

UserTesting Customer Terms and Conditions

Please read these Terms and Conditions carefully.

These Terms and Conditions, combined with Orders (defined below) referencing these Terms and Conditions, and our [Content Policy](#), our [Anti-Corruption Policy](#), our [Data Processing Agreement](#) and our [Privacy Policy](#), together create a legal agreement (collectively the “Agreement”) between you, on behalf of yourself or your employer, (“Customer”) and the User Testing group entity named on the applicable Order (“UserTesting”) that governs your access to and use of the Platform (defined below). We may update these Terms and Conditions from time to time. If we make material changes to these terms and conditions, we will update our Customers by email.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, CUSTOMER MUST NOT USE THE PLATFORM.

Description of the UserTesting Platform

UserTesting has developed a software platform (the “**Platform**”) that enables its customers to develop test plans and define audiences (“**Tests**”) in order to solicit perspectives on any brand, design, content or offering (the “**Purpose**”). Each individual participating in a Test (a “**Contributor**”) first accepts [UserTesting’s Contributor Terms and Conditions](#), which include, among other things, provisions requiring such Contributor to keep the contents of each Test they take confidential.

If permitted under an applicable Order, Customer can recruit its own Contributors to perform the Test on the Platform or Customer can request UserTesting to source Contributors for Customer. Customer may also secure services from UserTesting (“**Services**”) to assist Customer in preparing Tests, recruiting Contributors, or other assistance related to Customer’s use of the Platform.

Each Test completed by a Contributor (a “**Session**”) shall be recorded (a “**Recording**”) and made available to Customer on the Platform. If included in an applicable Order, UserTesting may provide additional content (“**Generated Content**”) generated from Recordings.

DISCLAIMER

Contributors are neither employees nor agents of UserTesting but are independent individuals who choose to use the Platform to engage in Tests. UserTesting does not review or control the content of the Tests or Recordings. USERTESTING EXPRESSLY DISCLAIMS ALL LIABILITY FOR THE ACTS OR OMISSIONS OF CONTRIBUTORS, OR FOR THE CONTENT OR ACCURACY OF THE RECORDINGS OR GENERATED CONTENT. CUSTOMER’S USE OR RELIANCE ON RECORDINGS AND GENERATED CONTENT IS AT ITS OWN RISK.

1.0 ACCESS AND USE OF PLATFORM

1.1. Orders

UserTesting shall provide access to Platform and related Services as set forth in an applicable order form (each an “**Order**”).

The Order will specify, to the extent applicable, (i) the version of the Platform (“**Product**”) being licensed by Customer, (ii) the number of licenses permitted to access the Product (each, a “**Seat**”), (iii) the number of Tests available, (iv) the length of time the Customer will have access to the Platform (the “**Subscription Term**”), and (v) the applicable fees and payment terms.

The Order may provide for (i) limitations on Seat licenses by geographic location, department, division or affiliate, (ii) standard or enhanced technical assistance to be provided to the Customer, (iii) additional products to be furnished by UserTesting to the Customer; and/or (iv) additional applicable terms and conditions.

Any unused Tests or Services shall expire at the end of the Subscription Term.

1.2. Tests and Seats

The Order may specify the Customer’s right to license the following types of Seats:

- Creator Seats, which includes the ability to create and launch Tests, and
- Viewer Seats, which includes the ability to view, collaborate and edit Recordings, but not to launch Tests.

Customer shall also be permitted to assign administrator privileges to a specified Seat, allowing such administrator to manage account access and assign Seats to Users within Customer’s organization (subject to limitations on assignment as set forth herein).

1.3. Self-Service License or Reseller

If Customer registers for a self-service license and no Order is entered into, the terms and limitations of access otherwise included in an Order (including the number and type of Tests and Seats and the Subscription Term) will be those defined on UserTesting’s website for the self-service Product.

If Customer obtains access to the Platform through a UserTesting authorized reseller and no Order or other written agreement is entered into directly between Customer and UserTesting, then Customer’s access to the Platform is subject to these Terms of Service, and in the event of conflict between these Terms of Service and terms between Customer and such authorized reseller, these Terms of Service will govern.

1.4. Account Registration

To obtain access to the Platform, Customer will be required to register an account. When registering with UserTesting, Customer must: (a) provide true, accurate, current and complete

information, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete. By registering with UserTesting, Customer agrees that UserTesting may send communications regarding the Platform or Services, including, but not limited to, promotional information and materials regarding UserTesting's other products and services.

2.0 USE OF PLATFORM

2.1. License

Subject to the terms and conditions of this Agreement, UserTesting grants to Customer a non-exclusive, non-transferrable, right and limited license to access and use the Platform during the Subscription Term solely for the Purpose and for Customer's internal business use.

2.2. Third Party Products

UserTesting may offer products from third party vendors ("**Third Party Products**") as part of an Order. Third Party Products may be accessed through the Platform or provided separately. Where a Third Party Product is subject to a separate set of terms and conditions, a copy of or link to such terms and conditions will be included in the Order.

All Third Party Products identified in an Order, whether or not linked to, or otherwise accessible through the Platform, are provided as a convenience to Customer and not under UserTesting's control. UserTesting does not make any representations or warranties with respect to any such third-party technology and does not have any responsibility or liability to Customer for Third Party Products and expressly disclaims any warranties for such Third Party Products, express, implied or statutory. Customer agrees to comply with all terms and conditions applicable to the use of Third Party Products.

2.3. Customer Responsibilities

(a) No Reverse Engineering

Customer shall not (and shall not permit any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Platform; or (ii) modify or create derivative works from the Platform, or (iii) introduce into the Platform any virus, worm, "back door," Trojan Horse, or similar harmful code. If Customer violates this section, UserTesting may immediately deny Customer access to the Platform, or any portion of thereof, without notice or refund.

(b) Seat Usage

Unless otherwise expressly permitted in an Order, each Seat must be assigned to named employee or agent of Customer (each, a "**User**") and may not be used by more than one individual. In the event a User is terminated from Customer's organization or otherwise reassigned to a new role or department, Customer may reassign a Seat to another employee or agent.

(c) Platform Usage

Customer shall not do any of the following (each a “**Restricted Activity**”):

- make the Platform available to anyone other than Users assigned to Seats;
- use the Platform for the benefit of anyone other than Customer;
- sell, resell, license, sublicense, distribute, make available, rent or lease the Platform in a service bureau or outsourcing offering;
- use the Platform in violation of applicable law or regulation, or the Content Policy;
- collect, store or use Recordings in violation of applicable laws or regulation;
- interfere with or disrupt the integrity or performance of the Platform or any data or information contained therein;
- attempt to gain unauthorized access to the Platform or its related systems or networks;
- permit access to, or use of, the Platform in a way that circumvents a contractual usage limit;
- copy the Platform or any part, feature, function or user interface thereof;
- frame or mirror any part of the Platform, other than framing on Customer’s own intranets or otherwise for Customer’s own internal business purposes;
- communicate with Contributors outside of the Platform regarding any activity under this Agreement;
- require Contributor to accept any terms that may, in any way, alter the rights of UserTesting or the obligations or duties of Customer under this Agreement;
- access or use the Platform or Contributors available through the Platform in order to build or benchmark a product or service competitive to UserTesting.

UserTesting may suspend Customer’s access to the Platform if it determines that Customer has engaged in any Restricted Activity. UserTesting will provide Customer with prompt notice if it suspends a Customer’s access to the Platform pursuant to a Restricted Activity and will restore access as soon as reasonably practicable once the situation is remedied.

Customer understands and agrees that UserTesting may monitor all use of the Platform for security, operational, improvement and performance purposes.

3.0 PRICING & PAYMENT TERMS

3.1 Fees and Payment Terms

Customer shall pay the amounts (“**Fees**”) set forth in each Order in consideration for its access to and use of the Platform. All Orders are non-cancelable, and Fees are non-refundable.

Customer will be responsible for paying UserTesting additional usage fees as applicable if Customer’s usage of the Platform exceeds the licenses and parameters set forth in the applicable Order. Additional usage fees (if applicable) may be found in the Order or on UserTesting’s website.

When UserTesting invoices Customer for Fees, Customer shall pay to UserTesting the full amount on the payment terms set out in the Order. If Customer disputes an invoice, Customer must

immediately notify UserTesting and pay the portion of the invoice not in dispute. Overdue undisputed invoices that remain unpaid shall be grounds for UserTesting to terminate Customer's access to the Platform without refund of any amounts paid.

Should UserTesting be unable or unwilling to continue providing access to the Platform under the terms of the Agreement for reasons other than breach of the Agreement by the Customer, UserTesting will refund to Customer a pro-rated portion of the Fees paid for the unused portion of the Subscription Term, and upon such refund shall have no further liability to Customer with respect to such discontinuance of service. Except as provided for in the previous sentence, all Fees owing are non-refundable.

3.2. Taxes

Amounts payable to UserTesting under this Agreement are payable in full to UserTesting without deduction and are net of taxes (including any sales, use, excise, ad valorem, property, withholding, value added tax, or other tax and any income tax withheld at source), tariff, duty or assessment levied or imposed by any government authority (including without limitation any country, state, city, county, province, department, or other subdivision of government) that may be applicable to the purchase of products, software licenses or services hereunder. Customer shall pay and shall indemnify and hold UserTesting harmless from all such taxes and customs duties. UserTesting reserves the right to invoice for sales tax if required under the applicable taxing jurisdiction unless Customer provides UserTesting with an exemption certificate or proof that Customer has self-assessed.

4.0 INTELLECTUAL PROPERTY

4.1. UserTesting Property

“UserTesting Property” means

- the Platform and Services
- any UserTesting Products or other offerings,
- any pre-existing intellectual property and related rights of UserTesting that are used in performance of UserTesting's obligations under an Order,
- Analyses and Promotional Content (as defined below under the heading “*License to UserTesting*”),
- any modifications, derivative works or updated versions of the foregoing.

All rights, title and interest in UserTesting Property shall remain the exclusive property of UserTesting and/or its licensors. UserTesting Property is the confidential and proprietary property of UserTesting or third parties from whom UserTesting has obtained the appropriate rights. No right or license is granted or implied under any of UserTesting's, or its licensors', patents, copyrights, trademarks, trade names, service marks or other intellectual property rights beyond the rights and restrictions set forth in the Agreement.

4.2. Customer Property

“**Customer Property**” means all material uploaded or inputted into the Platform by Customer.

All rights, title and interest in Customer Property shall remain the exclusive property of Customer and/or its licensors. Customer Property is the confidential and proprietary property of Customer or third parties from whom Customer has obtained the appropriate rights. No right or license is granted or implied under any of Customer’s, or its licensors’, patents, copyrights, trademarks, trade names, service marks or other intellectual property rights beyond the rights and restrictions set forth in the Agreement.

4.3. Recordings

UserTesting hereby assigns all right, title and interest it holds in the copyright in and to the Recordings to Customer, subject to the limitations set out below.

4.4. License to UserTesting

Subject to the following, Customer hereby grants to UserTesting a temporary, non-exclusive license to use Customer Property solely for the duration and purposes needed to perform UserTesting’s obligations in connection with the Agreement.

Customer hereby grants to UserTesting a perpetual, irrevocable, royalty-free, non-exclusive, worldwide license

- to use and incorporate into the Platform or Products, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer relating to the operation of the Platform or Products;
- to use, copy and create derivative works of the Tests, and Recordings to create the Generated Content, and for UserTesting’s own internal business purposes; and
- create:
 - analyses using data derived from use of the Platform and Services (“**Analyses**”); and
 - promotional content by using, copying, modifying or distributing portions of Tests, Generated Content and Recordings (“**Promotional Content**”)

provided that UserTesting will ensure that such Analyses and Promotional Content will not contain any Customer Confidential Information, or any information that could be used to individually identify Customer and/or any Customer Property.

5.0 CONFIDENTIAL INFORMATION AND PII

5.1. Confidential Information

As between Customer and UserTesting, the following information (“**Customer Confidential Information**”) shall be Confidential Information of Customer: (i) Customer Property, (ii) Tests,

Test Data and Recordings, and (iii) other non-public information regarding Customer's legal, financial or business affairs.

As between Customer and UserTesting, the following information ("**UserTesting Confidential Information**") shall be Confidential Information of UserTesting: (i) UserTesting Property, and (ii) other non-public information regarding UserTesting's legal, financial or business affairs.

Notwithstanding the foregoing, neither Customer Confidential Information nor UserTesting Confidential Information shall include information to the extent that it (a) is publicly known at the time of disclosure, (b) is received by a party to this Agreement ("**Recipient**") from a third party without restriction on disclosure and without breach of a non-disclosure obligations, (c) is published or otherwise made known to the public by the owner of the information ("**Discloser**"), or (d) was generated independently without reference to the other party's Confidential Information.

Recipient shall not use Confidential Information of Discloser except to fulfill performance of the Agreement and in accordance with its terms.

Recipient shall not disclose Confidential Information of Discloser to anyone other than its employees, contractors, advisors, and agents, who are bound by obligations of confidentiality as restrictive as those set forth in the Agreement.

Recipient will use at least the same standard of care to protect Discloser'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.

Notwithstanding the foregoing, each party may disclose Confidential Information of the other party to the extent required by a court of competent jurisdiction or other applicable governmental authority or as required by applicable law, provided that 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.

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.

5.2. Contributors' Personally Identifiable Information

(a) Personally Identifiable Information

Customer acknowledges that the Platform, Products and Tests are not intended to be used by Customer to collect and process information that can be used, either individually or in combination, to identify a particular individual ("**Personally Identifiable Information**" or "**PII**"). PII shall include "**Personal Data**" as defined under Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation) ("**GDPR**").

Customer acknowledges that some features of the Platform and Services enable Customer to view a Contributor's face or person ("**Face Recording**"), which constitutes Personally Identifiable Information. UserTesting will take steps to comply with applicable privacy laws, which may include disclosure of Customer's name to the Contributor. Customer hereby consents to such disclosure to the extent necessary to comply with applicable privacy laws.

(b) Restrictions on Collecting PII

Subject to the foregoing, Customer agrees that it will not require or request any PII from a Contributor through the Platform without prior written notice to UserTesting. In the event Customer determines that it has collected PII (either as part of the Tests, Recordings, or otherwise) through its use of the Platform, Customer (i) agrees to comply with all applicable privacy laws in connection with such collection, and (ii) advise UserTesting of Customer's collection of PII. Customer acknowledges that UserTesting will comply with applicable privacy laws with respect to such PII, which may include disclosure of Customer's name as the owner of the Recording resulting from the Test.

Unless explicitly permitted in writing in an Order, under no circumstances is Customer permitted to request or collect social security or other government issued identification numbers, medical or health-related information, or financial information from Contributors through the Platform.

(c) Obligations Regarding PII

Customer is the "data controller" under the GDPR with respect to the Tests, Recordings and other Generated Content. The parties agree that UserTesting's Data Processing Agreement shall apply to UserTesting's processing of any Personal Data on behalf of the Customer.

UserTesting shall not be liable to Customer for any claims, causes of action, damages, judgments, settlements, and/or costs asserted by a third party or Customer as a result of any breach of privacy laws (including, but not limited to, the GDPR) or any fines, penalties or costs arising therefrom, to the extent caused by the collection, use, or processing of PII collected by Customer in violation of this Agreement.

6.0 WARRANTY DISCLAIMERS

USERTESTING EXPRESSLY DISCLAIMS ANY WARRANTY REGARDING THE PLATFORM, THE TESTS OR THE SERVICES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

NONE OF USERTESTING, ITS AFFILIATES, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "USERTESTING PARTIES") ENDORSE ANY CONTRIBUTOR, TEST, RECORDING OR OTHER GENERATED CONTENT (INCLUDING, WITHOUT LIMITATION, ANY OPINION, RECOMMENDATION OR ADVICE EXPRESSED BY ANY CONTRIBUTOR). CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DECISIONS MADE BASED ON SUCH INFORMATION.

7.0 LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES

EXCEPT FOR EITHER PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR OF THE SUBSECTION TITLED "CONFIDENTIAL INFORMATION", IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, LOST PROFITS, 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. USERTESTING'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER TO USERTESTING FOR THE USE OF THE PLATFORM OR SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH DAMAGES.

8.0 INDEMNIFICATION

8.1. UserTesting Indemnification Obligations

UserTesting agrees to (a) defend Customer against any claim by a third party that the Platform or any Product infringes a valid US patent or any copyright or trade secret, of such third party and (b) indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If any UserTesting Product or the Platform becomes 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 Product or Platform, or (ii) replace or modify the Product or Platform so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to UserTesting, then UserTesting may terminate this Agreement upon written notice to Customer and refund to Customer fees that were pre-paid for the then current term, pro-rated for the remainder thereof.

8.2. Customer Indemnification Obligations

Customer agrees to indemnify, defend and hold UserTesting harmless against any claims, causes of action, damages, judgments, settlements, and/or costs (i) arising out of or related to any Customer Property, (ii) violation of any law, regulation or the Content Policy in connection with Customer's use of the Platform or Product, or information collected by Customer, (including but not limited to Tests, Recordings and Generated Content) or (iii) asserted by a third party or Contributor as a result of Customer's collection, use, transfer, or other processing of Contributors' Personally Identifiable Information collected as part of a Tests, or Recordings.

8.3. Exclusions

UserTesting shall have no liability or obligation hereunder with respect to any indemnification claim based upon (a) use of the Platform or any Product in an application, environment or with devices for which it was not designed or contemplated, (b) modifications, alterations, combinations

or enhancements of the Platform or any Product not created by or for UserTesting, or (c) 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.

8.4. 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.

9.0 GENERAL PROVISIONS

9.1. Termination

This Agreement will commence on the Effective Date of the earlier of (i) first Order between UserTesting and Customer, and (ii) Customer's first use of the Platform. Upon notice of termination, this Agreement will terminate on the later of (i) the termination of the last Order subject to this Agreement, and (ii) Customer's termination of access to the Platform.

UserTesting may suspend Customer's access to the Platform or Service upon written notice to Customer if Customer materially breaches this Agreement. Where such breach is curable, Customer shall have thirty (30) days after delivery of such notice to cure the breach. Failing a cure, UserTesting may terminate Customer's access to the Platform or Service. UserTesting will not be liable for any loss or damage resulting from the termination or suspension of Customer's access to the Platform or Services due to Customer's material breach of this Agreement.

9.2. Assignment

Neither party may assign this Agreement without the other party's prior written consent, except in the event of a merger, acquisition or sale of substantially all of the assigning party's assets. In the event of a 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 be null and void.

9.3. Notices

Notice shall be deemed given upon receipt via e-mail, personal delivery, delivery by a nationally recognized overnight delivery service (e.g., FedEx). Notices shall be sent to the address appearing on the applicable Order or an updated notice address delivered in writing (including by email) subsequent to an Order taking effect.

9.4. Governing Law

The Agreement shall be governed by and construed under the substantive laws, excluding choice-of-law rules of (i) the State of California, United States for all Orders entered into by User Testing, Inc. and (ii) Norway for all Orders entered into by TestOn AS. Each party agrees to the applicable law above without regard to rules regarding choice of law or conflicts of law. For all Orders entered into by User Testing, Inc., the parties hereby submit to the exclusive jurisdiction and venue in the United States District Court for the District of Northern California or in the state courts with competent jurisdiction located in San Francisco, California. For all Orders entered into by TestOn AS, the parties hereby submit to the exclusive jurisdiction and venue of Oslo City Court in Oslo, Norway. The parties waive their right to trial by jury in any action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

9.5. Publicity

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that UserTesting may use Customer's name in customer listings, on quarterly calls with its investors, and in marketing material. Customer agrees that UserTesting may also share Customer information with its subsidiaries and affiliates for marketing and other business purposes.

9.6. Export Compliance

The Platform and Services may be subject to export laws and regulations of the United States and other jurisdictions. UserTesting and Customer each represents that it is not named on any U.S. government denied-party list. Customer is required to determine if any content, data or information uploaded by Customer is subject to US export control. Customer will not (i) permit any User to access or use the Platform in a U.S.-embargoed country or region, or (ii) otherwise access or use the Platform or upload any content, data or other information in violation of any U.S. export law or regulation.

9.7. Miscellaneous

The parties to this Agreement are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture. No failure or delay by any party in exercising any right, power, or remedy under the Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power, or remedy. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, acts of terrorism, riot, failure of electrical, Internet, co-location or telecommunications service, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises.

9.8. 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 proposed by Customer in a Customer purchase order or otherwise. No Customer form shall modify the terms of the Agreement.

Questions, comments and requests in relation to this Agreement should be sent to legal@usertesting.com.

Last updated: August 6, 2021