



## ***Terms and Conditions for Survey Services:***

**1. Change of Scope.** If any of the requirements change during the process of implementing the Services, the Project Manager shall document such change, along with corresponding fee adjustments based on Scantron's then prevailing rates, in a written "Change of Scope." The Change of Scope must be approved by Customer in writing before it will be implemented by Scantron. Project tasks that may require a Change of Scope include, but are not limited to, modified programming specifications, increased or decreased processing volumes, form design modifications and other additional services. The Change of Scope will serve as an amendment to this Agreement and will be subject to the terms and conditions of this Agreement.

**2. Acceptance, Payment Terms and Taxes.** Customer will promptly inspect and accept or reject the Services upon delivery. Unless otherwise agreed by the parties in writing, invoices shall be paid within 30 days of receipt without deduction, withholding or offset. Any single payment equal to or greater than \$10,000 made by credit card may be subjected to a 4% handling fee. Scantron may suspend any Services provided under this Agreement until payments are brought current. Amounts not paid when due are subject to finance charges of 1.5% per month or the highest rate permitted by law, whichever is less, compounded daily from the due date until paid. Invoices not paid when due are assessed a late payment fee of 15% of the unpaid balance. Payment of late fees and finance charges does not excuse or cure late payment. Payments received are first applied to late fees and finance charges. Customer will pay or reimburse Scantron for all duties, taxes (other than taxes on Scantron's income), fees or other similar amounts assessed or imposed by governmental authorities. If Customer is required under any applicable law to withhold any taxes or duties from the amounts specified in this Agreement, then the amounts specified will be increased so that the net amounts actually paid to Scantron equal the amounts specified.

**3. Term and Termination.** This Agreement will be in effect from the Effective Date until the earlier of (a) 12 months after the Effective Date; (b) the date upon which any stated limitation on the scope or duration of the Services has been reached, whether expressed in labor-hours, scope of project, or otherwise; or (c) completion of the Services. If a party fails to cure a default within thirty (30) days after written notice explaining the default, the non-defaulting party may immediately terminate this Agreement. Scantron may terminate this Agreement immediately by giving Customer written notice of termination if Customer becomes insolvent or subject to a bankruptcy proceeding. Customer's termination for convenience or resulting from Customer's default does not relieve Customer of any payment obligations that arise prior to the effective date of the termination.

**4. Proprietary Rights.** Except as otherwise specified above, all materials, programs, methods, systems, proprietary software, surveys and forms created or used by Scantron in the performance of the Services shall be and remain the property of Scantron (or its affiliates, suppliers or licensors). All survey responses (whether paper, scanned images or electronic) shall, as between the parties, be Customer's property. Management report deliverables or data processed by Scantron for Customer in the performance of the Services (the "Reports") shall, upon delivery, become Customer's property. The Services are protected by copyright, trade secret and other proprietary rights of Scantron and its suppliers. Scantron reserves all rights in Services that are not expressly granted to Customer. Customer will not: (a) reproduce Services; (b) sell, sublicense or otherwise commercially exploit the Services or otherwise transfer or dispose of the Services; or (c) permit the use of Services by others.

**5. Confidentiality/Privacy/Security.** Both parties may acquire certain information that is confidential, proprietary or trade secret information of the other party or a third party ("Confidential Information") in the performance of the Services. Scantron acknowledges that Customer's Confidential Information includes Customer's customer information, including nonpublic personal financial information and individually identifiable health information (collectively the "nonpublic personal information"). Customer acknowledges that Scantron's Confidential Information includes all procedures and processes, source code, system design, database design, algorithms, trade secrets, technology, pricing and licensing. Other Confidential Information of either party shall be clearly identified in writing as confidential at the time of disclosure or promptly thereafter. The party receiving Confidential Information will: (a) use such information solely for performance under this Agreement; (b) not disclose such information to any third party (excluding agents who are not potential competitors of the disclosing party and, in the case of Scantron, its affiliated companies); and (c) otherwise protect such information from any unauthorized use or disclosure. The receiving party shall see that its employees, agents and subsidiaries having access to Confidential Information are bound by confidentiality obligations consistent with this provision.

Scantron will maintain and monitor policies and procedures to meet the data security objectives of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act, the Fair and Accurate Credit Transactions Act, the Fair Credit Reporting Act, and other related laws and regulations (the "Privacy Laws"), by addressing administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of nonpublic personal information relating to Customer's customers; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Customer. Scantron will provide prompt notice to Customer if Scantron becomes aware of an unauthorized disclosure involving Customer's sensitive customer or member information, as those terms are defined by the Privacy Laws' regulatory guidance issued by the applicable Federal agency which regulates Customer. Notification may be delayed to the extent necessary to prevent interference with a criminal investigation related to the disclosure. Scantron will permit a review to assess whether appropriate key controls are in place and/or will provide reasonable documentation to verify that Scantron has complied with its obligations under this paragraph, if (a) required of Customer by state or federal regulators; (b) conducted by either Customer and/or its regulator(s) at Customer's expense and during regular business hours; (c) limited to the scope of Scantron's obligations respecting the Services and pursuant to this paragraph; and (d) Customer provides reasonable advance notice. At Scantron's option, in lieu of access, Scantron may provide a SOC 2 Type 1 or similar third party report. At Customer's request, Scantron may provide additional services related to its obligations under this paragraph at Scantron's then current fees for such services. If Customer is a "covered entity" under HIPAA, Scantron agrees to execute a business associate agreement upon the reasonable request of Customer and to the extent required by law. Upon execution by both parties, such business associate agreement shall be incorporated herein by this reference.

Neither party will be obligated to keep confidential any information that is: (a) publicly available through no fault of such party, (b) received by such party from a third party who is not under a confidentiality obligation regarding the information, (c) independently developed by such party without referring to the Confidential Information, or (d) required by applicable law to be disclosed by such party (provided that the disclosing party shall give prompt notice to the other party unless notice is not allowed by a regulating agency seeking such information, and assist and support its efforts to maintain the confidentiality of the information, including but not limited to securing protective orders and limiting the information disclosed). Provided Scantron complies with all applicable Privacy Laws, Scantron may use nonpublic personal information in order to modify and improve its offering of services and products.

**6. Limited Warranties. A. Services Warranty.** Scantron warrants that the Services will be provided in a professional and workmanlike manner consistent with the definition of the Services to be performed. Provided that Customer gives Scantron written notice of failure to meet the foregoing warranty within thirty (30) days after completion of the applicable Services, Scantron will use reasonable efforts to correct or re-perform any Services that fail to comply with the foregoing warranty. If Scantron is unable to correct or re-perform such Services, Scantron will refund a reasonable portion of the fees paid with respect to such Services. **SCANTRON SHALL NOT BE RESPONSIBLE FOR THE DECISIONS MADE AND ACTION TAKEN BY CUSTOMER BASED UPON THE SERVICES AND RECOMMENDATIONS PROVIDED. B. Product Warranty.** The Services may include delivery of the survey forms or other products manufactured by Scantron specifically in connection with the Services (the "Products"). For a period of thirty (30) days following delivery of a Product (the "Warranty Period"), Scantron warrants that such Product will function in all material respects consistent with its specifications appearing in this Agreement.

Scantron does not warrant that the Product(s) are free from all bugs, errors or omissions. The warranty does not extend to any failure of the Products caused by: (a) any modification or change not made by Scantron; (b) any noncompliance caused by use of the Product(s) in combination with products, goods, services or other items furnished by anyone other than Scantron or not otherwise approved in writing for use with the Products by Scantron; or (c) use of the Product(s) in an operating environment other than as specified in writing by Scantron. Scantron will use reasonable efforts at its facility to correct any Product that fails to comply with the foregoing warranty by delivering one or more error corrections, provided that Customer gives Scantron prompt written notice of such failure during the Warranty Period, and Scantron is able to reproduce the noncompliance in the operating environment for which such Product is designed. If, after the expenditure of such reasonable efforts, Scantron is unable to correct the Product such that it complies with the foregoing warranty, Scantron will refund all or (if Customer continues to use such Product) a reasonable portion of the fees Customer has paid with respect to such Product in full satisfaction of all of Customer's claims relating to such noncompliance. Customer will supply Scantron with all reasonably requested information to assist Scantron in reproducing the failure. **C. Exclusive Warranties and Remedies.** REGARDLESS OF THE TERMS AND CONDITIONS CONTAINED IN ANY TSOV, SERVICE SCHEDULE or other document, THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION 6 ARE EXCLUSIVE AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SCANTRON, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE and non-infringement. **D. Third Party Items.** The Services may include delivery, installation and/or use of hardware and software manufactured by or for a third party manufacturer (the "Third Party Items"). All such Third Party Items are supplied "AS IS" by Scantron. The specific Third Party Items to be provided under the Agreement and the fees for such Third Party Items are subject to change (even after the execution of this Agreement) based on manufacturer availability and pricing.

**7. Limitations of Liability.** SCANTRON'S ENTIRE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY SERVICES, PRODUCTS OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, WILL IN NO EVENT EXCEED (i) THE FEES PAID TO SCANTRON BY CUSTOMER FOR THE APPLICABLE SERVICE, PRODUCT OR ITEM WHICH IS THE BASIS FOR THE CLAIM, OR (ii) IF SERVICES PROVIDED BY SCANTRON TO CUSTOMER FOR A PERIOD OF MORE THAN TWELVE (12) MONTHS ARE THE BASIS FOR THE CLAIM, THE FEES PAID TO SCANTRON BY CUSTOMER FOR THOSE SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. NO ACTION RELATED TO THIS AGREEMENT MAY BE BROUGHT MORE THAN TWO (2) YEARS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. IN NO EVENT WILL SCANTRON BE LIABLE TO CUSTOMER OR TO ANY OF CUSTOMER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST OR COST OF MONEY; OR FOR COVER; OR FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF SCANTRON'S PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE OR RESULTS OF USE OF ANY SERVICES, PRODUCTS OR OTHER ITEMS.

**8. Defense of Infringement Claims.** Scantron will defend Customer against any claim based upon infringement of any copyright, trademark or U.S. patent by the Services, provided that (i) Customer notifies Scantron of such proceeding promptly after Customer receives notice thereof, (ii) Scantron has exclusive control over the defense and settlement of the proceeding, (iii) Customer provides such assistance in the defense and settlement of the proceeding as Scantron may reasonably request, and (iv) Customer complies with any settlement or court order made in connection with such proceeding (e.g., as to the future use of any infringing Services). Scantron will: (i) indemnify Customer against any and all damages, costs and attorneys' fees finally awarded against Customer in any such proceeding, (ii) reimburse the out-of-pocket expenses Customer reasonably incurs in providing the assistance requested by Scantron above, and (iii) if the action is settled, pay any amounts agreed by Scantron in settlement of any claims of infringement. Scantron's obligations under this Section 8 will not apply to any infringement to the extent arising out of (a) any use or combination of the Services with any other products, goods, services or other items furnished by anyone other than Scantron or not otherwise approved in writing for use with the Services by Scantron, (b) any modification or change not made or authorized in writing by Scantron, (c) the use of an infringing version of the Services when a comparable noninfringing version has been made available to Customer, or (d) any Services developed to specifications which Customer has supplied or required of Scantron. In the event that Scantron reasonably believes it will be required to discontinue use of the Services, Scantron will do one of the following, selected by Scantron at its option: (a) Scantron will obtain for Customer the right to continue use of the Services; (b) Scantron will modify the Services to make them noninfringing; or (c) if Scantron is not reasonably able to accomplish the foregoing, Scantron may terminate Customer's right to use the infringing Services and refund Customer the fees Customer paid to Scantron for such Services. THIS SECTION 8 STATES THE ENTIRE LIABILITY OF SCANTRON WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHT, TRADEMARK, PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT RESULTING FROM OR RELATED TO THIS AGREEMENT OR ANY SERVICES, PRODUCTS OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT.

**9. Alternative Dispute Resolution.** Each party will use commercially reasonable efforts to resolve any dispute as soon as possible and will notify the other party in writing of the existence of a dispute. In the event any dispute cannot be resolved to the reasonable satisfaction of each party within ten (10) business days after notice, the dispute will be escalated and referred immediately in writing to a representative officer of each party. If the parties cannot resolve such dispute to their mutual satisfaction within ten (10) additional business days, the dispute will be referred to mediation with Judicial Arbitration and Mediation Services, Inc. ("JAMS") or any other mutually agreed upon mediator. Either party may demand mediation by written notice to JAMS (or the mutually-agreed upon mediator) with a copy going to the other party. Notices to JAMS will be sent to and all mediation hearings will be held in, the jurisdiction of the party initiating the mediation proceeding. The mediator will be subject to the mutual approval of the parties and will, to the fullest extent available, be trained and expert in the subject area of the asserted claims. Each party will make available in a timely fashion a representative with authority to resolve the dispute. The mediation will be conducted in accordance with JAMS rules and procedures for commercial mediation. The fees and expenses of the mediator and the mediation service will be shared equally by the parties and each party will otherwise be responsible for its own costs in participating in the mediation. If the dispute has not been resolved within two (2) months from the initial notice to the mediation service, the parties may mutually agree to continue the mediation process. If there is no agreement to continue the mediation process, there is no further obligation under this Agreement to engage further in alternative dispute resolution.

**10. Miscellaneous. A. No Waiver/ Severability.** The failure of either party to enforce any rights under this Agreement or to take action against the other party in the event of a breach will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court or arbitration decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provisions shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court or arbitration decision. **B. Assignment.** This Agreement may not be assigned or transferred in whole or in part in any way by Customer without the prior written consent of Scantron. **C. Notices.** All notices required by this Agreement will be given in writing and will be transmitted by hand delivery, U.S. certified mail (return receipt requested) or a nationally recognized express courier service to the address listed at the beginning of this Agreement for Customer and to the address listed at the beginning of the Agreement for Scantron Survey Services and with a simultaneous copy sent to Scantron Corporation., ATTN: Legal Department, 1313 Lone Oak Road, Eagan, MN 55121. Either party may change its address at any time by giving written notice of the address change to the other party. Notices will be deemed delivered upon the day of receipt or the third business day following posting, whichever occurs earlier. **D. Survival.** Sections 4, 5, 6C, 7, 8, 9, 10H, 10L and 10M, together with all other provisions of this Agreement which may reasonably be interpreted or construed as surviving the termination or expiration of this Agreement, will survive. **E. Equal Employment Opportunity; Affirmative Action.** In connection with Scantron's performance under this Agreement, unless exempt, the Equal Opportunity Clauses as set forth in Section 202 of Executive Order 11246, as amended, 41 C.F.R. § 1.4(a), Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, 41 C.F.R. § 250.5(a), Section 503 of the Rehabilitation Act of 1973, as amended, and 41 C.F.R. § 741.5(a) are incorporated by reference. Scantron has developed and maintains an affirmative action program. **F. Internet Security.** Customer acknowledges that the Internet is inherently insecure. Customer is responsible for providing its own firewall and other protections against unauthorized incursions. Scantron does not warrant that the Services are secure with respect to Customer's use of them in conjunction with the Internet. SCANTRON SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CLAIMS ARISING FROM OR RELATED TO USE OF THE SERVICES IN CONJUNCTION WITH THE INTERNET OR FOR WEB SITE SECURITY. **G. Insurance.** During the term of this Agreement Scantron shall carry and maintain commercial general liability insurance in an amount not less than \$1 million per occurrence with a \$2 million aggregate covering claims for bodily injury, death, personal injury or property damage. The liability insurance limits may be obtained through any combination of primary and excess or umbrella liability insurance. At Customer's reasonable request (no more than once annually) Scantron will deliver certificate(s) of insurance which evidence such minimum levels of insurance. **H. Non-Solicitation.** Without the express written consent of the other party, each party agrees not to hire (either as an employee or as an independent contractor) any employee of the other party who is involved with any Services for a period of 12 full calendar months from the date of completion of such employee's involvement with such Services. In the event that a party violates the terms of this Section 10H, the other party shall be entitled to receive from the hiring party an amount equal to such employee's annual salary at the time of leaving the other party's employ, as

liquidated damages. **I. Public Mention.** Scantron may reflect the Customer's name in a customer list and the respective services involved. **J. Compliance with Laws.** Customer shall, at all times, observe the terms and conditions of its own privacy policies. Customer represents and warrants to Scantron that Customer will use the Services in compliance with all applicable laws of the United States and any foreign territory, including, without limitation, laws or policies related to spamming (including, without limitation, the United States Can-Spam law, as amended from time to time) and the Privacy Laws. **K. Force Majeure.** Scantron will not be liable for any failure or delay in the performance of its obligations under this Agreement which might be due in whole or in part to any contingency, delay, failure or cause of any nature beyond its reasonable control, including without limitation fire, explosion, earthquake, floods, unavailability of necessary utilities or components, strike, war, acts of God, governmental actions or judgment or decree of a court of competent jurisdiction (not arising out of breach by Scantron of this Agreement). **L. Governing Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota without regard to its conflicts of law principles. Any legal proceeding for the enforcement of this Agreement or any provision hereof will take place in Dakota County, the State of Minnesota. **M. Prevailing Party.** In the event of any litigation between Scantron and Customer to enforce any provision or any right of either party hereto under this Agreement, the unsuccessful party of such litigation will pay to the prevailing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred therein. **N. Entire Agreement.** This Agreement supersedes any and all prior agreements among the parties related to the Services and any other items provided hereunder. No modification of any of the provisions of this Agreement will be valid unless set forth in the TSOW, a written Change of Scope or other document signed by both parties. Scantron will not be bound by the terms of Customer issued purchase order or other documents that set forth any terms that are additional to or inconsistent with this Agreement unless Scantron expressly assents to such terms in writing. **-END-**