

**(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS**

Contract Requisition Number: CR055872

Contract Number: C030669

Vendor Number: V024928

**MILWAUKEE BOARD OF SCHOOL DIRECTORS  
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 1st day of July 2022, by and between **Qualtrics, LLC** (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

**1. SCOPE OF SERVICES**

Contractor shall specifically perform the following tasks:

Contractor shall provide Milwaukee Public Schools with access to Qualtrics ResearchCoro, Stats IQ, and Vocalize. Access will include unlimited users (all employees), responses, projects, dashboards, and customer support as well as custom branded themes and advanced distribution.

In addition, Contractor will provide the “Employee Experience Life Cycle and Exit” solution in this contract which includes unlimited touchpoints, dashboards, automated directory import, automated actions, expert content and pre-configured questions and reporting, as well as feedback. This will include a one-time technical integration of human resources data.

Products and services to be in accordance with Contractor’s order form Q-1692755 incorporated herein as Exhibit A and Qualtrics Terms of Service or General Terms and Conditions for Qualtrics Services (“GTC”) incorporated herein as Exhibit B.

Contractor shall provide, at its own expense, all personnel, supplies, and equipment required to perform the services under this Contract.

**2. TERM**

This Contract shall be in effect July 1, 2022 through June 30, 2023 with the option to extend two (2) additional one-year terms upon mutual consent.

**No work** shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

**3. COMPENSATION**

Total compensation under this Contract shall not exceed \$277,791.67

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools  
Research, Assessment, & Data  
Dr. Melanie Stewart, Director  
Michael Harris, Senior Director – Talent Management  
5225 W. Vliet St.  
Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

## **(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS**

Contract Requisition Number: CR055872

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Vendor Number: V024928

### **4. NON APPROPRIATION OF FUNDS**

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

### **5. NON-DISCRIMINATION**

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

### **6. INDEMNITY**

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

### **7. BACKGROUND CHECKS**

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at [564@milwaukee.k12.wi.us](mailto:564@milwaukee.k12.wi.us)), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

### **8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY**

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile

## (ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

Contract Requisition Number: CR055872

Contract Number: C030669

Vendor Number: V024928

Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

|                             |  |
|-----------------------------|--|
| Workers' Compensation       | Statutory Limits                                 |
| Employers' Liability        | \$100,000 per occurrence                         |
| General Liability           | \$1,000,000 per occurrence/\$2,000,000 aggregate |
| Auto Liability              | \$1,000,000 per occurrence                       |
| Umbrella (excess) Liability | \$1,000,000 per occurrence                       |

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

### 9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors' Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

### 10. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

### 11. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

### 12. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

### 13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days' notice, but reserves the right to give immediate notice. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of

## **(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS**

Contract Requisition Number: CR055872

Contract Number: C030669

Vendor Number: V024928

termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

### **14. INDEPENDENT CONTRACTOR**

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

### **15. ASSIGNMENT LIMITATION**

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

### **16. PROHIBITED PRACTICES**

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

### **17. LIVING WAGE REQUIREMENT**

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

### **18. NOTICES**

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

### **19. WAIVER**

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

### **20. INTEGRATION / SEVERABILITY**

## **(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS**

Contract Requisition Number: CR055872

Contract Number: C030669

Vendor Number: V024928

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

### **21. CHOICE OF LAW & FORUM**

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

### **22. TIMING**

Time is of the essence in this Contract.

### **23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION**

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

### **24. FORCE MAJEURE**

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

### **25. STUDENT DATA**

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

### **26. NON-DISCLOSURE**

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

### **27. MPS LOGO/PUBLICITY**

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS's Executive Director of Communications & Outreach.

**(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS**

Contract Requisition Number: CR055872  
Contract Number: C030669  
Vendor Number: V024928

**28. ORDER OF PRIORITY**

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

**29. PUBLIC RECORDS**

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

**30. CONTRACT COMPLIANCE REQUIREMENT**

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 0 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V024928 )

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
*Janine Adamczyk, Director*  
*Procurement & Risk Management*

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

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

Qualtrics, LLC  
333 W. River Park Drive  
Provo, UT 84604  
(800) 340-9194

By: \_\_\_\_\_  
*Keith P. Posley, Ed.D.*  
*Superintendent of Schools*

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

SSN / FEIN: XXXXXXXXXX

Budget Code:  
SYS-0-0-AMT-RH-ECTS \$161,916.67  
OPR-0-0-8I2-HR-ECTS \$115,875.00

By: \_\_\_\_\_  
*Robert E. Peterson, President*  
*Milwaukee Board of School Directors*

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

By: \_\_\_\_\_

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

Insurance Compliance

(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

**qualtrics.**<sup>XM</sup>

**EXHIBIT A**

**Order Form**

|   |  |  |
|---|--|--|
| Parties:                                | Qualtrics, LLC<br>333 W. River Park Dr.<br>Provo, UT 84604<br>United States<br>( <b>"Qualtrics"</b> )  | Milwaukee Public Schools (inc)<br>5225 W Vliet St<br>Milwaukee, WI 53208<br>United States<br>( <b>"Customer"</b> )   |
| Effective Date:                         | The date signed by the last party to sign.   |  |
| Governing Document:                     | This Order Form is subject to the Qualtrics Terms of Service as amended and attached herein as Exhibit B (collectively, the <b>"Agreement"</b> ). All capitalized terms used but not defined herein have the meanings given to them in the Agreement. If there is a conflict between the terms of the Agreement and this Order Form, this Order Form will control. |  |
| Attachments:                            | <ul style="list-style-type: none"> <li>- Service Level Exhibit</li> <li>- Fees Exhibit</li> <li>- Cloud Service Exhibit</li> <li>- Professional Services Exhibit(s)</li> </ul>   |  |
| Services:                               | As set forth in the exhibits attached hereto   |  |
| Term:                                   | As set forth in the exhibits attached hereto   |  |
| Payment Terms:                          | As set forth in the exhibits attached hereto   |  |
| Additional Terms:                       |  |  |
| To be completed by Customer             |  |  |
| Regional Data Center:                   |  | Purchase Order Number (if any):  |
| Email Address for Invoice Submission:   | <a href="mailto:stewarmr@milwaukee.k12.wi.us">stewarmr@milwaukee.k12.wi.us</a><br><a href="mailto:harrism3@milwaukee.k12.wi.us">harrism3@milwaukee.k12.wi.us</a>   | Shipping Address:  |
| Invoicing Instructions (if applicable): |  | Billing Address for Invoice Submission:<br>Attn: Dr. Melanie Stewart, Director<br>Attn: Michael Harris, Sr. Director |

| Qualtrics                         | Customer                            |
|-----------------------------------|-------------------------------------|
| By (signature):                   | By (signature):                     |
| Name:                             | Name:                               |
| Title:                            | Title:                              |
| Date:                             | Date:                               |
| <b>Qualtrics Primary Contact:</b> | <b>Customer Primary Contact:</b>    |
| Name: Kristin Shotland            | Name: Marc Sanders                  |
| Phone:                            | Phone: 414-475-8570                 |
| Email: kristins@qualtrics.com     | Email: sandermc@milwaukee.k12.wi.us |



## EXHIBIT A

### Order Form

#### Service Level Exhibit

##### Service Levels

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





## EXHIBIT A

### Order Form

#### Fees Exhibit

##### License Details

| Start Date  | End Date    | Term in Months |
|-------------|-------------|----------------|
| 01-Jul-2022 | 30-Jun-2023 | 12             |

##### Cloud Service Details

| Period                     | Services                                       | Price                                       | Estimated Invoice Date | Payment Terms from Invoice | License Configuration |
|----------------------------|--|---|------------------------|----------------------------|-----------------------|
| 01-Jul-2022 TO 30-Jun-2023 | Cloud (Vocalize)<br>Cloud (EX)<br>Professional | \$161,916.67*<br>\$88,000.00<br>\$27,875.00 | Effective Date         | Net 30                     | Q-1692755             |
| <b>Total</b>               |  | <b>USD<br/>\$277,791.67</b>                 |                        |                            |                       |

\*Amount based on an \$175,875.00 annualized price, adjusted for unused portion of the Cloud Service previously purchased.

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

##### Press Release

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



## EXHIBIT A

### Order Form

#### Cloud Service Exhibit

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

*[Description of Services on following page]*



## EXHIBIT A

### Order Form

**YEAR 1**  
**Q-1692755**

#### CLOUD SERVICE

##### Vocalize

Website Targeting  
Additional Theme  
Text iQ  
Vocalize Core : 30000  
Stats iQ  
Role Based Dashboards  
Principal Level Access : 30000  
Advanced Security Management  
XM Directory - State of the Art  
Vocalize K12 ExpertReview - Response Quality (Advanced)  
Advanced Distribution Package  
Closed Loop Followup  
Additional Brands  
Developer Tools  
Included Authors  
Advanced Features Package

##### Employee Experience

Lifecycle - Employee : up to 9000  
Unlimited Touchpoints  
Employee Directory Import Automation  
Dashboards  
Automated Actions  
XM Solutions: expert content and pre-configured questions & reporting: Onboarding/Exit  
Text iQ  
HR Tech: SFTP + API integrations  
Always-on Feedback

## EXHIBIT A

### Order Form

#### Professional Services Exhibit

*Customer agrees that Qualtrics may use subcontractors to deliver any portion(s) of the Project at Qualtrics' discretion. Qualtrics currently intends to use Workforce Science Associates, LLC ("WSA"). Qualtrics will provide notice to Customer if the delivery subcontractor changes.*

"Delivery Team" refers to the set of resources assigned for fulfillment of project scope.

"Standard Business Hours" are 0900 to 1700 hours according to the time zone of the office in which Delivery Team is located, unless otherwise agreed to in writing during the project.

#### 1. Service Description

This Professional Services Exhibit describes the work to be provided by the Delivery Team, collectively the "Services", to Customer. Delivery Team will provide overall Services for the one-time implementation of two lifecycle surveys (one new hire survey and one exit survey). The Services include overall project management, survey design advisement, survey administration, reporting of results.

The Services will be performed for up to four (4) months following the kickoff meeting based on the scope of services outlined in this Order Form. Customer and Qualtrics both agree to make reasonable efforts to carry out our respective responsibilities in order to achieve this timeframe. Should Customer request that the project extend beyond this timeframe, additional fees may apply.

#### 2. Project Management

Qualtrics will provide project management for the activities and tasks in this Professional Services Exhibit. The purpose is to provide technical direction and control of Delivery Team project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

Delivery Team will:

- a. conduct a kickoff meeting or teleconference to introduce the project team members from both parties and to review and confirm the project scope and Customer's requirements ("Kickoff Meeting").
- b. maintain project communications through Customer's Project Manager.
- c. establish documentation and procedural standards for any deliverable Materials.
- d. work with Customer's Project Manager to prepare and maintain a detailed project plan and schedule for the performance of this Order Form which will include the activities, tasks, assignments, milestones and estimated task durations.
- e. review project tasks, schedules and make changes or additions, as appropriate, and measure and evaluate progress against the project plan with Customer's Project Manager.
- f. work with Customer's Project Manager to address and resolve deviations from the project plan.
- g. schedule and conduct post-survey business reviews with key Customer personnel.

## Order Form

### 3. Project Scope

Under this project Delivery Team will provide the Services for the deployment of lifecycle survey(s). Except for scheduled meetings, reviews, interviews and similar activities requested by Customer, all work for Services included under this Order Form will be performed remotely.

Charges and schedule are based on performance of the activities and tasks listed in this Order Form. Deviations that arise during the project will be managed through the Change Control process described below and may result in adjustments to the Project Scope, Estimated Schedule, Charges and other terms.

### 4. Employee Experience Survey Services

#### Survey Content

Delivery Team will:

- a. recommend a survey instrument leveraging WSA's best practice content, or utilize customer's existing survey instrument;
- b. potential limitations to benchmark comparisons and/or visual representations in reporting for custom client items will be discussed during the item design process.

#### Internet Survey Configuration

Delivery Team will:

- a. configure one (1) new hire survey project (including branching logic), created in U.S. English;
- b. configure one (1) exit survey project (including branching logic), created in U.S. English.

#### NOTES:

A survey project is defined as any unique set of items and demographics in a particular order and includes up to fifty (50) survey questions and up to twenty (20) unique demographics.

Translation services are not included as part of this project. The cost of such translation services will be subject to additional fees.

#### Contact File Import & Distribution Automation for Lifecycle Surveys

Delivery Team will:

- a. provide assistance to Customer covering the configuration and setup of (1) Employee Directory File Import using either Qualtrics File Service (QFS) or SFTP connector with customer-hosted SFTP server;
- b. provide documentation related to Qualtrics File Service (QFS) and SFTP Connector;
- c. provide guidance and assistance in configuration, testing and troubleshooting of:
  1. file processing rules;
  2. scheduling (hourly, daily, weekly);
  3. PGP encryption.

**NOTE:** WSA-hosted SFTP service must be scoped and purchased separately.

Customer will:

- a. provide their own SFTP server (if using SFTP connector);
- b. acquire any necessary login credentials before import is scheduled;
- c. provide a properly structured CSV file for import;

## Order Form

- d. set up additional imports if more than one is required.

### Communications

For each survey project provided for in this Order Form, Delivery Team will:

- a. provide a communications strategy guide;
- b. provide electronic invitations to the survey solution;
- c. provide all electronic communications in U.S. English.

### Survey Administration

Delivery Team will:

- a. launch one (1) new hire lifecycle survey project;
- b. launch one (1) exit lifecycle survey project;

**NOTE:** Delivery Team and Customer will mutually agree on the schedule for survey administration after the Kickoff Meeting(s).

### Online Data Reporting

For each survey project provided for in this Order Form, Delivery Team will:

- a. conduct a scoping and design call with Customer upon commencement of license to agree upon dashboard content and layout;
- b. create one (1) dashboard and connect it to one (1) survey, after survey has been programmed;
- c. map up to fifty (50) survey questions and up to twenty (20) embedded data fields to the dashboard;
- d. configure dashboard with up to eight (8) pages, including up to forty (40) widgets per page;
- e. dashboard to be built in English using standard features;
- f. create up to five (5) separate roles and up to twenty (20) dashboard access permissions and roles and send dashboard invites as part of a one-time initial setup of roles based on written list provided by Customer;
- g. prior to the dashboard launch, run a pre-launch review to walk through configurations and distribution setup;
- h. complete up to two (2) reviews per dashboard;
- i. send one (1) round of dashboard invites;

**NOTE:** Any delays in completing the design and programming of the survey may result in a delay of the survey mapping in the dashboard.

Customer will:

- a. confirm setup of all survey(s) that are to be mapped to dashboards;
- b. approve key metrics to be used in the dashboard;
- c. validate that the correct data has been mapped, widgets and filters work as expected, and user permissions are set accurately;
- d. provide written list of desired role setup and rules to Delivery Team;
- e. verify that Delivery Team setup of roles and permissions are correct to ensure that any users who require data restrictions or role-based access have appropriate attributes saved in the Qualtrics platform;
- f. compose and provide all messages for dashboard invites, reminders, etc. and share them with Delivery Team;

## EXHIBIT A

### Order Form

#### Qualtrics System Training

Delivery Team will:

- a. include up to two total web-based training sessions led by a Delivery Team project manager for Qualtrics tools;
- b. sessions will last up to one (1) hour each and may be recorded.

#### 5. Customer Responsibilities

The completion of this project depends on the full commitment and participation of Customer's management and personnel. Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the project and will be handled in accordance with the Change Control procedure.

#### Customer Program Manager

Prior to the start of this project, Customer will designate a person called Customer Program Manager who will be the focal point for Delivery Team communications relative to this project and will have the authority to act on behalf of Customer in all matters regarding this project.

Customer's Program Manager's responsibilities include the following:

- a. obtaining and providing information, data, and decisions within three working days of Delivery Team's request unless an alternative timeframe is agreed to by the parties in writing.
- b. manage Customer personnel and responsibilities for this project;
- c. serve as the interface between Delivery Team and all Customer departments participating in the project;
- d. administer the Change Control procedure with the Delivery Team Project Manager;
- e. participate in the Kickoff Meeting/call;
- f. resolve deviations from the project plan and schedule, which may be caused by Customer; and
- g. help resolve project issues and escalate issues within Customer's organization, as necessary.

#### Additional Customer Responsibilities

- a. Customer will ensure that Customer's staff is available to provide such assistance as Delivery Team reasonably requires and that Delivery Team is given reasonable access to Customer's senior management, as well as any members of Customer's staff to enable Delivery Team to provide the Services. Customer will ensure that its staff has the appropriate skills and experience. If any of Customer's staff fails to perform as required, Customer will make suitable additional or alternative staff available;
- b. provide all information and materials reasonably required to enable Delivery Team to provide the Services; and
- c. be responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which Delivery Team will have access during the Services.

#### 6. Change Control

The following Change Control process will be followed if a change to this Order Form is required:



## EXHIBIT A

### Order Form

- a. A Project Change Request (PCR) will be documented in an email and be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.
- b. Both the Customer and the Delivery Team Project Manager will review the proposed change and agree to implement it, recommend it for further investigation, or reject it.
- c. A PCR must be accepted by authorized representatives from both parties to authorize implementation of any agreed changes to the Order Form and the Agreement. Until a change is agreed to, both parties will continue to act in accordance with the latest agreed version of the Order Form.
- d. A PCR that has been approved by authorized representatives from both parties in writing constitutes a change authorization for purposes of this Order Form and the Agreement.



## EXHIBIT B

# Terms of Service or General Terms and Conditions for Qualtrics Services (“GTC”)

If a valid agreement exists between you (“Customer”) and Qualtrics, LLC (“Qualtrics”, an SAP America Inc. company) related to the subject matter hereof, those terms take precedence over these terms unless otherwise agreed by the Parties in relation to a specific Order Form. Refer to these GTC regularly to ensure compliance. These GTC can be found attached. **Acceptance.** Please read these GTC carefully before using [www.qualtrics.com](http://www.qualtrics.com) (the “Website”) or the products or services offered by Qualtrics (the “Services”). These GTC take effect when you click an “I Accept” button or checkbox presented with these GTC or when you use any of the Services or Website, whichever occurs first. If you are agreeing to these GTC on behalf of Customer, you represent to Qualtrics that you have legal authority to bind Customer. **Modifications to this Agreement.** Qualtrics may modify these GTC at any time by providing notice to Customer. By continuing to use the Services after the effective date of any modifications to these GTC, Customer agrees to be bound by the modified terms. Some Services may be subject to additional terms specific to those Services as set forth in the Service-Specific Terms <https://www.qualtrics.com/service-specific-terms/>, which are incorporated herein to the extent applicable. **United States Federal Government Agency:** If you are a United States federal government agency, use of the Services is subject to [this amendment](#).  
Revised September 1, 2020 \*\*\*\*\*

1. **DEFINITIONS** Capitalized terms used in this document are defined in the Glossary.
2. **USAGE RIGHTS AND RESTRICTIONS**
  1. **Grant of Rights.** Qualtrics grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials (as applicable) and Documentation solely for Customer’s and its Affiliates’ internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.
  2. **Authorized Users.** Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.
  3. **Acceptable Use Policy.** With respect to the Cloud Service, Customer will not:
    - a. disassemble, decompile, reverse-engineer, copy, translate or make derivative works,

## EXHIBIT B

- b. transmit any content or data that is unlawful or infringes any intellectual property rights, or
    - c. circumvent or endanger its operation or security.
  - 4. **Verification of Use.** Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. Qualtrics may monitor use to verify compliance with Usage Metrics, volume and the Agreement.
  - 5. **Suspension of Cloud Service.** Qualtrics may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. Qualtrics will promptly notify Customer of the suspension or limitation. Qualtrics will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.
  - 6. **Third Party Web Services.** The Cloud Service may include integrations with web services made available by third parties (other than Qualtrics' Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.
  - 7. **Mobile Access to Cloud Service.** If applicable, Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.
3. **QUALTRICS RESPONSIBILITIES**
- 1. **Provisioning.** Qualtrics provides access to the Cloud Service as described in the Agreement.
  - 2. **Support.** Qualtrics provides support for the Cloud Service as referenced in the Order Form.
  - 3. **Security.** Qualtrics will implement and maintain appropriate technical and organizational measures to protect the personal data processed by Qualtrics as part of the Cloud Service as described in the Data Processing Agreement attached hereto as **Exhibit A ("DPA")** for Cloud Services incorporated into the Order Form in compliance with applicable data protection law.
  - 4. **Modifications.**
    - a. The Cloud Service and Qualtrics Policies may be modified by Qualtrics. Qualtrics will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
    - b. If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to Qualtrics within thirty days after receipt of Qualtrics' informational notice.
  - 5. **Analyses.** Qualtrics or Qualtrics' Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("**Analyses**").

## EXHIBIT B

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

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

#### 4. CUSTOMER AND PERSONAL DATA

1. **Customer Data.** Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to Qualtrics (including Qualtrics' Affiliates and subcontractors) a nonexclusive right to process Customer Data solely to provide and support the Cloud Service.
2. **Personal Data.** Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.
3. **Security.** Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from Qualtrics.
4. **Access to Customer Data.**
  - a. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Customer Data.
  - b. Before the Subscription Term expires, if available, Customer may use Qualtrics' self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service. Alternatively, Customer may request data export through support ticket.
  - c. At the end of the Agreement, Qualtrics will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
  - d. In the event of third party legal proceedings relating to the Customer Data, Qualtrics will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

#### 5. FEES AND TAXES

1. **Fees and Payment.** Customer will pay fees as stated in the Order Form. After prior written notice, Qualtrics may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off

## EXHIBIT B

fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

2. **Taxes.** Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than Qualtrics' income and payroll taxes. Notwithstanding the foregoing, Customer will not be responsible for taxes from which they are exempt on the condition that Customer presents a direct pay permit or valid tax-exempt certificate for such taxes prior to invoice. If Qualtrics is required to pay taxes (other than its income and payroll taxes), Customer will reimburse Qualtrics for those amounts and, to the extent not prohibited by applicable law, indemnify Qualtrics for any taxes and related costs paid or payable by Qualtrics attributable to those taxes.

### 6. TERM AND TERMINATION

1. **Term.** The Subscription Term is as stated in the Order Form.
2. **Termination.** A party may terminate the Agreement:
  - a. upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty-day period,
  - b. as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
  - c. immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.
3. **Refund and Payments.** For termination by Customer or an 8.1(c) termination, Customer will be entitled to:
  - a. a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
  - b. a release from the obligation to pay fees due for periods after the effective date of termination.
4. **Effect of Expiration or Termination.** Upon the effective date of expiration or termination of the Agreement:
  - a. Customer's right to use the Cloud Service and all Qualtrics Confidential Information will end,
  - b. Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
  - c. termination or expiration of the Agreement does not affect other agreements between the parties.
5. **Survival.** Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

### 7. WARRANTIES

1. **Compliance with Law.** Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:
  - a. in the case of Qualtrics, the operation of Qualtrics' business as it relates to the Cloud Service, and
  - b. in the case of Customer, the Customer Data and Customer's use of the Cloud Service.
2. **Good Industry Practices.** Qualtrics warrants that it will provide the Cloud Service:

## EXHIBIT B

- a. in substantial conformance with the Documentation; and
    - b. with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.
  3. **Remedy.** Customer's sole and exclusive remedies and Qualtrics' entire liability for breach of the warranty under Section 7.2 will be:
    - a. the re-performance of the deficient Cloud Service, and
    - b. if Qualtrics fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of Qualtrics' failure to re-perform.
  4. **System Availability.**
    - a. Qualtrics warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement or Supplement ("SLA").
    - b. Customer's sole and exclusive remedy for Qualtrics' breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow Qualtrics' posted credit claim procedure. When the validity of the service credit is confirmed by Qualtrics in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.
    - c. In the event Qualtrics fails to meet the SLA (i) for three consecutive months, or (ii) for four or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Qualtrics with written notice within thirty days after the failure.
  5. **Warranty Exclusions.** The warranties in Sections 7.2 and 7.4 will not apply if:
    - a. the Cloud Service is not used in accordance with the Agreement or Documentation,
    - b. any non-conformity is caused by Customer, or by any product or service not provided by Qualtrics, or
    - c. the Cloud Service was provided for no fee.
  6. **Disclaimer.** Except as expressly provided in the Agreement, neither Qualtrics nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Qualtrics or product roadmaps in obtaining subscriptions for any Cloud Service.
8. **THIRD PARTY CLAIMS**
1. **Claims Brought Against Customer.**
    - a. Qualtrics will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates

## EXHIBIT B

a patent claim, copyright, or trade secret right. Qualtrics will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Qualtrics enters into) with respect to these claims.

- b. Qualtrics' obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by Qualtrics, or (iii) use of the Cloud Service provided for no fee.
- c. In the event a claim is made or likely to be made, Qualtrics may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, Qualtrics or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

- 2. **Claims Brought Against Qualtrics.** To the extent not prohibited by applicable law, Customer will indemnify Qualtrics against claims brought against Qualtrics and its Affiliates and subcontractors by any third party related to Customer Data, except to the extent such claim results from Qualtrics' breach of the Agreement. To the extent not prohibited by applicable law, Customer will indemnify Qualtrics against all damages finally awarded against Qualtrics and its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims, to the extent such claim results from Customer's negligence or willful tort.
- 3. **Third Party Claim Procedure.** To the extent not prohibited by applicable law, the party that is obligated to defend a claim will have the right to fully control the defense.
- 4. **Exclusive Remedy.** The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

### 9. LIMITATION OF LIABILITY

- 1. **Limitation of Liability.** To the extent not prohibited by applicable law, neither party will exclude or limit its liability for damages resulting from:
  - a. the parties' obligations under Section 8.1(a) and 8.2,
  - b. unauthorized use or disclosure of Confidential Information,
  - c. either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
  - d. any failure by Customer to pay any fees due under the Agreement,
  - e. claims brought against Qualtrics and its Affiliates and subcontractors by any third party related to Customer Data.
- 2. **Liability Cap.** Subject to Sections 9.1 and 9.3, and to the extent not prohibited by applicable law, the maximum aggregate liability of either party (or its respective Affiliates or Qualtrics' subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve

## EXHIBIT B

month period. Any “twelve month period” commences on the Subscription Term start date or any of its yearly anniversaries.

3. **Exclusion of Damages.** Subject to Section 9.1:
  - a. neither party (nor its respective Affiliates or Qualtrics’ subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
  - b. Qualtrics will not be liable for any damages caused by any Cloud Service provided for no fee.
4. **Risk Allocation.** The Agreement allocates the risks between Qualtrics and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

### 10. INTELLECTUAL PROPERTY RIGHTS

1. **QUALTRICS Ownership.** Qualtrics, Qualtrics’ Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to Qualtrics and its licensors.
2. **Customer Ownership.** Customer retains all rights in and related to the Customer Data. Qualtrics may use Customer-provided trademarks solely to provide and support the Cloud Service.
3. **Non-Assertion of Rights.** Customer covenants, on behalf of itself and its successors and assigns, not to assert against Qualtrics and its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

### 11. CONFIDENTIALITY

1. **Use of Confidential Information,**
  - a. The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11t. Customer will not disclose the Agreement or the pricing to any third party. Notwithstanding anything to the contrary herein, the receiving party may disclose Confidential Information as required by law (including as required by The Freedom of Information Act, 5 U.S.C. § 552 or analogous state law), provided that the receiving party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party’s compliance with the foregoing would cause it to violate a legal requirement), and (ii) discloses only such information as is required by law
  - b. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.

## EXHIBIT B

- c. In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.
2. **Exceptions.** The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:
  - a. is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
  - b. is generally available to the public without breach of the Agreement by the receiving party,
  - c. at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
  - d. the disclosing party agrees in writing is free of confidentiality restrictions.
3. **Publicity.** Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that Qualtrics may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of Qualtrics' marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Customer agrees that Qualtrics may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with Qualtrics.

### 12. MISCELLANEOUS

1. **Severability** If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.
2. **No Waiver.** A waiver of any breach of the Agreement is not deemed a waiver of any other breach.
3. **Electronic Signature.** Electronic signatures that comply with applicable law are deemed original signatures.
4. **Regulatory Matters.** Qualtrics Confidential Information is subject to export control laws of various countries, including the laws of the United States. Customer will not submit Qualtrics Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export Qualtrics Confidential Information to countries, persons or entities if prohibited by export laws.
5. **Notices.** All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by Qualtrics relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.
6. **Assignment.** Neither party shall assign or transfer the Agreement (or any of its rights or obligations) to any party without the prior written consent of the other party, except that either party may assign the Agreement to its Affiliates.



## EXHIBIT B

7. **Subcontracting.** Qualtrics may subcontract parts of the Cloud Service or Consulting Services to third parties. Qualtrics is responsible for breaches of the Agreement caused by its subcontractors.
8. **Relationship of the Parties.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.
9. **Force Majeure.** Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.
10. **Governing Law.** The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
11. **Entire Agreement.** The Agreement constitutes the complete and exclusive statement of the agreement between Qualtrics and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Qualtrics accepts or does not otherwise reject the purchase order.
12. **Data Processing Agreement.** Where Customer is processing personal data using the Services, the DPA shall govern the processing of such personal data.

## Glossary

1. **"Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
2. **"Agreement"** means an Order Form and documents incorporated into an Order Form.
3. **"Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of
  - a. Customer
  - b. Customer's Affiliates, and/or
  - c. Customer's and Customer's Affiliates' Business Partners.

## EXHIBIT B

4. **“Business Partner”** means a legal entity that requires use of a Cloud Service in connection with Customer’s and its Affiliates’ internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
5. **“Cloud Service”** means any distinct, subscription-based, hosted, supported and operated on- demand solution provided by Qualtrics under an Order Form.
6. **“Cloud Materials”** mean any materials provided or developed by Qualtrics (independently or with Customer’s cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
7. **“Confidential Information”** means
  - a. with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
  - b. with respect to Qualtrics: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding Qualtrics research and development, product offerings, pricing and availability.
  - c. Confidential Information of either Qualtrics or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure
8. **“Consulting Services”** means professional services, such as implementation, configuration, custom development and training, performed by Qualtrics’ employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
9. **“Customer Data”** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include Qualtrics’ Confidential Information.
10. **“Documentation”** means Qualtrics’ then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
11. **“Order Form”** means the medium by which Customer purchases a Cloud Service, including, as applicable, an ordering document that references the GTC.
12. **“Qualtrics Policies”** means the operational guidelines and policies applied by Qualtrics to provide and support the Cloud Service as incorporated in an Order Form.
13. **“Subscription Term”** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.
14. **“Supplement”** means as applicable, the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
15. **“Usage Metric”** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

# EXHIBIT B

## Exhibit A

### Data Processing Agreement

# PERSONAL DATA PROCESSING AGREEMENT FOR QUALTRICS CLOUD SERVICES

This Data Processing Addendum ("DPA") is entered into BETWEEN (1) **Customer**; and (2) **Qualtrics**.

## 1. DEFINITIONS

1. **"Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to Qualtrics be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
2. **"Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
3. **"Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
4. **"EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
5. **"GDPR"** means the General Data Protection Regulation 2016/679.
6. **"New SCC Relevant Transfer"** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
7. **"New Standard Contractual Clauses"** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof which shall automatically apply. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.
8. **"Personal Data"** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is:
  - a. entered by Customer or its Authorized Users into or derived from their use of the Cloud Service; or
  - b. supplied to or accessed by Qualtrics or its Subprocessors in order to provide support under the Agreement. Personal Data is a sub-set of Customer Data (as defined under the Agreement).
9. **"Personal Data Breach"** means a confirmed:

## EXHIBIT B

- a. accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
    - b. similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
  - 10. **“Processor”** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
  - 11. **“SAP”** means SAP SE, Qualtrics parent company.
  - 12. **“Schedule”** means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.
  - 13. **“Standard Contractual Clauses (2010)”** means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
  - 14. **“Subprocessor”** or **“sub-processor”** means Qualtrics Affiliates, SAP, SAP Affiliates and third parties engaged by Qualtrics, Qualtrics’ Affiliates in connection with the Cloud Service and which process Personal Data in accordance with this DPA.
  - 15. **“Technical and Organizational Measures”** means the technical and organizational measures for the relevant Cloud Service set out in Schedule 2.
  - 16. **Third Country”** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.
2. **BACKGROUND**
- 1. **Purpose and Application**
    - a. This document (“DPA”) is incorporated into the Agreement and forms part of a written (including in electronic form) contract between Qualtrics and Customer.
    - b. This DPA applies to Personal Data processed by Qualtrics and its Subprocessors in connection with its provision of the Cloud Service.
    - c. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by Qualtrics. Customer shall not store Personal Data in such environments.
  - 2. **Structure** Schedules 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects (Schedule 1) and the applicable Technical and Organizational Measures (Schedule 2).
  - 3. **Governance**
    - a. Qualtrics acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA.
    - b. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use Qualtrics as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud

## EXHIBIT B

Service. Where Qualtrics informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service. Customer shall forward such information and notices to the relevant Controllers.

### 3. SECURITY OF PROCESSING

1. **Applicability of the Technical and Organizational Measures** Qualtrics has implemented and will apply the Technical and Organizational Measures. Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.
2. **Changes.**
  - a. Qualtrics applies the Technical and Organizational Measures to Qualtrics' entire customer base hosted out of the same data center or receiving the same Cloud Service. Qualtrics may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.
  - b. Qualtrics will publish updated versions of the Technical and Organizational Measures at [www.qualtrics.com/terms-of-service](http://www.qualtrics.com/terms-of-service).

### 4. QUALTRICS OBLIGATIONS

1. **Instructions from Customer.** Qualtrics will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. Qualtrics will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or Qualtrics otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, Qualtrics will immediately notify Customer (email permitted).
2. **Processing on Legal Requirement.** Qualtrics may also process Personal Data where required to do so by applicable law. In such a case, Qualtrics shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.
3. **Personnel.** To process Personal Data, Qualtrics and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. Qualtrics and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.
4. **Cooperation.**
  - a. At Customer's request, Qualtrics will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding Qualtrics' processing of Personal Data or any Personal Data Breach.

## EXHIBIT B

- b. If Qualtrics receives a request from a Data Subject in relation to the Personal Data processing hereunder, Qualtrics will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.
    - c. In the event of a dispute with a Data Subject as it relates to Qualtrics' processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject.
    - d. Qualtrics shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, Qualtrics will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.
  - 5. **Personal Data Breach Notification.** Qualtrics will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. Qualtrics may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by Qualtrics.
  - 6. **Data Protection Impact Assessment.** If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, Qualtrics will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, audit reports and certifications). Any additional assistance shall be mutually agreed between the Parties.
5. **DATA EXPORT AND DELETION**
- 1. **Export and Retrieval by Customer.** During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Personal Data.
  - 2. **Deletion.** Before the Subscription Term expires, Customer may use Qualtrics' self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs Qualtrics to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed 6 months) unless applicable law requires retention.
6. **CERTIFICATIONS AND AUDITS**
- 1. **Customer Audit.** Customer or its independent third party auditor reasonably acceptable to Qualtrics (which shall not include any third party auditors who are either a competitor of Qualtrics or not suitably qualified or independent)

## EXHIBIT B

may audit Qualtrics' control environment and security practices relevant to Personal Data processed by Qualtrics only if:

- a. Qualtrics has not provided sufficient evidence of its compliance with the Technical and Organizational Measures that protect the production systems of the Cloud Service through providing either: (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 or ISAE3000 or other SOC1-3 attestation report. Upon Customer's request audit reports or ISO certifications are available through the third party auditor or Qualtrics;
  - b. a Personal Data Breach has occurred;
  - c. an audit is formally requested by Customer's data protection authority; or
  - d. provided under mandatory Data Protection Law conferring Customer a direct audit right and provided that Customer shall only audit once in any 12 month period unless mandatory Data Protection Law requires more frequent audits.
2. **Other Controller Audit.** Any other Controller may assume Customer's rights under Section 6.1 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by Qualtrics on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.
3. **Scope of Audit.** Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited in time to a maximum of 3 business days. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to Qualtrics.
4. **Cost of Audits.** Customer shall bear the costs of any audit unless such audit reveals a material breach by Qualtrics of this DPA, then Qualtrics shall bear its own expenses of an audit. If an audit determines that Qualtrics has breached its obligations under the DPA, Qualtrics will promptly remedy the breach at its own cost.

### 7. SUBPROCESSORS

1. **Permitted Use.** Qualtrics is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:
  - a. Qualtrics or Qualtrics affiliates on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. Qualtrics shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;
  - b. Qualtrics will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is

## EXHIBIT B

capable of providing the level of protection of Personal Data required by this DPA; and

- c. Qualtrics' list of Subprocessors in place on the effective date of the Agreement is published by Qualtrics at [www.qualtrics.com/subprocessor-list](http://www.qualtrics.com/subprocessor-list) or Qualtrics will make it available to Customer upon request, including the name, address and role of each Subprocessor Qualtrics uses to provide the Cloud Service.

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

- a. Qualtrics will inform Customer in advance (by email or by posting on the Cloud Service) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- b. Customer may object to such changes as set out in Section 7.3.

3. **Objections to New Subprocessors.**

- a. If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to Qualtrics. Such termination shall take effect at the time determined by the Customer which shall be no later than 30 days from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this 30 day period, Customer is deemed to have accepted the new Subprocessor.
- b. Within the 30 day period from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties discuss in good faith a resolution to the objection. Such discussions shall not extend the period for termination and do not affect Qualtrics' right to use the new Subprocessor(s) after the 30 day period.
- c. Any termination under this Section 7.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

4. **Emergency Replacement.** Qualtrics may replace a Subprocessor without advance notice where the reason for the change is outside of Qualtrics' reasonable control and prompt replacement is required for security or other urgent reasons. In this case, Qualtrics will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

8. **INTERNATIONAL PROCESSING**

- 1. **Conditions for International Processing.** Qualtrics shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.
- 2. **Amending the Agreement for International Processing.** The Standard Contractual Clauses and the New Standard Contractual Clauses have been removed from the Agreement. In the event Customer (i) chooses to collect Personal Data of an EEA or Swiss based Controller which is processed in a country outside the EEA, Switzerland and any country, organization or



## EXHIBIT B

territory acknowledged by the European Union as a safe country with an adequate level of data protection under Art. 45 GDPR, or (ii) collects Personal Data of another Controller which is processed internationally and such international processing requires an adequacy means under the laws of the country of the Controller, Customer shall provide prior notification to Qualtrics and the parties shall amend the Agreement as necessary. Customer's failure to provide notification to Qualtrics in advance of collection of such personal data is a material breach and Qualtrics may choose to terminate the Agreement.

### 9. **DOCUMENTATION; RECORDS OF PROCESSING**

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

## Schedule 1 Description of the Processing

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

### 1. **A. LIST OF PARTIES**

#### 1. **Under the Standard Contractual Clauses (2010)**

##### 1. Data Exporter

The data exporter under the Standard Contractual Clauses (2010) is the Customer who subscribed to a Cloud Service that allows Authorized Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also data exporters.

##### 2. Data Importer

Qualtrics and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).

#### 2. **Under the New Standard Contractual Clauses**

##### 1. Module 2: Transfer Controller to Processor

Where Qualtrics is located in a Third Country, Customer is the Controller and Qualtrics is the Processor, then Customer is the data exporter and Qualtrics is the data importer.

##### 2. Module 3: Transfer Processor to Processor

Where Qualtrics is located in a Third Country, Customer is a Processor and Qualtrics is a Processor, then Customer is the data exporter and Qualtrics is the data importer.

## EXHIBIT B

### 2. B. DESCRIPTION OF TRANSFER

#### 1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service, transmitted to, made available to, accessed or otherwise processed by the data importer.

#### 2. Data Categories

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

#### 3. Special Data Categories (if agreed)

1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("Sensitive Data"). Qualtrics has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.
2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):
  - a. training of personnel;
  - b. encryption of data in transit and at rest;
  - c. system access logging and general data access logging.
3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.

#### 4. Purposes of the data transfer and further processing; Nature of the processing

1. The transferred Personal Data is subject to the following basic processing activities:
  - a. use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical support);
  - b. continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
  - c. provision of professional services;
  - d. communication to Authorized Users;
  - e. storage of Personal Data in dedicated data centers (multi-tenant architecture);
  - f. release, development and upload of any fixes or upgrades to the Cloud Service;
  - g. back up and restoration of Personal Data stored in the Cloud Service

## EXHIBIT B

- h. computer processing of Personal Data, including data transmission, data retrieval, data access;
    - i. network access to allow Personal Data transfer;
    - j. monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
    - k. security monitoring, network-based intrusion detection support, penetration testing; and
    - l. execution of instructions of Customer in accordance with the Agreement.
  - 2. The purpose of the transfer is to provide and support the Cloud Service. Qualtrics and its Subprocessors may support the Cloud Service data centers remotely. Qualtrics and its Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.
- 5. **Additional description in respect of the New Standard Contractual Clauses:**
  - 1. Applicable Modules of the New Standard Contractual Clauses
    - a. Module 2: Transfer Controller to Processor
    - b. Module 3: Transfer Processor to Processor
  - 2. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing:  
In respect of the New Standard Contractual Clauses, transfers to Subprocessors shall be on the same basis as set out in the DPA.
  - 3. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).  
Transfers shall be made on a continuous basis.
  - 4. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period.  
Personal Data shall be retained for the duration of the Agreement and subject to Section 5.2 of the DPA.
- 3. **C. COMPETENT SUPERVISORY AUTHORITY**
  - 1. In respect of the New Standard Contractual Clauses:
    - 1. Module 2: Transfer Controller to Processor
    - 2. Module 3: Transfer Processor to Processor
  - 2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

## Schedule 2 Technical and Organizational Measures

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of applicable Data Protection Law.

## EXHIBIT B

Qualtrics will apply and maintain the Technical and Organizational Measures.

### 1. TECHNICAL AND ORGANIZATIONAL MEASURES

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

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

Measures:

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

Additional measures for Data Centers:

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

## EXHIBIT B

- Qualtrics and all third-party Data Center providers log the names and times of authorized personnel entering Qualtrics' private areas within the Data Centers.

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

Measures:

- Multiple authorization levels are used when granting access to sensitive systems, including those storing and processing Personal Data. Authorizations are managed via defined processes according to the Qualtrics Security Policy
- All personnel access Qualtrics' systems with a unique identifier (user ID).
- Qualtrics has procedures in place so that requested authorization changes are implemented only in accordance with the Qualtrics Security Policy (for example, no rights are granted without authorization). In case personnel leaves the company, their access rights are revoked.
- Qualtrics has established a password policy that prohibits the sharing of passwords, governs responses to password disclosure, and requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In the case of domain passwords, the system forces a password change every six months in compliance with the requirements for complex passwords. Each computer has a password-protected screensaver.
- The company network is protected from the public network by firewalls.
- Qualtrics uses up-to-date antivirus software at access points to the company network (for e-mail accounts), as well as on all file servers and all workstations.
- Security patch management is implemented to provide regular and periodic deployment of relevant security updates. Full remote access to Qualtrics' corporate network and critical infrastructure is protected by strong authentication.

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

## EXHIBIT B

authorization in the course of processing, use and storage.

Measures:

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

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

Measures:

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

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

Measures:

## EXHIBIT B

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

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

Measures:

- Qualtrics uses controls and processes to monitor compliance with contracts between Qualtrics and its customers, subprocessors or other service providers.
- As part of the Qualtrics Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the Qualtrics Information Classification standard.
- All Qualtrics employees and contractual subprocessors or other service providers are contractually bound to respect the confidentiality of all sensitive information including trade secrets of Qualtrics customers and partners.

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

Measures:

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

## EXHIBIT B

8. **Data Separation Control.**

Measures:

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

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

Measures:

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

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

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