



Standard Terms and Conditions

THIS AGREEMENT IS WITH VOXPOPME ("**PROVIDER**") AND GOVERNS CUSTOMER'S ACCESS TO AND USE OF THE SERVICES (DEFINED BELOW).

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR CLICKING A BOX THAT INDICATES ACCEPTANCE CUSTOMER ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THAT INDIVIDUAL REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THAT ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "**CUSTOMER**" REFERS TO THAT ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE AUTHORITY TO BIND THAT ENTITY AND ITS AFFILIATES, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, THAT INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. IN ADDITION, THE SERVICES MAY NOT BE ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

1. ORDER FORMS

(a) **Order Forms.** Provider shall provide the services as expressly set forth in one or more order forms executed by the parties in accordance with this Section 1(a) or in an online order specifying the Services to be provided hereunder (each an "**Order Form**"). Each Order Form is incorporated into this Agreement by reference and is governed by these Standard Terms. If there is a conflict between an Order Form and these Standard Terms, then these Standard Terms will control unless the Order Form expressly indicates it is overriding terms of the body of these Standard Terms, and expressly identifies which of these Standard Terms the Order Form is overriding. Provider will have no obligation to provide any Services unless the parties have executed an Order Form for those Services.

2. USE OF THE SERVICES

(a) **Services.**

(i) "**Services**" means services that Customer or Customer's Affiliate purchases under an Order Form. Customer will have the right to access and use the Services specified on each Order Form during the Order Form Term (defined below) of that Order Form solely (1) for Customer's or its Permitted Users (defined below) uses and as otherwise expressly specified in that Order Form, (2) in accordance with any documentation that Provider makes available in connection with those Services, and (3) in strict accordance with this Agreement, including any scope of use restrictions set forth in the applicable Order Form. Provider will use commercially reasonable efforts to make the Services set forth in each Order Form available for Customer's access and use as specified by such Order Form and in accordance with this Agreement.

(ii) Subject to Section 2(a)(i), Customer will have the right to permit its employees, independent contractors, subcontractors, Customer clients, or other non-employees that perform any of Customer's obligations under this Agreement or act on behalf of Customer in connection with this Agreement, and participants in Customer's market research ("**Permitted User(s)**"), to access and use the Services.

(b) **Restrictions.** Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (1) rent, lease, or otherwise permit third parties to use any Services; (2) use any Services to provide services to any third party (e.g., as a service bureau); (3) circumvent or disable any security or other technological features or measures of the Services; (4) modify, translate, reverse engineer, decompile, disassemble, or otherwise derive the source code or the underlying ideas, algorithms, structure, or organization from the Services (except to the extent that applicable law prevents the prohibition of such activities), nor use the Services to (a) knowingly send unsolicited or unlawful messages; (b) knowingly send or store infringing, obscene, threatening, harmful, libelous, or otherwise unlawful material, including material harmful to children or violative of privacy rights; (c) knowingly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts or agents; (d) interfere with or disrupt the integrity or performance of the Services or the data

contained therein; or (viii) provide or disclose to, or enable the use of the Services by, persons other than Permitted Users.

(c) **Compliance with Law.** Customer will use the Services in compliance with all applicable laws and regulations, including all applicable privacy laws.

(d) **Protection Against Unauthorized Use.** Customer will use reasonable efforts to prevent any unauthorized use of the Services and immediately notify Provider in writing of any unauthorized use that comes to Customer's attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Customer, Customer will take all steps reasonably necessary to terminate the unauthorized use. Customer will cooperate and assist with any actions taken by Provider to prevent or terminate unauthorized use of the Services.

(e) **Reservation of Rights.** Customer will not have any rights to the Services except as expressly granted in this Agreement. Provider reserves to itself all rights to the Services not expressly granted to Customer in accordance with this Agreement.

(f) **Feedback.** If Customer provides any feedback to Provider concerning the functionality and performance of the Services (including identifying potential errors and improvements) ("**Feedback**"), Customer hereby assigns to Provider, at no additional cost, all right, title, and interest in and to the Feedback.

(g) **Modifications.** Provider reserves the right to modify the Services from time to time in its sole discretion. Provider will use commercially reasonable efforts to ensure that modifications do not materially adversely affect the features or functionalities of the Services.

(h) **Software; Accounts.**

(i) **Software.** Customer acknowledges and agrees that use of Services may require the installation and use of Provider-provided software (e.g., mobile applications, application programming interfaces) ("**Software**"). In that instance, the Software will be deemed part of the Services.

(ii) **Accounts.** Customer acknowledges and agrees that use of Services may require that Customer and Permitted Users create accounts ("**Administrative Accounts**") in Provider's administrative website. In that instance, that administrative website and Administrative Accounts will be deemed part of the Services. Customer will and will ensure that all Permitted Users keep their authentication factors (such as user ID and user credentials) strictly confidential and not share that information with any unauthorized person. Customer will be responsible for any and all actions taken in each Administrative Account, and shall immediately notify Provider of any unauthorized access to or use of any Administrative Account. Customer will provide Provider with accurate and complete information when registering for or using the Services and will keep such information current.



3. SUPPORT

(a) **Severity Definitions.** The following problem classification table will be used for classifying performance issues:

Severity	Level	Outage and Error Description
1	Critical	Inaccessible; inoperable – e.g., site down or consistently experiencing >6s load time; Consistently >400ms response time/latency; Key data missing, data errors, or data corruption
2	High	Substantial degradation of user experience, or core functionality broken; Substantial degradation of Services response time (>200s but <400ms), but with no data loss or corruption
3	Medium	Degradation of user experience for a significant number of users, but the site or service is still usable overall
4	Low	Non-User impacting issues

(b) **Response Times.** Provided that Customer is current with its payment of fees, Provider will use commercially reasonable efforts to respond to unscheduled core Services outage or errors promptly after any are detected by or reported to Provider, on an expedited basis based on the severity of the situation. Notwithstanding the foregoing, Provider will use commercially reasonable efforts to triage and correct any such Services outage and errors in accordance with the following:

Severity Level	First Response Time	Update Interval	Target Resolution time (Patch/Work Around)
1	Immediate	30 min	ASAP
2	10 minutes	45 min	ASAP
3	8 hours	12 hours	12 hours
4	24 hours	24 hours	2 business days

4. FEES AND PAYMENT

(a) **Fees and Payment Terms.** Customer will pay Provider the fees specified in the Order Form and any other amounts owing under this Agreement (the “**Fees**”). Without limiting the preceding sentence and to avoid doubt, if Customer exceeds the order volume set forth on an Order Form, Customer will pay for that excess use at overage rate set forth in that Order Form, or if no rate for overages is set forth, then at Provider’s then-prevailing rates for the applicable Services. In the event of an overage, Customer may also request to upgrade their Services tier; in that instance Voxpopme will prepare a proposed Order Form for that upgrade, and the parties will negotiate in good faith towards the execution of that Order Form which may include the full or partial waiver of amounts due as a result of overages occurring prior to the execution of that Order Form. Unless otherwise specified in an Order Form, Customer will pay all amounts due within 30 days of the date of the applicable invoice. Amounts not paid when due will be subject to interest at the lesser of one and one-half percent (1.5%) per month or the maximum permitted by law plus all collection costs.

(b) **Taxes.** Other than net income taxes imposed on Provider, Customer will bear all taxes, duties, and other governmental charges, including but not limited to sales taxes, (collectively, “**taxes**”) resulting from this Agreement.

5. TERM AND TERMINATION

(a) **Term.**

(i) **Agreement.** The term of this Agreement will begin on the Start Date of the initial Order Form entered into between the parties (the

“**Effective Date**”) and continue until terminated in accordance with Section 5(b) or (c) (the “**Term**”).

(ii) **Order Forms.** In the case of an Order Form executed by the parties, each Order Form will begin on the Start Date and continue until the End Date each as set forth on that Order Form (the “**Initial Term**”), the date of either party’s signature notwithstanding. After its Initial Term, and except as otherwise set forth in an Order Form, each Order Form will automatically renew at Provider’s then-current rates for an unlimited number of successive periods equal in length to the Initial Term, (a “**Renewal Term**,” and collectively with the Initial Term, “**Order Form Term**”) unless at least 60 days before the end of the then-current term either party provides written notice of non-renewal to the other party. In the case of an online order for Services, and notwithstanding anything in this section to the contrary, Customer’s subscription will be billed on a monthly basis. The Order Form Term will begin on the date the customer submits the online Order Form and excluding any Trial Period (as defined herein) the Order Form Term will continue on a month-to-month basis until such time as Customer cancels their subscription by providing notice to Provider at least five (5) working days’ prior to the end of the next monthly billing period. Customer agrees to provide valid credit card information to Provider for billing purposes and to update that information as necessary for the term of the subscription. No invoice will be provided by Provider. Customer understands and agrees that Provider will not prorate the final month, and that Customer will be billed for the balance of the month irrespective of the date that Customer provides notice of cancellation.

(b) **Termination.**

(i) **Convenience.** Either party may terminate this Agreement on 30 days’ notice to the other party if no Order Form is in effect.

(ii) **Material Breach.** Customer may terminate an Order Form on notice to Provider if Provider does not cure its material breach of this Agreement as to the Services provided pursuant to that Order Form within 30 days of receiving written notice of that breach. Provider may terminate this Agreement, any Order Form, and any Service on notice to Customer if Customer does not cure a material breach of this Agreement (including, to avoid doubt, any Order Form) within 30 days of receiving written notice of that breach. If Customer fails to timely pay any fees, Provider may, without limitation to any of its other rights or remedies, suspend the performance or provision of the Services until it receives all amounts due.

(c) **Termination for Bankruptcy or Insolvency.** Provider may terminate this Agreement (including all Order Forms) if Customer ceases to do business in the ordinary course or is insolvent (i.e. unable to pay its debts in the ordinary course as they come due), or is declared bankrupt, or is the subject of any liquidation or insolvency proceeding which is not dismissed within one hundred twenty (120) days, or makes any assignment for the benefit of creditors.

(d) **Post-Termination Obligations.** If this Agreement is terminated for any reason, any amounts (including expenses) owed to Provider for completed services and work in progress, as well as fees applicable to the duration of the terminated Services subscription, will be immediately due and payable; any and all liabilities accrued prior to the effective date of the termination will survive. Provider will delete all Customer Materials (defined below) (including all video files) (“**Deletion**”) within 60 days after termination of this Agreement, provided that Provider will not be deemed in breach of this Agreement if it fails to do so. If Customer wishes to retain a copy of Customer Materials after termination, Customer will be responsible for (but in all cases subject to Section 2 of this Agreement) downloading that copy of Customer Materials from Customer’s instance of the Service before termination. To avoid doubt, Customer will have no further access to the Services, and Provider will have no obligation to maintain, make available, or otherwise provide access to any Customer Materials after the Term except as otherwise agreed by the parties (e.g., Provider may offer Customer assistance in extracting Customer Materials that may remain in Provider’s systems after the Term at Provider’s then-current rates).

6. PROPRIETARY RIGHTS



(a) **Customer Materials.** Any materials provided by Customer to Provider ("**Customer Material(s)**") will be used and disclosed as required to perform the Services and as otherwise authorized by this Agreement. Customer Materials also include materials and information provided by Customer's Permitted Users, including any sound or video recordings, transcripts, or survey flows (to the extent such call flows are derived from Customer Materials) resulting from Customer's or any Permitted User's access to or use of the Services. Customer hereby grants Provider a worldwide, fully-paid up, royalty-free, irrevocable, non-transferable (other than in connection with the permitted assignment of this Agreement), non-sublicensable, and non-exclusive license for Provider to use and copy the Customer Materials for the purposes of (i) enabling Provider to provide the Services for the benefit of Customer; and (ii) to improve the Services and all related software, technology, and services under development by Provider.

(b) **Inventions.** All works of authorship, inventions, discoveries, improvements, methods, processes, formulas, designs, techniques, and information conceived, discovered, developed or otherwise made (as necessary to establish authorship, inventorship, or ownership) by Provider, solely or in collaboration with others, in the course of performing the Services (including those resulting from Provider's use of Customer Materials as authorized in Section 6(a)); or that form all or part of a deliverable provided as part of the Services, whether developed as part of the Services or separately, will be the sole property of Provider. For clarity, Customer Materials remain the sole property of Customer.

(c) **Third Party Products; AI Tools.** Any third-party products that Provider may provide in connection with the Services are provided pursuant to the terms of the applicable third party agreement, and Provider assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any third party products. Provider offers AI-powered tools, which are enabled by default. The Provider evaluates all tools for safety. Provider's standard security and privacy policies apply to the use of AI-powered tools.

7. CONFIDENTIALITY

(a) **Definition.** "**Confidential Information**" means any and all information relating to or disclosed in the course of this Agreement, which is or should be reasonably understood to be confidential or proprietary to the disclosing party, including the Services (in the case of Provider) and Customer Materials (in the case of Customer). Confidential Information does not include any information that the receiving party can demonstrate: (i) was publicly available at the time of disclosure to it; (ii) was published or otherwise became publicly available after disclosure to the receiving party, through no fault of its own; (iii) was in the possession of the receiving party at the time of disclosure to it from a third party who had a lawful right to such information and disclosed such information to it, without a breach of duty owed to the disclosing party; or (iv) was independently developed by the receiving party without reference to Confidential Information of the disclosing party, as proven by dated written records.

(b) **Protection of Confidential Information.** During the Term, each receiving party will use the same care to prevent disclosing to third parties the Confidential Information of the disclosing party as it employs to avoid disclosure, publication, or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care. The receiving party will promptly notify the disclosing party upon gaining knowledge of any disclosure, loss, or use of the disclosing party's Confidential Information in violation of this Agreement. Each receiving party will only share the disclosing party's Confidential Information with its employees, agents, representatives, contractors and consultants on a "need to know" basis in connection with performance of the party's obligations under this Agreement. If the receiving party is served with a court order compelling disclosure of any Confidential Information of the disclosing party, it will, to the extent allowed under law, provide the disclosing party with immediate notice thereof (including, if permitted, a copy of the applicable order), provide the disclosing party with a reasonable opportunity to oppose disclosure, and cooperate in good faith with the disclosing party in the event the disclosing party opposes disclosure. Despite anything to the contrary, any Customer Materials that are in an aggregated and de-identified form or are anonymous (i.e. in a form that cannot

be used itself to identify Customer or an end user) will not be considered to be the Confidential Information of Customer.

8. DATA SECURITY AND PRIVACY

(a) **Data Security.**

(i) Provider will implement and maintain a privacy and security program that includes appropriate administrative, technical, and physical safeguards designed to: (i) safeguard the security, confidentiality, integrity, and availability of Customer Materials; (ii) protect against anticipated threats or hazards to the security, confidentiality, integrity, and availability of Customer Materials; and (iii) protect against unauthorized access, use, disclosure, modification, or destruction of Customer Materials.

(ii) If there is any loss, destruction, damage, or alteration to Customer Materials, Customer's sole and exclusive remedy for that loss or damage shall be for Provider to use commercially reasonable efforts to restore the lost, destroyed, damaged, or altered Customer Materials from the latest back-up of such Customer Materials maintained by Provider in accordance with its then-current archiving and back-up policies. Provider shall not be responsible for any disclosure of Customer Materials caused by any third party (except those third parties sub-contracted by Provider to perform services related to Customer Materials maintenance and back-up) except to the extent caused by Provider's breach of Section 8(a)(i) (and in all cases subject to the exclusions and limitations on liability set forth in Section 12).

(b) **Data Privacy.**

(i) Customer is solely responsible for the legality, integrity, accuracy, quality, completeness or appropriateness of all Customer Materials. Customer acknowledges that the Services serve merely as a platform for the collection, analysis, distribution, and transmission of that information. Customer acknowledges that Provider has no obligation to preview, screen or monitor any information, including Customer Materials, but has the right, in its sole discretion, to edit, delete or mute any such information. Under no circumstances will Provider be liable in any way for any information sent or transmitted via the Services by Customer, any Permitted User, or any third party.

(ii) Customer acknowledges and agrees that the Customer Materials may be transferred or stored outside the country where Customer and the Permitted Users are located in order to carry out the Services and Provider's other obligations under this Agreement. Customer shall ensure that Customer has the necessary consent or is otherwise legally entitled to transfer the relevant personal data to Provider so that Provider may lawfully use, process and transfer the personal data in accordance with this Agreement on Customer's behalf.

(iii) Without limiting Customer's other obligations under this Agreement, Customer shall ensure that the relevant individuals and entities (e.g., individuals participating in Customer's market research who interact with the Services) have been informed of, and have given their consent to, the use, processing and transfer of their personal information for the purposes set forth in this Agreement as required by all applicable laws.

(iv) Both parties will comply with all applicable requirements of the applicable data protection and privacy legislation in force from time to time (including the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended (together the "**Data Protection Legislation**").

(v) The parties acknowledge that if Provider processes any personal data on Customer's behalf when performing its obligations under this Agreement, Customer is the Controller and Provider is the Processor for the purposes of the Data Protection Legislation.

(vi) Without prejudice to the generality of clause 8(b)(iv) above, Provider shall, in relation to any personal data processed in connection with the performance by Provider of its obligations under this agreement:

- (1) process that personal data only on the documented written instructions of Customer unless except as otherwise required by any applicable laws. Where



Provider is relying on applicable laws as the basis for processing personal data, Provider shall promptly notify Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit Provider from so notifying Customer;

- (2) not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
 - a) Customer or Provider has provided appropriate safeguards in relation to the transfer;
 - b) the data subject has enforceable rights and effective legal remedies;
 - c) Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - d) Provider complies with reasonable instructions notified to it in advance by Customer with respect to the processing of the personal data;
- (3) assist Customer, at Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (4) notify Customer without undue delay on becoming aware of a personal data breach;
- (5) at the written direction of Customer, delete or return personal data and copies thereof to Customer on termination of this Agreement unless required by applicable law to retain the personal data; and
- (6) maintain complete and accurate records and information to demonstrate its compliance with this clause 8(b) and immediately inform Customer if, in the opinion of Provider, an instruction from Customer infringes the Data Protection Legislation.

(vii) The parties agree to cooperate in good faith toward the execution of an amendment to this Agreement or such other agreement containing additional terms as are necessary to comply with Data Protection Legislation, including, if appropriate, standard contractual clauses or other transfer legalization mechanism governing the transfer of personal information.

9. WARRANTIES AND DISCLAIMER

(a) **Mutual Warranties.** Each party represents and warrants to the other that: It is duly incorporated, registered and validly existing under the laws of its jurisdiction of incorporation; this Agreement has been duly authorized, executed, and delivered, and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; the execution, delivery and performance of this Agreement does not violate or contravene any law, decree, administrative ruling or regulations applicable to it nor conflict with, cause a breach of, or constitute a default under any provision of any judgment, injunction, order, decree or material agreement or other material instrument binding upon it.

(b) **Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN SECTION 9(A), PROVIDER MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PROVIDER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. PROVIDER DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES. THE SERVICES ARE PROVIDED AS-IS, AND PROVIDER DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. PROVIDER DOES NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES WILL ALWAYS

BE AVAILABLE. PROVIDER EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF CUSTOMER'S USE OF OR ACCESS TO THE SERVICES.

10. INTELLECTUAL PROPERTY INFRINGEMENT

(a) **Defense of Infringement Claims.** Provider will, at its expense, either defend Customer from or settle any claim, proceeding, or suit ("**Claim**") brought by a third party against Customer alleging that Customer's use of the Services infringes or misappropriates any patent, copyright, trade secret, trademark, or other intellectual property right during the term of this Agreement. If the Service becomes, or in Provider's opinion is likely to become, the subject of an infringement claim covered by this Section 10(a), Provider may, at its option, either: (1) procure for Customer the right to continue using the Service as permitted under this Agreement, (2) replace or modify the Service so that it becomes non-infringing, or after attempting (1) and (2), if Provider reasonably determines that neither is feasible, then Provider will (3) immediately terminate Customer's use of the Service. Provider's obligations pursuant to this Section 10(a) are contingent upon: (a) Customer furnishing Provider with prompt written notice of the Claim, (b) Customer granting Provider full and complete control over the defense and settlement of the Claim, (c) Customer providing assistance in connection with the defense and settlement of the Claim as Provider may reasonably request, and (d) Customer complying with any settlement or court order made in connection with the Claim (e.g., relating to the future use of any infringing Services). Customer will not defend or settle any Claim without Provider's prior written consent. Customer will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Provider will have sole control over the defense and settlement of the Claim. Provider will indemnify Customer from and pay all damages, costs, and attorneys' fees finally awarded against Customer in any Claim under this Section 10(a); all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Customer in connection with the defense of a Claim under this Section 10(a) (other than attorneys' fees and costs incurred without Provider's consent after Provider has accepted defense of the Claim); and all amounts that Provider agrees to pay to any third party to settle any Claim under this Section 10(a).

(b) **Exclusions from Obligations.** Provider will have no obligation under this Section 10 for any infringement or misappropriation to the extent that it arises out of or is based upon use of the Services in combination the Customer Materials or with other products or services if such infringement or misappropriation would not have arisen but for such combination; the Services as provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; use of the Services by Customer for purposes not intended or outside the scope of the license granted to Customer or in violation of any applicable law; Customer's failure to use the Services in accordance with instructions provided by Provider, if the infringement or misappropriation would not have occurred but for such failure; or any modification of the Services not made or authorized in writing by Provider where such infringement or misappropriation would not have occurred absent such modification.

(c) **Limited Remedy.** This Section 10 states Provider's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property right by the Services.

11. CUSTOMER INDEMNIFICATION

(a) **Defense.** Customer will defend Provider from (i) any actual or threatened third party Claim arising out of or based upon Customer's use of the Services (except to the extent Provider is required to indemnify Customer for such Claim under Section 10(a)), (ii) Customer's breach of any of the provisions of this Agreement, (iii) Customer's gross negligence or willful misconduct, and (iv) Provider's collection, use, storage, transfer, or other processing of any personal information as authorized by this Agreement. Provider will: give Customer prompt written notice of the Claim; grant Customer full and complete control over the defense and settlement of the Claim; provide assistance in connection with the defense and settlement of the Claim as Customer may



reasonably request; and comply with any settlement or court order made in connection with the Claim. Provider will not defend or settle any Claim without Customer's prior written consent. Provider will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Customer will have sole control over the defense and settlement of the Claim.

(b) Indemnification. Customer will indemnify Provider from and pay all damages, costs, and attorneys' fees finally awarded against Provider in any Claim under Section 11(a); all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Provider in connection with the defense of a Claim under Section 11(a) (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of the Claim); and, all amounts that Customer agrees to pay to any third party to settle any Claim under Section 11(a).

12. LIMITATIONS OF LIABILITY

(a) Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, NO PARTY WILL, UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED SUCH PARTY LOST PROFITS OR LOSS OF BUSINESS, EVEN IF THAT PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PRECEDING EXCLUSION OF DAMAGES WILL NOT APPLY TO A PARTY'S BREACH OF CONFIDENTIALITY, BREACH OF SECTION 2 BY CUSTOMER, OR A PARTY'S INDEMNITY OBLIGATIONS (BUT SOLELY TO THE EXTENT SUCH AMOUNTS ARE PAID TO A THIRD PARTY).

(b) Cap on Liability. EXCEPT FOR EITHER PARTY'S INDEMNITY OBLIGATIONS, A BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS, CUSTOMER'S OBLIGATIONS PURSUANT TO SECTION 4, OR A BREACH BY CUSTOMER OF SECTION 2, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO PROVIDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). UNDER NO CIRCUMSTANCES WILL PROVIDER'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO PROVIDER'S INDEMNITY OBLIGATIONS EXCEED THREE TIMES THE TOTAL AMOUNT PAID BY CUSTOMER TO PROVIDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

(c) Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY PROVIDER TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

13. GENERAL

(a) Relationship. Provider will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement.

(b) Assignability. Neither party may assign its right, duties, and obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of the assigning party's obligations under this Agreement.

(c) Subcontractors. Provider may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Provider remains responsible for all of its obligations under this Agreement.

(d) Permitted Users. The actions of all Permitted Users are attributable to Customer for all purposes. Customer will ensure that (i) each Permitted User strictly complies with all of the terms and conditions of this Agreement and any applicable documentation and (ii) any use of the Services by Customer and its Permitted Users must, in the aggregate, be within the scope of use restrictions designated in the applicable Order Form and this Agreement.

(e) Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section (e). Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

(f) Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

(g) Governing Law. Agreements by and between Voxpopme, Inc., and Customer will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Utah, U.S.A., without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in Salt Lake County, Utah in connection with any action arising out of or in connection with this Agreement. Agreements by and between Voxpopme, Ltd., and Customer will be interpreted, construed, and enforced in all respects in accordance with the local laws of England. Each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

(h) Press Releases. Provider may (i) issue a press release announcing the relationship contemplated by this Agreement and (ii) otherwise throughout the Term identify Customer as Provider's customer in Provider's customer list, on Provider's website, and in Provider's marketing materials using Client's name, trademarks, and/or logos (provided that in all such instances Provider's use of Customer's trademarks or logos will be subject to Customer's style guidelines, if any).

(i) Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

(j) Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

(k) Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement. This Agreement may also be executed and delivered by e-signature, electronically, or by Customer's unilateral acceptance hereof in an online order, and such execution and delivery will have the same force and effect of an original document with original signatures.

(l) Suspension. Provider may suspend, restrict, or terminate Customer's and/or any Permitted User's access to any Administrative Account and/or right



to use Services at any time if Provider has reason to believe that the Customer has failed to comply with any terms and conditions of this Agreement or if Provider believes that continued use by Customer or any Permitted User represents a risk to Provider or any of its other customers. The Parties agree that, should this Agreement be breached, money damages may be an inadequate remedy. Accordingly, the non-breaching Party shall be entitled to seek, and a court of competent jurisdiction may grant, specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall be in addition to all other remedies available to the non-breaching Party at law or in equity.

(m) **U.S. Government End User Provisions.** If the Customer or a customer of Customer is a branch, agency, or instrumentality of the United States Government, government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Provider to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically covering such rights, must be included in any applicable contract or agreement.

(n) **Attorney Fees.** In the event a suit or action is instituted to enforce any provision of this Agreement, the party prevailing in that suit or action shall be entitled to recover its reasonable expenses, including but not limited to attorney fees.

(o) **Entire Agreement.** This Agreement, including all exhibits, is the final and complete expression of the agreement between these parties regarding Customer's use of the Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this. No employee, agent, or other representative of Provider has any authority to bind Provider with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. Provider will not be bound by, and specifically objects to, any additional term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise (including the terms of any purchase order).

(p) **Interpretation.** The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits. No ambiguity will be construed against any party based on a claim that the party drafted the language. The headings appearing at the beginning of the Articles or Sections contained in this Agreement have been inserted for reference purposes only and must not be used to construe or interpret this Agreement. Any reference to any agreement, document, or instrument will mean such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Whenever the words "hereunder," "hereof," "hereto," and words of similar import are used in this Agreement, they will be deemed references to this Agreement as a whole and not to any particular Article, Section, or other provision hereof. The word "or" is used in the inclusive sense of "and/or." The terms "or," "any" and "either" are not exclusive.

(q) **Trial Period.** Customer may register for a free trial period on Provider's website (the "Trial Period"), in which case Provider will make the Services available to Customer on a trial basis free of charge for the period indicated in the Order Form. Any Customer Materials provided by Customer during the Trial Period will be permanently lost unless Customer purchases a subscription to the same Services as those covered by the trial or exports such data before the end of the Trial Period. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, DURING THE TRIAL PERIOD THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND PROVIDER SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE PROVIDER'S LIABILITY SHALL NOT EXCEED \$100.00. WITHOUT LIMITING THE FOREGOING, PROVIDER, ALONG WITH ITS AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS OR (B) THAT CUSTOMER'S USE OF THE SERVICES DURING THE TRIAL PERIOD WILL BE UNINTERRUPTED, SECURE OR ERROR FREE. NOTWITHSTANDING ANY LIMITATIONS OF LIABILITY OTHERWISE SET FORTH HEREIN, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO PROVIDER FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.
