

Terms of Service

1. Agreement

These Terms specify the agreement between You and Optimal regarding the Services. They set out our obligations as a service provider and Your obligations as a customer. Please read them carefully. These Terms apply from the time that You access the Services. By using the Services You acknowledge that You have read and understood and agree to be bound by these Terms. If You are using the Services on behalf of a business, You represent to Us that You have authority to bind that business or entity to these Terms and that business accepts these Terms, in which case the terms "Customer", "You", and "Your" when used in these Terms refers to that entity and its Affiliates. The Services are provided for the length of term chosen by You in the Online Registration Service or (if applicable) an Order Form, subject to Optimal's right to suspend the Services or terminate these Terms in accordance with clause 20. These Terms incorporate each Order Form stated to be subject to these Terms and either signed or agreed in writing by the parties (including by way of email).

2. Access to the Services

2.1. Optimal's license to You. Provided You comply with these Terms, Optimal grants You the right to access and use the Services You have purchased via the Website and according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to these Terms.

3. Changes to the Services

3.1. Optimal may make changes to the Services. Provided that the Services continue to substantially comply with the description set out in the Service Description, Optimal may at any time modify the Services, the Optimal Materials and Technology and/or the manner in which the Services are delivered. We will notify You if We make a significant change to the Services. You acknowledge and agree that: (a) as a software as a service provider, Optimal needs flexibility to make changes to functionality and roll out improvements to the Services in order to scale the Services for all its customers; and (b) Optimal cannot agree to one customer imposing restrictions or requiring consent on changes to its Services, including changes that could hinder or prevent Optimal's ability to roll out changes to functionality, improvements to its Services, or to generally operate its Services across its customer base.

4. Restrictions on use

4.1. Purpose limitation. You must only use the Services and Website for Your own lawful internal business purposes of designing, executing, and recruiting participants for user

research studies, in accordance with these Terms and any notice sent by Optimal or condition posted on the Website. You must also comply with all applicable laws that apply to You under these Terms (including Applicable Data Protection Laws).

4.2. Compliance with Site Policies. You agree to abide by the requirements or restrictions specified in the Online Registration Service, any Policies and any Order Form (including the limitations for number of seats or studies), and Optimal's Privacy Notice (available here: [Privacy Notice](#)) which explains how We process any personal information We collect.

4.3. Age requirements. You must not access or use the Services if You are under the age of 16.

4.4. Customer use restrictions. As a condition of access, when accessing and using the Services, You must not: (a) impersonate another person or misrepresent authorisation to act on behalf of others or Optimal; (b) resell or make available the Services to any third party, or otherwise commercially exploit the Services (unless otherwise agreed in writing by Optimal); (c) use or misuse the Services in any way which may impair the functionality of Optimal's systems or impair the ability of any other user to use the Services; (d) attempt to undermine the security or integrity of or gain unauthorised access to any of Optimal's computing systems or networks or any third party's computing systems or networks; (e) transmit, or input into the Services or the Website, any files that may damage any other person's computing devices or software (including by introducing any malicious software or code); (f) attempt to modify, copy, adapt, reproduce, disassemble, decompile, or reverse engineer any computer programs or systems used to deliver the Services or to operate the Website; (g) grant or assign rights in the Services or the Optimal Materials and Technology in any way (except that You may distribute the information created by You in Your use of the Services); (h) create any works based on, or copy, the Optimal Materials and Technology or the Services or access the Services in order to build or supply a similar or competitive product or service; (i) place any payment card information or any protected health information on the Services and You acknowledge that the Services are not compliant with the requirements of the Payment Card Industry Data Security Standard or the Health Insurance Portability and Accountability Act 1996; (j) use the Services in connection with any unlawful, illegal, fraudulent or harmful purpose or activity as reasonably determined by Optimal; or (k) use the Services in a manner, nor transmit, input or store any Customer Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is incorrect or misleading.

4.5. Personnel. The following applies to Your personnel who access and use the Services: (a) You may authorise any member of Your personnel to be a User, in which case You will provide Optimal with the User's name and other information that Optimal reasonably requires in relation to the User; (b) No individual other than a User may access or use the Service; (c) You must procure each User's compliance with clauses 4.1 to 4.4, the requirements or restrictions specified in the Online Registration Service and any Order Form, and any other reasonable condition notified by Optimal to You; (d) Without limiting clause 4.5(c), You are responsible for ensuring that all Users comply with these Terms. Any breach of these Terms by Your personnel (including, to avoid doubt, a User) is deemed to be a breach of these Terms by You.

5. Fees and payment

5.1. Fees. The applicable Service Fee for the Services is specified on the Site or an Order Form (as applicable). The Service Fees exclude Sales Tax which You must pay on taxable supplies under these Terms. You must pay the Service Fees in advance, electronically in cleared funds without any set off or deduction, and within 30 days of receipt of Optimal's invoice or any date set out in the Order Form (as applicable).

5.2. Renewals and changes to Fees. If You have selected to receive the Services for a fixed term, that term will automatically renew for further terms of equal duration unless either party provides prior notice to the other that they do not intend to renew at the end of the then current term. Each renewal will incur a further Service Fee. We may change the Service Fees at any time. If You have selected to receive the Services for a term, any changes will commence at the beginning of any renewal term. No refund will be provided, including refunds for failure to terminate Your subscription prior to renewal, for selection of an incorrect product or for early termination by Optimal or You.

6. Your Account details

6.1. Accuracy of account details. You agree to provide Us with accurate and complete registration and account information and to maintain and promptly update that information in the event of any changes to ensure it is current at all times.

6.2. No account sharing and security of account details. Your account details are specific to You and may not be shared with any other person. You agree: (a) to keep Your login details confidential and secure and that you will not share them with others; (b) that you are solely responsible for all activity in connection with access to and use of the Services and/or Website through Your account or using Your login; (c) that if You know or suspect that Your login information has or is likely to become used in an unauthorised way, You must immediately change Your password. If You are unable to change Your password, You must immediately notify Optimal by email at support@optimalworkshop.com. We may request that You change Your password(s) in connection with the Services at any time, and You will promptly comply with any such request and all reasonable directions We issue in relation to the Services.

7. Support

7.1. Support and Service Level Agreement ("SLA"). You may email any support queries to Optimal at support@optimalworkshop.com and Optimal will endeavour to respond in accordance with its [current SLA](#) made available on its Website. Optimal will not charge You additional fees for support provided in response to such queries. Except as set out in Our SLA, nothing in this clause commits Optimal to a course of action or priority or to a timeframe for any response it may make to support queries. Your sole remedy in the event We breach the SLA is to have the Services supplied again.

8. Participant recruitment

8.1. Participant credits. If You purchase pre-paid recruitment credits: (a) We will provide survey participants within 7 days of Your request; (b) where We have provided survey participants, if You are not satisfied with the survey participants You must advise Us within 5 days and We will provide alternative survey participants within 7 days; (c) no refunds are available for pre-paid recruitment credits; (d) Unless permitted by Optimal in writing, You must not request uniquely identifying or personal information, for example, name and email address, from these survey participants; and (f) all pre-paid recruitment credits expire 12 months after purchase, or immediately if You no longer maintain a current paid subscription to the Services.

8.2. Third party participant terms. If You utilise Optimal's Managed Recruitment service, you agree that Optimal may source participants from its third party participant panel providers. You agree to abide by any third party terms and conditions applicable to Your interactions with such participants.

9. Warranties

9.1. Mutual warranties. Each party warrants: (a) it has full power, capacity, and authority to accept, deliver and perform its obligations under these Terms; and (b) once accepted, these Terms constitute legal, valid, and binding obligations and are enforceable in accordance with its terms.

9.2. Optimal warranties. Optimal warrants that the Service will perform substantially in accordance with the Service Description.

9.3. Your warranties. You warrant that You will not transmit, or input into the Services or the Website: (a) any protected health information as defined in the Health Insurance Portability and Accountability Act of 1996 (US); or (b) any cardholder data as defined in the Payment Card Industry Data Security Standard.

10. Warranty limitations

10.1. No other warranty. Other than the warranties in clause 9, Optimal makes no other warranty, representation, guarantee, express or implied, whether by statute, common law, customer, usage or otherwise in respect of the Services

and as to any other matter, including that Optimal does not warrant that the Services or the Customer Data will be compatible with any application, program or software not specifically identified as compatible, free from defects, errors and bugs, or fit for any particular purpose.

10.2. Third party communication networks. Optimal is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over third party communication networks or facilities, including the internet, and You acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communication networks or facilities.

10.3. Breach of warranty. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including warranties of merchantability, fitness for purpose, title, and non-infringement. Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, Optimal's liability for any breach of that condition or warranty is limited, at Optimal's option, to: (a) supplying the Services again; and/or (b) paying the costs of having the Services supplied again.

10.4. Consumer Guarantees Act 1993. You are acquiring the Services for the purposes of a business and the Consumer Guarantees Act 1993 does not apply to these Terms.

10.5. Exclusions. The warranty in clause 9.2 will not apply where the Service is provided at no charge or to the extent any non-conformance is caused by: (a) Your use of the Services contrary to Optimal's instructions or in breach of these Terms; or (b) You, or by any product or service not provided by Optimal.

10.6. AI Features and AI Output. AI Features and AI Output are provided on an as-is and as-available basis without warranties of any kind. You are solely responsible for Your reliance on AI Outputs, and You acknowledge that any such AI Outputs may contain errors, hallucinations, or inaccuracies. Optimal may remove or modify AI Features at its sole discretion. Notwithstanding anything to the contrary in these Terms, to the maximum extent permitted by law, Optimal excludes all responsibility or liability for AI Features and AI Output.

11. Warranty remedy

11.1. Warranty claims. To make a claim under the warranty in clause 9.2, You must send an email to support@optimalworkshop.com indicating clearly in what way the Service fails to perform in accordance with the warranty.

11.2. Your remedy. Your sole and exclusive remedy and Optimal's entire liability for breach of the warranty in clause 9.2 will be as follows: (a) Optimal will, at its reasonable expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide You with an alternative means of accomplishing the desired performance; or (b) if Optimal fails to re-perform such non-conformance within 30 days, then You may terminate

these Terms by written notice to Optimal, subject to termination occurring within three months of Optimal's failure to re-perform.

12. Limitation of Liability

12.1. Liability disclaimer. To the greatest extent possible in accordance with applicable laws, We specifically disclaim any liability (whether based in contract, tort, strict liability or otherwise) for any direct, indirect, incidental or consequential damages arising out of or in any way connected with Your access to or use of the Services or the Website.

12.2. Optimal's liability is limited. In all cases where our liability is not excluded: (a) subject to clause 12.2(b), our maximum aggregate liability under or in connection with these Terms, for all events arising in any twelve month period whether in contract, equity, tort (including negligence), breach of statutory duty, indemnity, or otherwise, will not exceed the total annual Service Fees paid or payable in that twelve month period. Each "twelve month period" commences on the date You accept these Terms or any anniversary of that date; and (b) We will not be liable for any indirect or consequential loss or damage, loss of profits or savings, loss or corruption of data or information, or faults and/or errors in third party products incorporated into the Services.

12.3. Right of termination. Your only right with respect to dissatisfaction or problems with the Service, other than as provided for in clause 12, is to terminate these Terms.

12.4. No responsibility for third party websites or feeds. You acknowledge that the Services may link to third party websites or feeds that are connected or relevant to the Services. Any link from the Services does not imply any Optimal endorsement, approval, or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, Optimal excludes all responsibility or liability for those websites or feeds.

13. Indemnity

13.1. Your indemnity. You indemnify Optimal against all liability, claim, proceeding, cost, damages, expense (including Optimal's legal fees on a solicitor and own client basis) and loss of any kind arising from (a) Your breach of any of these Terms or any obligation You may have to Optimal, including any third party claims and any costs relating to the recovery of any Service Fees that are due but have not been paid; and (b) any actual or alleged claim by a third party that any Customer Data infringes the rights of that third party (including Intellectual Property rights and privacy rights) or that the Customer Data is incorrect or misleading.

13.2. IP Claims brought against Customer. Optimal indemnifies You against any claim or proceeding brought against You by any third party alleging that Your use of the Services in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights (IP Claim). This indemnity is subject to You: (a) promptly notifying Optimal in writing of the IP Claim; (b) making no

admission of liability and not otherwise prejudicing or settling the IP Claim, without Optimal's prior written consent; and (c) giving Optimal complete authority and information required for Optimal to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Optimal's account.

13.3. Defence and settlement of IP Claim. In the event an IP Claim is made or likely to be made, then in defence or settlement of the IP Claim, Optimal may (at Optimal's option): (a) procure for You the right to continue using the Services which is subject to the IP Claim under these Terms; or (b) re-perform, replace or modify the Services to be non-infringing without a material decrease in functionality.

13.4. Exclusive remedy and limitations: The provisions of clause 13.3. and 13.4. state the sole, exclusive, and entire liability of Optimal (including Optimal's related companies) to You, with respect to any IP Claim. The indemnity in clause 13.2. does not apply to the extent that an IP Claim arises from or in connection with: (a) Your breach of these Terms; (b) any third party data You input into the Services or the Customer Data; (c) a modification of the Services or Documentation by anyone other than Optimal; (d) Your use of the Services or Documentation in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorised in writing by Optimal; (e) use of any Services provided for no charge; or (f) Your use of the Services or Documentation after notice of the alleged or actual infringement from Optimal.

14. Confidentiality

14.1. General confidentiality obligations. Each party must, unless it has the prior written consent of the other party: (a) keep confidential at all times the Confidential Information of the other party; (b) effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and (c) disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with the provisions of this clause.

14.2. Permitted disclosures. Clause 14.1 will not apply to any disclosure or use of Confidential Information: (a) for the purpose of performing these Terms or exercising a party's rights under these Terms; (b) if that information was known, or becomes known, to the public through no act or default of the recipient; (c) that the recipient is required by law to disclose so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by law); (d) which is rightfully received by a party to these Terms from a third party without restriction and without breach of any obligation of confidentiality; or (e) to the extent that such disclosure is authorised by these Terms or in writing by the party from whom the Confidential Information is first received.

15. Intellectual Property

15.1. Optimal Materials and Technology. You acknowledge and agree that Optimal or its licensor is and remains the sole owner of, and retains all Intellectual Property Rights in the Optimal Materials and Technology, the Services, the Website and any derivative works of them. Except for the right to access and use the Services and the Website provided for in these Terms, You do not obtain any rights in the Optimal Materials and Technology or the Services or any licence to any software.

15.2. Know-how and Feedback. To the extent not owned by Optimal, You grant Optimal a royalty-free, transferable, irrevocable, and perpetual licence to use for Optimal's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Optimal in the provision of the Services. If You provide Optimal with Feedback then: (a) all Intellectual Property Rights in that Feedback, and anything created as a result of that Feedback (including new material, enhancements, modifications or derivative works), are owned solely by Optimal; and (b) Optimal may use or disclose the Feedback for any purpose, provided that Optimal does not publicly identify You as the source of such Feedback without Your consent.

15.3. Your brand. Optimal may identify You as a user of the Services on the Website and in its marketing and other promotional materials. You grant Optimal a non-exclusive, royalty-free license to use, publish and display Your name, trade marks, logos and designs (Brands) for these purposes. Optimal will use the Brands only in accordance with any usage and marketing guidelines provided by You in writing from time to time. You may (acting reasonably and after consultation with Optimal) withdraw Optimal's rights under this clause at any time by written notice to Optimal.

16. Data

16.1. Customer Data. You own the title to, and all Intellectual Property Rights in, the Customer Data. You grant Optimal a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, make available, and communicate the Customer Data for the purpose of Optimal providing, offering promotions and marketing to You (including the option to participate in Optimal's studies or product research), and developing, improving, supporting, and operating, the Services. Optimal may also use general platform usage data, and aggregated and anonymous information derived from the Customer Data, for its legitimate business purposes, including internal research, improving the Services, and carrying out artificial intelligence and machine learning (statistical data). This right to use statistical data survives termination or expiry of these Terms. Title to, and all Intellectual Property Rights in, this statistical data is and remains Optimal's property. For clarity, nothing in this clause 16.1 gives Optimal the right to publicly identify You or any individual user as the source of such statistical data.

16.2. Responsibility for Customer Data. In relation to Customer Data, You acknowledge and agree that You are responsible for procuring, and must procure, all licences, authorisations and consents required for You, Your personnel and any survey participants to use the Services,

including to use, store and input Customer Data through, the Services.

16.3. *Processing of personal information.* You acknowledge and agree that: (a) to the extent Customer Data contains personal information, in collecting, holding and processing that information through the Service, We are acting as Your agent for the purposes of the Privacy Act 2020 (New Zealand) and any other applicable privacy law, as the data processor for the purposes of the EU/UK Data Protection Laws and as the service provider for the purposes of California Data Protection Law (as applicable); (b) if EU/UK Data Protection Laws apply, the additional terms in the [Data Processing Terms](#) set out in Schedule 1 also form part of these Terms; (c) if California Data Protection Law applies, the additional terms in the CCPA/CPRA Service Provider Agreement as set out in Schedule 2 of the [Data Processing Terms](#) also form part of these Terms; (c) You are responsible for, and must obtain all necessary consents from the relevant individual to enable Optimal and its personnel (including any sub-processors) to access, collect, use, hold and process that personal information and to exercise any right and perform any obligation under these Terms; and (d) to avoid doubt: (i) when using the Services, You are responsible for determining the questions that are asked of survey participants (including assessing the spectrum of answers that may result, and including any personal information that may be inputted into the Services by survey participants in response to such questions); and (ii) Optimal has no responsibility or liability for such questions or any answers provided in response to such questions.

16.4. *User Contact Information.* We are the Data Controller of User Contact Information, and will process User Contact Information in accordance with our Privacy Notice. You are responsible for informing your Users of their rights under the Privacy Notice. You warrant that you have obtained all necessary consents, permissions and rights and have provided all relevant notices necessary under applicable data protection laws for us to lawfully process User Contact Information as an independent Controller for the purposes detailed under our Privacy Notice.

16.5. *Right to export or delete Customer Data.* Subject to clause 21.2, You may export or delete the Customer Data including Your surveys and related participant responses at any time. If You request Optimal to delete any Customer Data by written notice Optimal will process the deletion within 30 days, and the information will be retained for a further 30 days before being permanently destroyed.

16.6. *Customer Data for team accounts.* Where You have an account that allows team members to generate and access surveys in relation to that account, You are responsible for any action by such team members including all data that team members incorporate or enter into the Services.

17. Data Processing Agreement and CCPA/CPRA Service Provider Agreement

17.1. *Data Processing Agreement.* The Data Processing Agreement set out in Schedule 1 of the Data Processing Terms applies to the extent that Optimal is processing

personal information subject to EU/UK Data Protection Laws in the course of the performance of the Services.

17.2. *CCPA/CPRA Agreement.* The CCPA/CPRA Service Provider Agreement set out in Schedule 2 of the Data Processing Terms applies to the extent that Optimal is processing personal information subject to California Data Protection Law in the course of the performance of the Services.

18. Security and Privacy

18.1. *Our environment.* We will use reasonable efforts to provide a secure environment to protect the integrity and security of the Service and Your information and to prevent data loss. We provide no guarantee or warranty in relation to data loss or data breaches. You are responsible for backing up the Customer Data uploaded onto the Services.

18.2. *Breach Incidents.* If We become aware of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal information that is part of the Customer Data (Breach Incident), We will: (a) make reasonable efforts to identify the cause of the Breach Incident; (b) comply with all Applicable Data Protection Laws requiring notification of the Breach Incident (including informing You without undue delay); (c) cooperate with You in good faith and provide any assistance reasonably necessary for You to comply with Your obligations under Applicable Data Protection Laws with respect to the Breach Incident, including any obligations You have under Applicable Data Protection Laws to report, notify or investigate the Breach Incident; (d) take the steps We consider necessary and reasonable to remediate and mitigate the cause of the Breach Incident and impact of its effects, to the extent remediation or mitigation is within our reasonable control; and (e) notify You of any subsequent changes to the Website or Services.

19. Cancellation

19.1. *Your right to cancel.* You can cancel Your account and/or terminate Your access to and use of the Services at any time by email sent to support@optimalworkshop.com.

19.2. *No refund.* If You selected to purchase the Services for a fixed term and You cancel Your account or terminate Your access to and use of the Services before the end of that fixed term, Optimal will not provide any refund for any remaining prepaid period for the fixed term.

19.3. *Free trial accounts.* Optimal may provide You with a free trial account on a discretionary basis. If You have had a free trial account for 7 days or more, and have not elected to upgrade to a paid account, Optimal may, at any time on notice to You, cancel Your access to and use of the Services with immediate effect.

20. Suspension and Termination

20.1. *Optimal's termination rights.* Optimal may immediately terminate these Terms and/or Your use of and access to the Services and the Website, or suspend for any definite or indefinite period of time, Your access to and use of the

Services and the Website, if: (a) You breach any of these Terms and the breach is not capable of being remedied; (b) You breach any of these Terms where the breach is capable of being remedied but You do not remedy the breach within 10 days after receiving notice of the breach; (c) You or Your business become insolvent, go into liquidation, have a receiver or manager appointed, make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction; (d) Your continued use of the Service may result in material harm to Optimal services or any of its users, (e) Your continued association with Optimal does or is likely to harm Optimal's reputation.

20.2. *Failure to pay the Fees.* Optimal may immediately terminate these Terms, or suspend for any period of time, Your access to and use of the Services and the Website if you fail to pay the applicable Service Fees by the payment due date.

20.3. *Order Form term.* Unless terminated under clause 20.4, each Order Form begins on the start date set out in that Order Form, and will be in effect for the term set out in that Order Form.

20.4. *Termination or expiry of Order Form.* An Order Form will terminate on the earlier of: (a) expiry or termination of these Terms for any reason; (b) the date a party gives notice of termination; or (c) the end date (if any) specified in an Order Form.

20.5. *Notification.* Where We take any action under this clause 20, We will promptly notify You.

21. Consequences of Termination

21.1. *Service Fees and access to the Services.* Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of these Terms: (a) any Service Fees paid in advance will not be refunded and You will pay any outstanding Service Fees up to the effective date of termination; and (b) You (including any user authorised by You) may no longer access or use the Services.

21.2. *Your Customer Data.* On termination of these Terms, Optimal will hold Customer Data for 30 days before permanently deleting the Customer Data, unless otherwise required by applicable law and such Customer Data will be subject to the confidentiality obligations in these Terms.

21.3. *Survival.* Clauses 12, 13.1, 14, 15, 16.4 and 23.8, survive the expiry or termination of these Terms.

22. Service and Maintenance

22.1. *Availability.* Subject to clause 22.2 and Optimal's [current SLA](#), Optimal will use reasonable efforts to ensure the Services are available on a 24/7 basis. However, it is possible that on occasion the Services may be unavailable to permit maintenance or other development activity to take place, or during a Force Majeure Event. Optimal will

use reasonable efforts to publish advance details of any unavailability on the Website.

22.2. *Third party service features.* Through the use of web services and APIs, the Services interoperate with a range of third party service features. Optimal does not make any warranty or representation on the availability of any such features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, Optimal may cease making that feature available to You. To avoid doubt, if Optimal exercises its right to cease the availability of a third party feature, You are not entitled to any refund, discount or other compensation.

23. General

23.1. *Changes to the Terms.* We may amend these Terms at any time. We will let You know about the changes either by posting the revised version of the Terms on the Website, by notifying You in accordance with clause 23.2, or by communicating it to You through the Services. Revised terms will be effective from the time they are posted, but will not apply retroactively. Your continued use of the Services after the posting of revised terms constitutes Your acceptance of such revised terms.

23.2. *Notices.* Optimal will deliver all notices under these Terms by email sent to the email address used by You to register for the Services. You will deliver any notice by email sent to support@optimalworkshop.com.

23.3. *Entire Agreement.* These Terms (including any Order Form) and the terms of any other notices or instructions We give to You under these Terms constitute the entire agreement between You and Optimal and govern Your use of the Services and Website, except for, and then only to the extent that You have entered into an Optimal Service Agreement. These Terms supersede any prior agreements or earlier versions of these Terms between You and Optimal for the use of the Services and Website as of the effective date indicated at the beginning of these Terms. The parties agree that the confidentiality obligations set out in clause 14 will override and supersede all previous confidentiality obligations agreed between the parties in any non-disclosure agreement or other confidentiality agreement executed between the parties prior to the date You accept these Terms.

23.4. *Delays.* Neither party will be liable for any delay or failure in performance of its obligations under these Terms to the extent caused by a Force Majeure Event. This clause does not apply to any obligation to pay money.

23.5. *No Assignment.* You may not assign or transfer any rights to any other person without Optimal's prior written consent.

23.6. *Waiver.* The failure by any party to enforce any provisions of these Terms at any time shall not operate as a waiver of that provision in respect of the particular act or omission or any other act or omission.

23.7. *Severability.* If any term or provision of these Terms is held to be illegal, invalid, or unenforceable it will be severed

from these Terms without affecting the legality, validity, or enforceability of the remaining provisions.

23.8. Governing law. These Terms are governed by the laws of New Zealand, and each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts.

23.9. Jurisdictional Matters. If You are residing in a jurisdiction which restricts the use of internet-based applications according to age, or which restricts the ability to enter into agreements such as these Terms according to age and You are under such a jurisdiction and under such age limit, You may not enter into these Terms and access or use the Service. If You are residing in a jurisdiction where it is forbidden by law to offer or use software for internet communication, You may not enter into these Terms and You may not access or use the Service. By entering into these Terms, You represent that You have verified in Your own jurisdiction that Your use of the Service is allowed.

23.10. Subcontracting. Optimal may hire or engage one or more sub-contractors to perform any or all of its obligations under this Agreement. Optimal will use the same degree of care in selecting any such sub-contractor as it would if such contractor was being retained to provide similar services to Optimal and Optimal shall in all cases remain responsible for all of its obligations under this Agreement. You acknowledge that the [Data Processing Terms](#) includes certain provisions concerning sub-contractors who are sub-processors. To receive notifications when Optimal updates its sub-processors list, you must subscribe.

24. Interpretation and Definitions

24.1. Interpretation. In these Terms, unless the context otherwise requires: (a) the singular includes the plural and vice versa; (b) a reference to materials means a reference to materials of any kind whether in the form of documentation, software or otherwise; (c) a reference to Optimal includes reference to its successors and permitted assigns (and where the context so permits) its personnel, sub-contractors and representatives; (d) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done; (e) the words “includes” and “including” are to be read as being followed by the words “without limitation”; and (f) a reference to any documentation and the Website includes as varied or substituted.

24.2. Acts of personnel. An act or omission of any personnel of either party to these Terms is deemed to be the act, omission or misconduct of that party.

24.3. Precedence. If there is any conflict or inconsistency between the documents, the following order of precedence must apply, unless otherwise stated to the contrary in any Order Form or variation agreement by cross-referring to the relevant clause to be overridden: (a) any applicable Schedules; (b) these Terms; and (c) any applicable Order Form.

24.4. Defined Terms

AI Features means any product feature or functionality of the Services that uses artificial intelligence or machine learning.

AI Output means any results, including responses to prompts, or other content produced by your use of AI Features.

Applicable Data Protection Laws means where applicable, the EU/UK Data Protection Laws, California Data Protection Law, and the New Zealand Privacy Act 2020.

Business Day means any day of the year other than a Saturday, a Sunday, a New Zealand public holiday or Wellington anniversary day, and a reference to days, other than Business Days, is a reference to any calendar day of the year.

California Data Protection Law means the California Consumer Privacy Act of 2018 and the California Privacy Rights Act of 2020 and their implementing regulations.

CCPA/CPRA Service Provider Agreement means the CCPA/CPRA service provider agreement set out in Schedule 2 of the Data Processing Terms.

Confidential Information means these Terms (including the Service Fees), any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, these Terms, the Optimal Materials and Technology and any other Optimal commercially sensitive materials and proprietary methodologies, the Customer Data, personal information as defined in the New Zealand Privacy Act 2020, any personal information and material marked “Confidential” or with a similar marking, or which, by its nature, is apparent as confidential.

Customer Data means all data, content, and information (including personal information, Your studies and study results) submitted by the You or on Your behalf to the Services or collected and processed by You or on Your behalf using the Services. Customer Data excludes User Contact Information.

Data Processing Agreement means the data processing agreement set out in Schedule 1 of the Data Processing Terms.

Data Processing Terms means the Data Processing Terms published on the Website (as updated from time to time).

Documentation means all documentation relating to the provision of the Services provided by Optimal including the documentation published on the Website.

EU/UK Data Protection Laws means all laws and regulations of the European Union and its member states, and the United Kingdom, that apply to the processing of Customer Data under these Terms, including (where applicable) the GDPR and the UK Data Protection Laws.

Feedback means comments, ratings, sentiments, information, questions, data, ideas, descriptions of processes, or other information relating to the Services that is submitted to Optimal by You or by Your Permitted Users.

Force Majeure Event means an event beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, that party's obligations under these Terms, excluding any event: (a) that could have been avoided by a party taking reasonable steps or reasonable care; (b) for which the affected party is or was directly responsible; (c) constituted by the failure of a sub-contractor, except to the extent that the sub-contractor was subject to a Force Majeure Event; or (d) constituted by the insolvency of either party or lack of funds.

GDPR means the European Union General Data Protection Regulation 2016/679.

general platform usage data means (i) aggregated and anonymised data about interactions with the Services' product features by the Customer, the Customer's Permitted Users, or Participants; and (ii) de-identified records of any interaction with the Services, provided that no Customer Data is retained in such records.

Intellectual Property Right includes copyright and all worldwide rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification, or derivative work of the Intellectual Property.

Online Registration Service means the online registration service and sign-up workflow on the Website completed by You for Your purchase of the Services.

Optimal, We, Our and Us means Optimal Workshop Limited (New Zealand Registered Company number 1973791) and includes its successors and assigns.

Optimal Materials and Technology means the materials and technology used by Optimal and its sub-contractors in relation to the Services including software, equipment and technology, methodologies and business processes, and materials including technical information, templates, design documents and the Documentation, and includes any enhancement, modification, or derivative work of those materials and technology.

Optimal Service Agreement means a separate written agreement entered into between You and Optimal for the provision and use of the Services.

personal information means information about an identifiable, living person, and includes personal data, personally identifiable information and equivalent information under Applicable Data Protection Laws.

Policies means any policy communicated to You or hosted on Optimal's website (including the Policies section of the Legal Center).

Sales Tax means any sales tax, goods and services tax, value added tax, or equivalent tax payable under any applicable law.

Service Description means the description of the Services set out in these Terms, any Order Form, and the Website.

Service Fees means the fees payable by You for the Services under these Terms, as may be set out in an applicable Order Form.

Service Level Agreement means the Service Level Agreement published on the Website (as updated from time to time).

Services means the provision of Optimal's user research platform and tools which assists organisations to understand customer behaviours and improve products and customer experiences which is to be provided in the form of online services, in accordance with these Terms.

Order Form means any statement of work, order form, or agreed quote in relation to the Services that satisfies the requirements of clause 1.

statistical data has the meaning set out in clause 16.1.

Terms means these Terms of Service, the Service Level Agreement, and the Data Processing Terms (as applicable), as amended from time to time by Optimal, and any Order Form signed or agreed by the parties on or after the date of these Terms.

UK Data Protection Laws means all laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the UK Data Protection Act 2018.

UK GDPR has the meaning given in the UK Data Protection Act 2018.

User means any of Your personnel who are authorised to access and use the Services on Your behalf in accordance with clause 4.

User Contact Information means personal data about your Users, such as their name and email address, that Optimal stores separate from the Services in order to, among other things, communicate with your Users related to Optimal's provision and support of Services. User Contact Information is not considered Customer Data.

Website means the Optimal Workshop website at optimalworkshop.com.

You means you as the customer of the Services and Your has a corresponding meaning.