

# SURVEYMONKEY DATA PROCESSING AGREEMENT with EU Standard Contractual Clauses

## HOW THIS DPA APPLIES

This DPA is only valid and legally binding if the Customer is a party to an Agreement and is a controller of personal data for the purpose of Data Protection Legislation (which includes Customers located in the EU and Customers who process personal data of individuals resident in the EU). This DPA takes effect from the date that the Customer creates an account or purchases a plan with a SurveyMonkey service.

This Data Processing Agreement (“DPA”) is between the Customer (**defined below**) and the applicable SurveyMonkey entity determined as follows:

- (i) for Customers located in any country other than the United States:
  - (a) SurveyMonkey Europe is a contracting entity to this DPA as the primary processor of the Customer; and
  - (b) SurveyMonkey Inc. is a contracting entity to this DPA in its capacity as a sub-processor of SurveyMonkey Europe and as a data importer under the Customer Standard Contractual Clauses.
- (ii) for Customers located inside the United States, SurveyMonkey Inc. shall be the contracting entity to this DPA and data importer of Customer’s Personal Data for the purpose of the Customer Standard Contractual Clauses.

This is the latest version of the SurveyMonkey DPA (dated 27 July 2020).

### DPA INSTRUCTIONS

This DPA consists of this cover page, the Data Processing Agreement Terms (overleaf), and Attachment A (which contains two appendices). Any modifications to the terms of this DPA (whether handwritten or otherwise) will not be effective unless SurveyMonkey has separately agreed to those modifications in writing.

To ask questions about this DPA, please contact your SurveyMonkey contact or email [privacy@surveymonkey.com](mailto:privacy@surveymonkey.com).

**NOTE: THIS DPA WILL BE AUTOMATICALLY BINDING ONCE THE CUSTOMER ACCESSES THIS DPA THROUGH COMPLETION OF THE WUFOO FORM. CUSTOMER IS NOT REQUIRED TO FILL IN ANY PART OF THIS DPA OR TO RETURN A SIGNED COPY OF THIS DOCUMENT TO SURVEYMONKEY.**

## DATA PROCESSING AGREEMENT TERMS

### 1 DEFINITIONS.

**"Agreement"** means any agreement between SurveyMonkey Inc. or SurveyMonkey Europe and a customer for a Qualifying Account. Such an agreement may have various titles, such as "Order Form", "Sales Order", "Terms of Use" or "Master Services Agreement".

**"Customer Standard Contractual Clauses"** means the Standard Contractual Clauses in the form attached as Attachment A.

**"controller", "data subject", "personal data", "process", "processing", "processor"** have the same meanings as in the Data Protection Legislation.

**"Contracting SM Entity"**, means either SurveyMonkey Inc. or SurveyMonkey Europe as applicable;

**"Customer"** means the customer that is identified on, and/or is a party to, the Agreement and who has completed the Wufoo form to acknowledge agreement to this DPA.

**"Customer Personal Data"** means personal data that is submitted to the Services by or to Customer, processed by SurveyMonkey Inc. for the purposes of delivering the Services to the Customer including the personal data set out in Appendix 1 to Attachment A.

**"Data Protection Legislation"** means the General Data Protection Regulation (EU) 2016/679, and all other applicable EU or EU Member State laws in relation to data protection and any update, amendment or replacement of same.

**"Qualifying Account"** means (i) any SurveyMonkey services, to include any enterprise or self service account or plan (ii) in relation to Wufoo online form services, any account or plan available for Wufoo services and/or (iii) any GetFeedback services which are not sales assisted.

**"Services"** means the services ordered by Customer from SurveyMonkey under a Qualifying Account in the Agreement.

**"SurveyMonkey"** means in the case of Customers in the United States, SurveyMonkey Inc. and, in the case of customers outside of the United States, SurveyMonkey Europe and SurveyMonkey Inc..

**"Standard Contractual Clauses"** means the standard contractual clauses annexed to the EU commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Customer Personal Data to Processors established in Third Countries under Directive 95/46/EC).

**"SurveyMonkey Europe"** means SurveyMonkey Europe UC, an Irish company, located at 2 Shelbourne Buildings, Second Floor, Shelbourne Road, Dublin 4.

**"SurveyMonkey Inc."** means SurveyMonkey Inc., a Delaware corporation located at One Curiosity Way, San Mateo, CA 94403, United States.

### 2 DATA PROCESSING.

2.1 SurveyMonkey Processing. In its processing of Customer Personal Data, SurveyMonkey shall:

- (a) comply in all material respects with applicable Data Protection Legislation; and
- (b) implement appropriate technical, administrative, physical and organizational measures to adequately safeguard and protect the security and confidentiality of Customer Personal Data against accidental, unauthorized or unlawful destruction, alteration, modification, processing, disclosure, loss, or access.

2.2 SurveyMonkey Inc. Status. SurveyMonkey Inc. may process Customer Personal Data either on behalf of Customer as part of supporting SurveyMonkey Europe's provision of the Services to Customer or on its own behalf as the Customer's primary processor (as applicable).

- 2.3 Processing Instructions. Customer instructs the Contracting SM Entity to process Customer Personal Data for the following purposes: (a) processing necessary for the provision of the Services; (b) processing in accordance with SurveyMonkey's privacy policies; (b) processing initiated by Customer's end users in their use of the Services; and (c) processing to comply with the other reasonable instructions provided by Customer to the Contracting SM Entity (e.g., via email) where such instructions are consistent with the terms of their Agreement. For the purposes of Clause 5(a) of the Customer Standard Contractual Clauses, the foregoing is deemed an instruction by the data exporter to the data importer to process Customer Personal Data.
- 2.4 Confidentiality: SurveyMonkey will ensure that all SurveyMonkey personnel involved in the processing of Customer Personal Data are party to confidentiality obligations in respect of the Customer Personal Data.
- 2.5 Assistance: the Contracting SM Entity will (to the extent that it is reasonably able) provide any assistance reasonably required by the Customer where the Customer conducts a data protection impact assessment involving the Services and shall co-operate as reasonably requested by the Customer to enable the Customer to comply with any exercise of rights by a data subject under the Data Protection Legislation in respect of Customer Personal Data (to the extent that information required by the Customer is not available to the Customer through the Services). Any assistance provided by the Contracting SM Entity under this section 2.5 shall be at the sole cost of the Customer.
- 2.6 Customer Processing. Customer will, in its use of the Services, process Customer Personal Data in accordance with the requirements of applicable Data Protection Legislation. Customer's instructions to the Contracting SM Entity for the processing of Customer Personal Data will comply with Data Protection Legislation and Customer will have sole responsibility for the accuracy, quality, and legality of Customer Personal Data and the means by which Customer acquired Customer Personal Data.

### **3 DATA TRANSFER REQUIREMENTS.**

- 3.1 Application of Customer Standard Contractual Clauses. The Customer Standard Contractual Clauses and the terms of this Section 3 will apply to all processing of Customer Personal Data by SurveyMonkey Inc. where the Customer Personal Data is transferred from the European Economic Area (EEA) to outside the EEA, either directly or via onward transfer, to any country or recipient: (a) not recognized by the European Commission as providing an adequate level of protection for personal data (as described in the Data Protection Legislation), and (b) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules.
- 3.2 Intra-Group Transfer. Where SurveyMonkey Europe is the Contracting SM Entity, SurveyMonkey Europe shall ensure that any transfer of Customer Personal Data to SurveyMonkey Inc. is effected in accordance with the safeguards specified under the Data Protection Legislation (which may include the use of Privacy Shield (or any replacement or successor to this program) or Standard Contractual Clauses). To the extent applicable, the Customer appoints SurveyMonkey Europe as its agent for the purpose of entering into the Customer Standard Contractual Clauses with SurveyMonkey Inc..
- 3.3 Flow-Down. To the extent required, the Customer appoints SurveyMonkey Europe and/or SurveyMonkey Inc. as its agent for the purposes of entering into Standard Contract Clauses with sub-processors on the Customer's behalf (in its capacity as data exporter) for the purpose of processing the Customer Personal Data in the manner envisaged by this DPA.

### **4 SUB-PROCESSORS.**

- 4.1 Sub-processing. The parties acknowledge that, pursuant to FAQ II.1 in Article 29 Working Party Paper WP 176 entitled "FAQs in order to address some issues raised by the entry into force of the EU Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC", a data exporter may provide a general consent to onward subprocessing by the data importer. Accordingly, Customer provides a general consent to SurveyMonkey, pursuant to Clause 11 of the Customer Standard Contractual Clauses, to engage onward sub-processors, subject to compliance with the requirements in this Section 4.
- 4.2 Sub-processor List. SurveyMonkey will, subject to any confidentiality provisions under the Agreement or otherwise imposed by SurveyMonkey:
- (a) make available to Customer a list of the SurveyMonkey subcontractors ("**Sub-processors**") who are involved in processing or sub-processing Customer Personal Data in connection with the provision of the Services, together with a description of the nature of services provided by each Sub-processor ("**Sub-processor List**"). A copy of this Sub-processor List is available [here](#) ;

- (b) provide Customer with written notice (“**New Sub-processor Notice**”) of the addition of any new Sub-processor or replacement of an existing Sub-processor at any time during the term of the Agreement, provided that Customer signs up to a mailing list made available by SurveyMonkey through which such notices will be delivered by e-mail;
  - (c) ensure that all Sub-processors on the Sub-processor List are bound by contractual terms that are in all material respects no less onerous than those contained in this DPA;
  - (d) be liable for the acts and omissions of its Sub-processors to the same extent SurveyMonkey would be liable if performing the services of each of those Sub-processors directly under the terms of this DPA, except as otherwise set forth in the Agreement; and
  - (e) provide copies of any Sub-processor agreements to Customer pursuant to Clause 5(j) of the Customer Standard Contractual Clauses only upon reasonable request by Customer. Such agreements may be redacted by SurveyMonkey to remove any commercial information and any information unrelated to the processing of Customer Personal Data conducted by the Sub-processor.
- 4.3 New / Replacement Sub-processors. If Customer has a reasonable basis to object to SurveyMonkey’s use of a new or replacement Sub-processor, Customer will notify SurveyMonkey (and, to the extent applicable, SurveyMonkey Europe) promptly in writing and in any event within 15 days after receipt of a New Sub-processor Notice. In the event of such objection, either Customer or SurveyMonkey may terminate the portion of any Agreement relating to the Services that cannot be reasonably provided without the objected-to new Sub-processor (which may involve termination of the entire Agreement) with immediate effect by providing written notice to the other party. Such termination will be without a right of refund for any fees prepaid by Customer for the period following termination.

## 5 SECURITY.

- 5.1 Security Measures. SurveyMonkey implements the security measures outlined [here for SurveyMonkey/Wufoo](#) and [here for GetFeedback](#) with respect to the Customer Personal Data. These security measures may be updated from time to time and SurveyMonkey will notify the customer where an update to these measures results in a material decrease in the levels of security applicable to Customer Personal Data

## 6 SECURITY INCIDENT NOTIFICATION.

- 6.1 Security Incident. The parties agree that the obligations in Clause 5(d)(ii) of the Customer Standard Contractual Clauses will be carried out in accordance with this Section 6. If SurveyMonkey Inc. or SurveyMonkey Europe becomes aware of any unauthorized or unlawful access to, or acquisition, alteration, use, disclosure, or destruction of, Customer Data (“**Security Incident**”), it will take reasonable steps to notify Customer without undue delay, but in any event within 72 hours of becoming aware of the Security Incident. SurveyMonkey will also reasonably cooperate with Customer with respect to any investigations relating to a Security Incident with preparing any required notices, and provide any information reasonably requested by Customer in relation to any Security Incident.

## 7 AUDITS.

- 7.1 Audit Procedures. The parties agree that the audits described in Clauses 5(f), 11(4) and 12(2) of the Customer Standard Contractual Clauses will be carried out in accordance with the following conditions:
- (a) Customer will provide the Contracting SM Entity with at least 1 month’s prior written notice of any audit by sending such notice to [privacy@surveymonkey.com](mailto:privacy@surveymonkey.com), which may be conducted by Customer or an independent auditor appointed by Customer (provided that no person conducting the audit shall be, or shall act on behalf of, a competitor of SurveyMonkey) (“**Auditor**”);
  - (b) Contracting SM Entity agrees, subject to any appropriate and reasonable confidentiality restrictions, to provide evidence of any certifications and compliance standards it maintains and will, on request, make available to you an executive summary of SurveyMonkey’s (or SurveyMonkey affiliates’) most recent penetration tests, which summary shall include remedial actions taken by SurveyMonkey resulting from such penetration tests.
  - (c) The scope of the certifications and penetration tests provided will be limited to SurveyMonkey systems, processes, and documentation relevant to the processing and protection of personal data undertaken for the Services obtained by you, and Auditor will conduct audits subject to any appropriate and reasonable confidentiality restrictions requested by SurveyMonkey.
  - (d) You will promptly notify and provide SurveyMonkey with full details regarding any perceived non-compliance or security concerns **discovered during the course of an audit**.

7.2 If there is a DPA with SCCs in place with the Customer, the Customer may exercise the audit rights granted thereunder by instructing the Contracting SM Entity to execute the audit as described in this Section 7.

7.3 The parties agree that, except as otherwise required by order or other binding decree of a regulator with authority over the Customer, this Section 7 sets out the entire scope of the Customer's audit rights under the Agreement and this DPA.

## 8 TERMINATION & RETURN OF DATA

8.1 The term of this DPA will terminate automatically on the later of: (i) the expiration or termination of the Agreement; or (ii) the deletion period referred to in clause 8.2 below.

8.2 Following termination of the Agreement, SurveyMonkey shall, at the direction of the Customer return or delete all Customer Personal Data in accordance with the relevant provisions of the Agreement or, in the absence of any instruction from the Customer shall delete Customer Personal Data within ninety (90) days (upon deletion of the related account by Customer) unless, and to the extent only in each case, European Union or European Union Member State law applicable to SurveyMonkey requires further storage of the Customer Personal Data. SurveyMonkey also retains the rights set out in the Agreement, to include the right to close and delete all data within an inactive account on notice to a Customer.

## 9 GENERAL.

9.1 Liability. Any and all claims brought under this DPA whether in contract, tort (including negligence), for breach of statutory duty or otherwise howsoever arising will be subject to the same terms and conditions, including the exclusions and limitations of liability, as are set out in the Agreement. To the extent applicable, the SurveyMonkey entity that is not a party to the Agreement but is a party to this DPA is entitled to rely on the said exclusions and limitations of liability to the same extent as the SurveyMonkey entity which is party to the Agreement and the aggregate liability of both SurveyMonkey entities shall be as expressed in respect of the Contracting SurveyMonkey Entity under the Agreement. In no event will any party limit its liability with respect to any data subject rights under the Customer Standard Contractual Clauses.

9.2 Conflict: In the case of conflict or ambiguity between: (i) the terms of this DPA and the terms of the Agreement, with respect to the subject matter of this DPA, the terms of this DPA shall prevail; (ii) the terms of any provision contained in the main body of this DPA and any provision contained in the Customer Standard Contractual Clauses, the provision in the Customer Standard Contractual Clauses shall prevail.

9.3 Electronic Copy. This DPA is delivered as an electronic document.

9.4 Entire Agreement. This DPA constitutes the entire agreement between the parties and it supersedes any other prior or contemporaneous agreements or terms and conditions, written or oral, concerning its subject matter.

9.5 Severability. If any provision of this DPA is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.

9.6 Governing Law. This DPA will be governed by the laws of Ireland and the courts of Ireland will have exclusive jurisdiction over any dispute arising pursuant to this DPA.

\* \* \* \* \*

## Attachment A

### **Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of data exporting organisation:	<b>SurveyMonkey Europe as agent for and on behalf of the Customer as defined in the Agreement.</b>
E-mail:	<b>The Email Address of the Primary Admin/Account Holder</b>

**The data exporting organisation identified in the table above  
(the “data exporter”)**

- And -

Name of data importing organisation:	<b>SurveyMonkey Inc.</b>
Address:	<b>One Curiosity Way, San Mateo, CA 94403, United States</b>
Tel.:	<b>+1-650-543-8400</b>
Fax:	
E-mail:	<a href="mailto:privacy@surveymonkey.com">privacy@surveymonkey.com</a>

**SurveyMonkey Inc.**  
(the “data importer”)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

## Clause 1

### **Definitions**

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

*Clause 4*

***Obligations of the data exporter***

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

*Clause 5*

***Obligations of the data importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;



- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

*Clause 6*

***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.  
  
The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

\* \* \* \* \*

## APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Capitalized terms used in this Appendix which are otherwise undefined in these Clauses have the meanings given to them in the Data Processing Agreement to which these Clauses are attached.

### Data exporter

*The data exporter is (please specify briefly your activities relevant to the transfer):*

The data exporter is the legal entity that has executed the Standard Contractual Clauses as a data exporter and has purchased Services on the basis of one or more Agreements with either SurveyMonkey Europe UC or SurveyMonkey Inc..

### Data importer

*The data importer is (please specify briefly activities relevant to the transfer):*

SurveyMonkey Inc. provides support and sub-processing services to its affiliated entity, SurveyMonkey Europe UC, which is a provider of online survey and survey-related services and data collation services.

### Data subjects

*The personal data transferred concern the following categories of data subjects (please specify):*

Data subjects include:

- Natural persons who submit personal data to the data importer via use of the Services (including via online surveys and forms hosted by the data importer on behalf of the data exporter) (“**Respondents**”).
- Natural persons whose personal data may be submitted to the data exporter by Respondents via use of the Services.
- Natural persons who are employees, representatives, or other business contacts of the data exporter.
- The data exporter’s users who are authorized by the data exporter to access and use the Services.

### Categories of data

*The personal data transferred concern the following categories of data (please specify):*

The data exporter may submit personal data to the Services, and may request for Respondents to submit personal data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, without limitation:

- Personal data of all types that may be submitted by Respondents to the data exporter via user of the Services (such as via surveys). For example: name, geographic location, age, contact details, IP address, profession, gender, financial status, personal preferences, personal shopping or consumer habits, and other preferences and other personal details that the data exporter solicits or desires to collect from its Respondents.
- Personal data of all types that the data importer may include in forms and surveys hosted on the Services for the data exporter (such as may be included in survey questions).
- Contact and billing details of the data exporter’s employees, authorized end users, and other business contacts. For example: name, title, employer, contact information (company, email, phone, address, etc.), payment information, and other account-related data.

### Special categories of data (if appropriate)

*The personal data transferred concern the following special categories of data (please specify):*

Respondents may submit special categories of personal data to the data exporter via the Services, the extent of which is determined and controlled by the data exporter. For clarity, these special categories of Personal Data may include information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

### Processing operations

*The personal data transferred will be subject to the following basic processing activities (please specify):*

The objective of processing Personal Data by the data importer is to support SurveyMonkey Europe UC or SurveyMonkey Inc. (as applicable) in its performance of the Services pursuant to the Agreement.

## APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses.

Capitalized terms used in this Appendix which are otherwise undefined in these Clauses have the meanings given to them in the Data Processing Agreement to which these Clauses are attached.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

The data importer will maintain appropriate administrative, physical, and technical safeguards (“**Security Safeguards**”) for protection of the security, confidentiality and integrity of Personal Data as are described in the Data Processing Agreement to which these Clauses are attached.