

GENERAL TERMS AND CONDITIONS

Effective Date: _____

Customer: _____

1. OVERVIEW

- 1.1. These Terms are made and entered as of the Effective Date by and between UserTesting and Customer. These Terms, combined with all Orders and any other terms incorporated herein by reference, together comprise the entire understanding between the parties with respect to the Agreement. Capitalized words within these Terms and the rules for interpreting these Terms are defined in Section 15.
- 1.2. These Terms govern the provision by UserTesting of Products and Services to Customer. The Products and Services enable customers to create, develop, or manage test plans, define audiences, and conduct Tests to solicit feedback from Contributors for the Purpose, and to generate Output. If Customer wishes to purchase Professional Services, these will be identified in the applicable Order and governed by a Statement of Work, in addition to these Terms.

2. CONTRIBUTORS

- 2.1. UserTesting-sourced Contributors. Customer agrees that it will not, without UserTesting's prior written consent: (a) solicit contact information from; or (b) contact, UserTesting-sourced Contributors outside of the specific Test for which they were sourced.
- 2.2. Contributor Status. Contributors are neither employees nor agents of UserTesting but are independent individuals who choose to engage in Tests. Prior to participating in any Test, UserTesting will ensure that UserTesting sourced Contributors agree to terms and conditions that include, among other things, provisions requiring them to agree to keep the contents of each Test they take confidential.
- 2.3. Disclaimer. NONE OF USERTESTING, ITS AFFILIATES, AND ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS ENDORSE ANY CONTRIBUTOR OR ANY OUTPUT (INCLUDING, WITHOUT LIMITATION, ANY OPINION, RECOMMENDATION OR ADVICE EXPRESSED BY ANY CONTRIBUTOR). USERTESTING EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY CONTRIBUTORS' ACTS OR OMISSIONS, AND FOR THE CONTENT AND ACCURACY OF THE OUTPUT. CUSTOMER'S USE OF, OR RELIANCE, ON CONTRIBUTORS OR ANY OUTPUT IS AT ITS OWN RISK AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DECISIONS MADE BASED ON SUCH INFORMATION.

3. ORDER PROCESS

- 3.1. UserTesting Orders. To order Products or Services from UserTesting, Customer may (a) execute an Order with UserTesting or (b) subscribe online, in which case, the terms and limitations of access otherwise included in an Order will be those defined on UserTesting's website. Customer's use of Products or receipt of Services shall be deemed definitive evidence that an Order has been entered into. An Affiliate of Customer may enter into an Order, and by doing so agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement, and both Customer and Affiliate will be considered the "Customer" for the purposes of obligations and responsibilities under this Agreement.
- 3.2. Order Contents. Each Order will specify, to the extent applicable, specifics and limitations surrounding: (a) the Products; (b) the Services; (c) the Subscription Term; (d) additional options, third party products, restrictions, and/or terms and conditions, as applicable; (e) the applicable Fees and payment terms; and (f) any other terms to which the parties may agree.
- 3.3. Third Party Orders. If Customer obtains access to the Products or Services through a UserTesting authorized third party and no Order or other written agreement is entered into directly between Customer and UserTesting, then Customer's access to the Products or Services are subject to this Agreement, and in the event of conflict between this Agreement and terms between Customer and such authorized third party, this Agreement will govern. UserTesting is not responsible for the actions, omissions, statements, or offerings of any such third party.
- 3.4. Free Trials. UserTesting may provide Customer with access to a Free Trial. Any Free Trial will end at the earlier of: (a) the Free Trial end date specified on the Order; (b) the start date of any Order for the same Products or Services on a paid for basis; or (c) termination of the Free Trial at any time by UserTesting in its sole discretion. UserTesting makes no commitments whatsoever with respect to the features, functionality, service levels, support or availability made available as part of a Free Trial and reserves the right to change such features and functionality at any time without notice and in its sole discretion.

4. PRODUCT LICENSE AND USERS

- 4.1. License. Subject to these Terms and the applicable Order, UserTesting grants to Customer a non-exclusive, non-transferrable, non-sublicensable, right to access and/or use the Products solely for the Purpose during the Subscription Term.
- 4.2. Workgroup License. Except as provided in Section 4.3, UserTesting shall grant Customer's Workgroup, a license to use the Products and Services.
- 4.3. Seat-Based License. Where no Workgroup is referenced or where Workgroup is designated "N/A", Customer shall be granted a license to use the Products included in such Order on a seat basis, and each seat shall be used exclusively by the individual User assigned in accordance with Section 5.2.
- 4.4. Agency License. Unless otherwise provided for in a separate Order executed in writing between the parties, Customer may not use the Products and Services on behalf of a third party, unless the parties enter into an Order specifically allowing use of the Products

for an End Client and in all such cases only if provided that: (a) Customer provides UserTesting with the name of the End Client prior to the beginning of the relevant Term (as stated on the applicable Order); (b) such End Client is designated as the Workgroup name or End Client on the applicable Order; (c) Customer represents and warrants that use of the Products and Services under the applicable Order shall be solely on behalf of and for the benefit of such End Client; and (d) Customer shall ensure that any and all Output in connection with such use of the Products and Services shall be shared only with such End Client, and not with any other third party.

- 4.5. **Data Retention.** The Products includes a feature that allows Customer to download Customer Property during the applicable Subscription Term. After expiration or termination of the relevant Order, UserTesting will retain Customer Property for at least: (a) ninety (90) days in relation to the UserZoom platform; (b) thirty (30) days in relation to the UserZoom Go and/or UserTesting platform; or (c) up to two (2) months in relation to the EnjoyHQ platform¹; and, upon Customer's written request during this Retention Period, will make available for download Customer Property and Output to Customer.
- 4.6. **Changes.** During a Subscription Term, the Products, versions, applications, and/ or features contained therein, may change from time to time, provided such changes will not materially degrade the functionality of the Products. Certain Products may be updated from time to time as necessary to address bug fixes, patches, or for maintenance releases or other similar updates as required for Product maintenance.

5. **CUSTOMER RESPONSIBILITIES**

- 5.1. **No Reverse Engineering.** Customer shall not, and shall not permit any third party to: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Products; (b) modify, or create derivative works from, the Products; (c) introduce into the Products any virus, worm, "back door," Trojan Horse, or similar harmful code; or (d) copy or "frame" the Products or any part, feature, function or user interface associated with the Products.
- 5.2. **Customer Users.** To obtain access to and use of the Products, Customer must register individual User Accounts. Unless otherwise expressly permitted in an Order or product specific terms, each User Account must be assigned to a User and may not be used by more than one individual. Customer may request to re-assign User Accounts, which UserTesting may agree to in its reasonable discretion.
- 5.3. **Product Usage.** Customer will: (a) be responsible for Users' compliance with the Agreement; (b) be responsible for the accuracy, quality and legality of Customer Property, the means by which Customer acquired Customer Property, Customer's use of Customer Property; (c) prevent unauthorized access to or use of the Products and notify UserTesting promptly of any such unauthorized access or use; (d) be responsible for all activities and charges incurred through its User Account; and (e) use the Products only in accordance with the Agreement, UserTesting's Content Policy² and applicable laws and government regulations. Customer understands and agrees that UserTesting may monitor all use of the Products for security, operational, improvement, reporting and performance purposes, including but not limited to sharing metrics about Customers' and Users' use of the Products with third parties who produce reports for Customer, provided such third parties are provided only the metrics necessary to produce the reports and are bound by confidentiality terms substantially similar to those in this Agreement.
- 5.4. **Restricted Activities.** Customer shall not do any of the following:
 - (a) permit multiple Users to access the Products using shared User Accounts;
 - (b) use, or make use of, the Products for anything other than the Purpose;
 - (c) sell, resell, license, sublicense, distribute, make available, rent or lease the Products in any manner whatsoever;
 - (d) violate, or ask a Contributor to do something that may violate, any applicable law (including but not limited to third-party privacy rights), regulation or UserTesting's Content Policy in connection with Customer's: (i) use of the Products; or (ii) collection of information (including but not limited to during Tests and in the Output);
 - (e) interfere with or disrupt the integrity or performance of the Products or any associated data or information;
 - (f) require Contributors to accept any terms that may, in any way, alter the rights of UserTesting or the obligations or duties of Customer under the Agreement;
 - (g) access or use the Products or Contributors available through the Products in order to build, create or design a product or service competitive to UserTesting; and
 - (h) access or use the Products to train an artificial intelligence or machine learning algorithm.
- 5.5. If Customer breaches this Section 5, UserTesting may, without prejudice to any other rights or remedies it may have under this Agreement or at law: (a) report to appropriate law enforcement or regulatory authorities; (b) restrict access to the Platform; and/ or (c) delete any Output resulting from or constituting such breach.

6. **INTELLECTUAL PROPERTY**

- 6.1. **UserTesting Property.** As between the parties, all rights, title and interest in UserTesting Property shall remain the exclusive and confidential property of UserTesting and/ or its licensors from whom UserTesting has obtained the appropriate rights. No right or

¹ <https://help.usertesting.com/hc/en-us/articles/11880397521309>

² <https://www.usertesting.com/content-policy>

license is granted or implied under this Agreement in relation to any UserTesting Property beyond the rights, and subject always to the restrictions, expressly set forth in these Terms.

- 6.2. **Ownership of Output.** In consideration of payment by Customer of any Fees which may be due under all relevant Orders, UserTesting assigns all right, title and interest it holds in the copyright in and to the Output generated during the relevant Subscription Term to Customer.
- 6.3. **Customer Property.** As between the parties, all rights, title and interest in Customer Property remains the confidential and exclusive property of Customer and/or its licensors from whom Customer has obtained the appropriate rights. No right or license is granted or implied under this Agreement in relation to any Customer Property beyond the rights, and subject always to the restrictions, expressly set forth in these Terms. Customer represents, warrants and undertakes that it has, and shall maintain for the duration of the Agreement, all rights, permissions and consents necessary to: (a) submit Customer Property to UserTesting; (b) disclose and display Customer Property to Customer's Users and Contributors; and (c) grant UserTesting the rights to use Customer Property set forth in this Agreement.
- 6.4. **Performance License.** Customer hereby grants to UserTesting an irrevocable, royalty-free, non-exclusive, sublicensable, worldwide license to: (a) use, copy, and create derivative works of, the Customer Property to perform UserTesting's obligations under the Agreement; and (b) permit the UserTesting's Affiliates, subcontractors and service providers to use, copy, and create derivative works of, the Customer Property insofar as such Affiliates, subcontractors and service providers require to do so to fulfill UserTesting's obligations under the Agreement, and in each of the foregoing instances including but not limited to displaying Customer Property to Contributors and Users.
- 6.5. **Feedback License.** In addition to the foregoing license, Customer hereby grants to UserTesting a perpetual, irrevocable, royalty-free, non-exclusive, sub-licensable, worldwide license to (a) use and incorporate into the Products and/ or Services, any Feedback; and (b) create and make use of Analyses; provided that Feedback and Analyses will not identify Customer or Customer Property and will only be used by UserTesting in an anonymized, aggregated manner.

7. **DATA PRIVACY**

- 7.1. **DPA.** Each party shall at all times comply with the terms of the DPA in relation to any collection, use, transfer, or other processing of Personal Data.
- 7.2. **Consent.** Where applicable, the Product may include the ability to create Recordings. If Customer collects any personal information from Contributors via Recordings, Customer is responsible for obtaining the necessary consents from and disclosing to Contributors the information that Customer will collect, how Customer will use that information, and make any other disclosures required by the Data Protection Legislation (which may be done within the Products software). Customer further agrees to obtain consent from Contributors prior to making use of Contributors' voice or image (whether still or in motion) for any activity other than the Purpose.
- 7.3. **Specialized Testing.** Physical product testing is permitted provided that Customer complies with this Agreement. Customer acknowledges and agrees that UserTesting has no liability for any claims that arise from or are related to Customer's physical product testing conducted by Customer. Physical product testing will require the Customer to gain consent from Contributors prior to any shipment of any physical product. UserTesting reserves the right to refuse to allow the testing of physical products, in its sole discretion. Customer is prohibited from testing with minors unless they have entered into a currently valid Minor Testing Addendum with UserTesting.
- 7.4. **Disclaimer.** UserTesting shall not be liable for any claims, causes of action, damages, judgments, settlements, and/or costs asserted by a third party or Customer as a result of any physical product testing initiated by Customer, for any breach of privacy laws (including, but not limited to, the GDPR, HIPAA and COPPA) or any fines, penalties or costs arising from the foregoing, to the extent caused by Customer's failure to comply with the Agreement, the DPA, or applicable law.

8. **PRICING AND PAYMENT TERMS**

- 8.1. **Fees and Payment Terms.** Customer shall pay the Fees in consideration for access to and use of the Products and/ or Services. Unless otherwise provided in an Order, all amounts payable under this Agreement are payable in U.S. Dollars. All Orders are non-cancelable, and Fees are non-refundable, except as otherwise provided in these Terms.

When UserTesting invoices Customer for Fees, Customer shall pay to UserTesting the full amount to the payment address specified on each invoice in accordance with the payment terms set out in the Order. Except as otherwise provided in an Order all invoices are payable net thirty (30) days from the date stated on the invoice.

If any payment due under an invoice is not received by UserTesting by the due date for payment, then in addition to any other rights or remedies available to UserTesting (including but not limited to suspension), UserTesting may: (a) if such failure to pay is not reasonably disputed in good faith (in which case, both parties agree to work in good faith to resolve such dispute as soon as reasonably possible and Customer must pay the undisputed portion of the invoice) or remedied within fifteen (15) days of Customer's receipt of notice thereof from UserTesting (which may be served via email), temporarily suspend Customer's access to the Products and provision of the Services until all payments currently due from Customer are received by UserTesting; (b) charge the Customer interest on such due amounts from the due date for payment until the date such amounts are fully paid, at the greater of the maximum rate permitted by applicable law or 1.5% of the outstanding balance per month; and (c) exercise any lawful remedies to obtain payment, all reasonable costs (including but not limited to engaging a third-party collection agency, attorneys' fees, court costs and service charges) of which shall be borne by Customer.

- 8.2. **No Contingencies.** Customer agrees that its license purchase of the Products and/or Services is not contingent on the delivery of any future functionality or features thereof, or dependent on any oral or written comments made by UserTesting regarding such future functionality or features.

8.3. Taxes.

- (a) Sales Tax. UserTesting reserves the right to invoice for Taxes if required under the applicable taxing jurisdiction unless Customer provides UserTesting with an exemption certificate, proof that Customer has self-assessed or direct pay permit. UserTesting will apply Taxes based upon where the Customer has stated the Products and/ or Services will be used. Customer will inform UserTesting immediately if such location changes and will be responsible for any additional Taxes due as a result. Payments due to UserTesting under this Agreement shall be increased so that amounts received by UserTesting, after provisions for taxes and all taxes on such increase, will be equal to the amounts required under this Agreement if no Taxes were due on such payments.
- (b) Withholding Taxes. Amounts payable to UserTesting under the Agreement are payable in full, free and clear and without deduction of, and do not include any and all present and future withholding taxes. Customer shall make all payments under this Agreement without deduction of any withholding taxes unless required by law. If any such deduction of withholding taxes is required, Customer shall pay to UserTesting such additional amount as will ensure that UserTesting receives the same total amount that it would have received if no such deduction of withholding taxes had been required. Customer shall provide evidence that all applicable withholding taxes have been paid to the appropriate authority by delivering to UserTesting receipts or notarized copies thereof within thirty (30) days after the due date for such payments.
- (c) Tax Indemnity. The Customer shall indemnify UserTesting for the full amount of Taxes attributable to the provision of Products and/ or Services under this Agreement, and any liabilities (including penalties, interest, and expenses) arising from such Taxes, within thirty (30) days from any written demand by UserTesting.

- 8.4. Third Party Payment. If Customer requests a third party billing agent to make payments on its behalf, the relevant purchase order must be issued by the third party billing agent and in the event that payment is not received on time and in full, in accordance with the terms of this Agreement, Customer shall remain obligated to pay.

9. TERM AND TERMINATION

- 9.1. Term. The Agreement will commence on the Effective Date and remain in effect until terminated by either party in accordance with these Terms. Upon notice of termination of the Agreement, the Agreement will terminate on the later of the date of termination of the last Order subject to these Terms, or termination of Customer's access to the Products or UserTesting's provision of the Services. UserTesting may accept Orders under this Agreement in its sole discretion.
- 9.2. Subscription Terms. Each Subscription Term begins on the date specified in the relevant Order and shall continue until the expiry set forth therein, unless terminated earlier in accordance with these Terms.
- 9.3. Termination. Either party may terminate these Terms or the applicable Order upon written notice to the other if the other party commits a material breach of its obligations hereunder and the breaching party fails to cure such breach within thirty (30) days following its receipt of written notice specifying the breach (or fifteen (15) days in the case of non-payment except where the non-payment is the result of a good faith dispute over the invoice). If Customer validly terminates an Order or the Agreement for breach by UserTesting as set forth in this Section 9.3, Customer shall be entitled to receive a refund of any prepaid Fees in an amount prorated to reflect the period of time between the date on the date of termination and the end of the period for which Customer has prepaid for such use. If UserTesting validly terminates an Order or the Agreement for breach by Customer that remains uncured after thirty (30) days (or fifteen (15) days in the case of non-payment, except where the non-payment is the result of a good faith dispute over the invoice), Customer shall pay any and all unpaid fees covering the remainder of the Subscription Term under all impacted Orders, and any and all committed fees under all impacted SOWs.
- 9.4. Suspension. UserTesting may suspend Customer's (or one or more Users') access to the Products or the provision of the Services thirty (30) days after delivery of breach notice to the Customer if the breach is curable, or immediately if: (a) the breach is not curable; or (b) the breach is a violation of Section 5 of these Terms. UserTesting will provide Customer with prompt notice if it suspends any Users' access to the Products pursuant to this Section and may restore access as soon as reasonably practicable once the cause for suspension is remedied to the UserTesting's satisfaction. UserTesting will not be liable for any loss or damage resulting from the termination or suspension of Customer's access to and/ or use of the Products or delivery of the Services due to Customer's material breach of the Agreement.
- 9.5. Accrued Rights and Survival. Termination or expiry of this Agreement or any Order made hereunder shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, including but not limited to Sections 5 (Customer Responsibilities), 6.5 (Feedback and Performance License), 7 (Data Privacy), 8 (Pricing and Payment Terms), 10 (Confidentiality), 11.4 (Warranty Disclaimers), 13 (Limitation of Liability), 14.8 (Export Compliance) and 14.10 (Governing Law) shall remain in full force and effect.

10. CONFIDENTIALITY

- 10.1. Use. Each party shall not use the other party's Confidential Information, except to fulfill performance of the Agreement and in accordance with its terms. Each party shall not disclose the other party's Confidential Information to anyone other than their Affiliates and its and their respective directors, officers, employees, contractors, subcontractors, service providers, advisors, and agents, who need to know the Confidential Information and are bound by obligations of confidentiality as restrictive as those set forth in the Agreement.

- 10.2. Standard of Care. Each party will use at least the same standard of care to protect the other party's Confidential Information as it does with its own Confidential Information of similar nature, but in no event shall such standard fall below a reasonable standard of care.
- 10.3. Permitted Disclosure. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to the extent required by a court of competent jurisdiction or other applicable governmental authority or as required by applicable law, provided that (insofar as legally permissible) such party uses reasonable efforts to notify the other party in advance of such disclosure so as to permit the other party to request confidential treatment or a protective order prior to such disclosure.
- 10.4. Injunctive Relief. Each party acknowledges that breach of this provision may result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party may be entitled to seek injunctive relief to enforce the provisions of this Section.
11. **WARRANTY**
- 11.1. Product Warranty. UserTesting warrants to Customer that during the applicable Subscription Term of a particular Order, the Products will operate in substantial accordance with their then-current Documentation. The foregoing warranty shall not apply to any issues: (a) caused by factors outside of UserTesting's reasonable control; (b) that result from any actions or inactions of Customer or any third parties; or (c) that result from Customer's operating environment or systems. Customer's sole and exclusive remedy for breach of this warranty shall be that UserTesting shall use commercially reasonable efforts to modify the non-conforming Products to achieve in all material respects functionality substantially equivalent to that described in the Documentation. If UserTesting is unable to restore such functionality within a reasonable time (considering the severity of the error and its impact on Customer following UserTesting's acceptance of Customer's claim under this Section 11.1, Customer shall be entitled to terminate the relevant Order only insofar as it relates to the non-conforming Products, in which case Customer shall be entitled to receive a refund of any applicable prepaid Fees in an amount prorated to reflect the period of time between the date when Customer was unable to use the non-conforming Products due to such non-conformity and the end of the period for which Customer has prepaid.
- 11.2. Services Warranty. UserTesting warrants to Customer that the Services will be performed materially in a professional and competent manner. The foregoing warranty shall not apply to any issues: (a) caused by factors outside of UserTesting's reasonable control; or (b) that result from UserTesting following Customer's specific instructions. Customer's sole and exclusive remedy for breach of this warranty shall be that UserTesting shall use commercially reasonable efforts to reperform the Services to the standard warranted herein.
- 11.3. Notification. UserTesting shall have no obligation with respect to a warranty claim under this Section 11 unless notified of such claim within thirty (30) days of the first instance of material failure to comply with this warranty.
- 11.4. DISCLAIMER. OTHER THAN AS PROVIDED IN THIS SECTION 11 OF THESE TERMS, USERTESTING EXPRESSLY DISCLAIMS ANY WARRANTY REGARDING THE PRODUCTS, SERVICES THE TESTS, THE OUTPUT, OR THE CONTRIBUTORS, USERTESTING PROPERTY AND ANY OTHER MATTER WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PRODUCTS AND SERVICES PROVIDED FREE OF CHARGE, INCLUDING AS PART OF A TRIAL, IF ANY, ARE PROVIDED "AS IS," AND EXCLUSIVE OF ANY WARRANTY WHATSOEVER.
12. **INDEMNIFICATION**
- 12.1. UserTesting Indemnification Obligations. UserTesting agrees to indemnify, defend and hold Customer harmless against any Losses to the extent such arise directly from a claim by a third party that Customer's use of any of the Products in accordance with these Terms infringe a valid patent or copyright or trade secret, of such third party. UserTesting shall have no liability or obligation hereunder with respect to any indemnification claim based upon (a) use of the Products other than in accordance with the UserTesting's instructions, (b) modifications, alterations, combinations or enhancements of the Products not created or authorized by UserTesting, (c) Customer's violation of Section 5, or (d) Customer's continuing allegedly infringing activity after being notified thereof or its continuing use of any version after being provided modifications that would have avoided the alleged infringement. If any Products become or, in UserTesting's opinion, is likely to become, the subject of any claim or injunction preventing its use as contemplated herein, UserTesting may, at its option: (i) obtain for Customer the right to continue using the implicated Products; or (ii) replace or modify the implicated Products so that they become non-infringing without substantially compromising their principal functions. If (i) and (ii) are not reasonably available to UserTesting, then UserTesting may terminate any Order insofar as it relates to the implicated Products upon written notice to Customer and Customer shall be entitled to receive a refund of any applicable prepaid Fees in an amount prorated to reflect the period between the date of termination and the expiry of the Subscription Term.
- 12.2. Customer Indemnification Obligations. In the event Customer Property is alleged to or does infringe or violate any intellectual property right or other legal right of any third party, Customer will indemnify, defend and hold UserTesting harmless from and against any and all Losses incurred by UserTesting resulting therefrom provided, that Customer will not be obligated under this sentence to the extent any such infringement arises from UserTesting's unauthorized use of the Customer Property.
- 12.3. Required Procedures. Any claim for indemnification hereunder requires that (a) the party seeking indemnification provide prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim, provided that: (i) the indemnified party shall reserve the right to secure its own, separate counsel and participate in the defense at its own expense; (ii) no settlement that affects the rights or reputation of the indemnified party shall be agreed to without that party's prior written consent which shall not be unreasonably withheld or delayed; and (iii) the indemnifying party may not settle any claim against the indemnified party unless it unconditionally releases the indemnified party of all liability.
13. **LIMITATION OF LIABILITY**

- 13.1. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, LOST PROFITS, GOODWILL, BUSINESS LOSS OR ANY OTHER INCIDENTAL, INDIRECT, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR (A) FEES OWING TO USERTESTING, (B) A BREACH BY CUSTOMER OF SECTION 5, (C) EITHER PARTY'S OBLIGATIONS UNDER SECTION 12, AND (D) A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER TO USERTESTING UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH DAMAGES. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) OR MULTIPLE CLAIMS. THE FOREGOING DISCLAIMER WILL NOT APPLY TO ANY LIABILITY WHICH MAY NOT BE LAWFULLY LIMITED OR EXCLUDED.
14. **GENERAL**
- 14.1. **Compliance.** The parties will comply with all laws applicable to the performance of their respective obligations under the Agreement, including but not limited to regulations relating to anti-slavery, anti-bribery and anti-corruption. If either party learns of any violation relating to this Agreement, they shall promptly notify the other party.
- 14.2. **Assignment.** Neither party may assign or transfer this Agreement without the other party's prior written consent, except in the event of: (a) an assignment to an Affiliate; or (b) the merger, acquisition or sale of the assigning party or sale of substantially all of the assigning party's assets. In the event of an assignment to an Affiliate, merger, acquisition or sale of substantially all of the assigning party's assets, the assigning party shall deliver notice to the other party of such assignment. Any attempt to assign this Agreement other than as permitted above will have no effect.
- 14.3. **Third Party Rights.** Save as to the express rights of any Affiliates under an Order, the parties do not intend to establish any third party rights through the execution of the Agreement. Any such third party rights possible under applicable law, whether by statute or common law, are hereby expressly excluded.
- 14.4. **Third Party Products.** UserTesting may offer optional Third Party Products, or the Services may enable access to Third Party Products, that may require acceptance of third party terms presented to the Customer. Linking to or use of Third Party Products constitutes Customer's agreement with such terms. UserTesting is not a party to such third-party agreements and is not responsible for such Third Party Products or any exchange of data between Customer and any third party. Access to Third Party Products by way of UserTesting may be withdrawn at any time. UserTesting has no responsibility for claims based on Third Party Products or items not provided by UserTesting.
- 14.5. **Order of Precedence.** If there is any conflict among any elements of the Agreement, the descending order of precedence is: the applicable Order; the DPA; and the Terms.
- 14.6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.
- 14.7. **Entire Agreement.** The Agreement constitutes the complete and exclusive agreement between Customer and UserTesting with respect to the subject matter hereof and supersedes any prior communications (both written and oral) regarding such subject matter. UserTesting expressly objects to any additional or conflicting terms in any Customer purchase order or other Customer form. Each party represents that it has validly entered into this Agreement and has the legal power to do so. Neither party may vary the terms of this Agreement unless documented in writing signed by an authorized signatory of each party.
- 14.8. **Export Compliance.** The Products or Services, and UserTesting Property may be subject to export laws and regulations of the USA, the UK or the EU, and other jurisdictions. Each party represents that it is not named on any USA, UK, EU or other applicable denied-party list. Customer is required to determine if any content, data or information uploaded by Customer is subject to USA, UK or EU export control or export control of any other applicable jurisdiction. Customer will not and nor will it permit (a) any User or any third party to access or use the Products or Services in a USA-embargoed or otherwise restricted country or region, or (b) otherwise access or use the Products or Services or upload any content, data or other information in violation of any USA, UK, EU or other applicable export law or regulation.
- 14.9. **Force Majeure.** Neither Customer nor UserTesting will be liable for delays or non-performance of any of its obligations only to the extent that the delay or failure to perform the obligation in question is caused by any event or circumstance beyond its reasonable control, including but not limited to acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, pandemics, strikes or other labor problems or Internet service provider failures or delays.
- 14.10. **Governing Law.** This Agreement, its subject matter and its formation (and any non-contractual disputes or claims) are, regardless of any rules concerning conflict of laws, governed by: (a) the laws of the State of California and the federal laws of the United States of America, if Customer is located in the continent of North America or South America; (b) English law, if Customer is located elsewhere in the world. Both parties irrevocably agree to the exclusive jurisdiction of the courts of either Section 14.10(a) or Section 14.10(b) herein, as applicable. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.
- 14.11. **Independent Contractors.** The parties are independent contractors. This Agreement will not be construed to create or imply any partnership, agency, or joint venture. Unless expressly provided in this Agreement, no failure or delay by any party in exercising any right, power, or remedy shall operate as a waiver of any such right, power, or remedy.
- 14.12. **Notices.** Notice shall be deemed given upon receipt via an email, or personal delivery, delivery by a nationally recognized overnight delivery service (e.g., FedEx, UPS) or any other valid form of transmission recognized under applicable law. Notices to Customer shall be sent to the email or postal address appearing on the applicable Order or an updated notice address delivered in writing (including by email) subsequent to an Order taking effect. Notices to UserTesting shall be sent to the email or postal address appearing on the

applicable Order, or an updated notice address delivered in writing (including by email) subsequent to an Order taking effect, and with an e-mail cc to "legal@usertesting.com".

- 14.13. **No Waiver.** Failure to enforce a provision in this Agreement will not constitute a waiver of that provision, and a waiver of a provision will be binding only if made in writing by the waiving party.
- 14.14. **Publicity.** Neither party will use the names, likeness, logos, trademarks or other identifying information of the other party without the prior written consent of the other, except that Customer agrees that UserTesting may use Customer's name, likeness, logos, trademarks or other identifying information in customer listings and in marketing material.
- 14.15. **Severability.** If any provision is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated.

15. DEFINITIONS AND INTERPRETATION

- 15.1. The following rules of interpretation apply in this agreement:

- (a) Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- (b) Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- (c) Headings shall not affect the interpretation of this Agreement.
- (d) A reference to writing or written includes email but does not include fax.

- 15.2. The following definitions shall apply to the Agreement:

"Affiliate" means any business entity that owns more than 50% of the voting interest in a party, or otherwise directly or indirectly controls, is controlled by, or is under common control with a party, for as long as such party remains controlled by or is under common control by such party;

"Agreement" means the combined collection of the Terms, all applicable Orders, and any other terms that are incorporated herein by reference;

"Analyses" means analyses using data derived from use of the Products and Services;

"Contributors" means individuals who participate in Tests;

"Confidential Information" means Customer Confidential Information or UserTesting Confidential Information as the context requires. Confidential Information shall not include information to the extent that it (a) is publicly known at the time of disclosure, (b) is received from a third party without restriction on disclosure and without breach of confidentiality or non-disclosure obligations, (c) is published or otherwise made known to the public by the party who owns it, or (d) was generated independently without reference to the other party's Confidential Information;

"Customer Confidential Information" means: (a) Customer Property; (b) the Tests and the Output; and (c) all other non-public information regarding Customer's legal, financial or business affairs;

"Customer Property" means: (a) any and all data, files, attachments, text, images, and other content that the Customer or its Users upload or input to the Products; and (b) subject to Section 6.2, the Tests and Output;

"Customer" means the entity named at the beginning of these Terms;

"Documentation" means standard operational and technical specifications, if any, provided by UserTesting with an Order.

"DPA" means the Data Processing Agreement set out at <https://www.usertesting.com/privacy-center/data-processing-agreement>;

"Effective Date" means the date stated at the beginning of these Terms;

"End Client" means a third party who UserTesting has expressly authorized in an Order as being final beneficiary of the Products or Services;

"Fees" means the amounts that are set forth in an Order or otherwise due and payable under the Agreement;

"Feedback" means suggestion, enhancement request, recommendation, correction or other feedback provided by Customer and/ or Users relating to the Products and/ or Services;

"Free Trial" means limited, free access to the Products and/ or Services;

"Losses" means any liabilities, claims, causes of action, damages, judgements, settlements, expenses and/or costs (including reasonable legal fees);

"Order" means an order form or other document detailing the Products and/ or Services to be provided;

"Output" means content generated from Tests, including but not limited to Recordings, derivatives thereof, content generated from Recordings, and reports and information about Tests;

"Personal Data" shall have the meaning ascribed to it in the DPA;

"Products" means certain UserTesting proprietary software applications, including web-based, self-service digital user testing and customer experience measurement solutions, as further set out in the applicable Order. In some instances, a Product may also be referred to as a "Platform";

"Professional Services" means certain customized or professional services that UserTesting may offer on a fee-based basis;

"Statement of Work" means a statement of work which sets out the details of any Professional Services to be provided by UserTesting to customer, including the (a) scope of work; (b) project schedule; and (c) any other terms to which the parties may agree;

"Purpose" means Customer's internal business use;

"Recordings" means a feature that allows Customer to record a Contributor's activity on a web site or application tracked as part of a Test;

"Restricted Activities" shall mean the activities listed under Section 5.4;

"Retention Period" means the period(s) after expiration or termination of a relevant Order in which UserTesting will retain Customer Property, as set out in Section 4.5;

"Services" means support services ancillary to the provision of the Products;

"Subscription Term" means the length of time Customer will have access to and/or use of the Products;

"Taxes" means all sales tax, value added tax and similar point of sale taxes, levies, imposts, dues, duties, fines or other charges of whatsoever nature however imposed by any country or any subdivision or authority thereof in any way connected with the provision of the Products and/ or Services, this Agreement or any instrument or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes as are imposed on or measured by a party's net income, profits or property;

"Terms" means these General Terms and Conditions;

"Test" means studies conducted by Users using the Products;

"Third Party Products" means non-UserTesting products or services either offered by UserTesting in an Order or which the Customer connects to the Products and/ or Services;

"User" means a named employee, agent, or independent contractor of Customer who is authorized to use the Products and/or Services on Customer's behalf;

"User Account" means an individual account that enables Users to access and use of the Products;

"UserTesting" means the UserTesting entity which signs these Terms;

"UserTesting Confidential Information" shall mean: (a) UserTesting Property; (b) all other non-public information regarding UserTesting's legal, financial, business affairs, technical features, functionality, product roadmap or security measures;

"UserTesting Property" shall mean: (a) the Products and Services; (b) any other UserTesting products or offerings; (c) any pre-existing intellectual property and related rights of UserTesting that are used in performance of UserTesting's obligations under an Order; (d) Analyses; and (e) any modifications, derivative works or updated versions of the foregoing;

"Workgroup" means Customer's internal business group or team specified in an Order.

IN WITNESS WHEREOF, the parties have executed and delivered these Terms as of the day and year set forth above by their duly authorized signatories below.

[INSERT UT ENTITY PRIOR TO SIGNING]:

CUSTOMER:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

UserTesting contract reviewer initials: _____