

Terms of Service

Please read these Terms of Service, [Data Processing Agreement](#), [Privacy Policy](#) and [Acceptable Use Policy](#). Together these four (4) artifacts form a unified agreement ("**Agreement**") that applies to all users of the Platform. This Agreement is between the Hotjar Contracting Entity described in Section 15 ("**Hotjar**", "**We**", "**Our**" or "**Us**") and the natural or legal person agreeing to it (together with Affiliates of such person which ordered Platforms for such Affiliate as provided in this Agreement, each "**Customer**", "**You**" or "**Your**") and contains important information about Your use of Our Site and/or Platform. Hotjar and You may each be referred to as a "**Party**" or collectively as the "**Parties**."

By signing up to Hotjar's Platform, You agree that You are a duly authorized representative of the Customer and You have read, understood and are bound by this Agreement.

Hotjar may amend this Agreement from time to time. We commit to sending an email to the email address associated with Your Account and posting a written notice on Our Site 30 calendar days before any changes go into effect, provided such changes are not mandated by law to take effect on an earlier date. Your use of Our Site and/or Platform following the effective date of any modifications to this Agreement will constitute Your acceptance of the modified Agreement.

1. Definitions

In addition to the terms otherwise defined in this Agreement, the following terms have the definitions below:

1.1 "**Account**" means an account with Hotjar to use its Platform;

1.2 "**Affiliate**" of a Party means any entity that the Party directly or indirectly controls, is under common control with, or is controlled by, where control means the ownership of more than fifty percent (50%) of the voting interests of the subject entity. Any legal entity will be considered a Party's Affiliate as long as that interest is maintained.

1.3 "**Applicable Law**" means the laws to which Hotjar is subject, particularly Regulation (EU) 2016/679 (General Data Protection Regulation - "**GDPR**"), the California Consumer Privacy Act and California Privacy Rights Act of 2020 (together

the "**CCPA**"), the Brazilian [Lei Geral de Proteção de Dados](#) (the "**LGPD**") and such laws as may be applicable from time to time;

1.4 "**Confidential Information**" means all information provided directly or indirectly by or on behalf of a Party and its Affiliates (the "**Disclosing Party**"), to the other Party (the "**Receiving Party**"), in each case before, on, or after the date of this Agreement, whether orally or in writing, which is of a confidential nature or which would be reasonably considered as being confidential. Confidential Information will include information relating to this Agreement which is not generally known to the public, non-public financial information/data, business plans or methods, product roadmaps and pricing and other commercially sensitive information, marketing strategies, sales projections, supplier lists/names, and Data. Confidential Information does not include information that: (a) was or becomes generally known to the public through no fault or breach of the Agreement by the Receiving Party; (b) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (c) was rightfully obtained by the Receiving Party from a third party not under a duty of confidentiality and without restriction on use or disclosure; (d) was rightfully in the Receiving Party's possession at the time of disclosure without restriction on use or disclosure; or (e) is disclosed by the Receiving Party with the Disclosing Party's prior written approval.

1.5 "**Data**" means anything that You share with Us, including Personal Data and Confidential Information, and any data which is publicly available.

1.6 "**Engage Product**" means the Platform provided by Us relating to the Engage research product that connects Testers in order to receive Feedback on Platforms and other products and services through user interviews and user tests.

1.7 "**Early Access Program**" means a program offered in Our or Our Affiliate's sole discretion to a select group of customers for the testing and feedback of a not yet publicly released potential Platform.

1.8. "**Hotjar Enabled Site**" means Your digital property (i.e. site) that has the Platform enabled;

1.9 "**Indemnified Party(ies)**" means the Party or entity (whether You or Us) being indemnified under Section 10 including its Affiliates, employees, directors, agents, and representatives.

1.10 "**Indemnifying Party(ies)**" means the Party or entity (whether You or Us) that is providing indemnification under Section 10.

1.11 "**Intellectual Property Rights**" means any and all intellectual property rights including, patents, rights to inventions, utility models, copyright and related rights,

trade and service marks, trade, business and domain names, rights in trade dress and get-up, rights to goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semiconductor, mask work, and topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property and industrial property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or may subsist now or in the future.

1.12 **"Local Addendum(a)"** means an addendum set forth in Section 15 for customers (i) in certain jurisdictions or (ii) entering into Order Forms with certain Hotjar Contracting Entities, which supplements and/or modifies this Agreement to include terms specific to such jurisdiction or Hotjar Contracting Entity.

1.13 **"Order Form"** means an ordering document (including any online ordering completed by You when you agree to [Subscription Plans](#)) specifying the applicable Platform and other terms agreed between the Parties and that is entered into between You and Us or any of our respective Affiliates, including any addenda and supplements. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement and any applicable Local Addendum as if it were an original party.

1.14 **"Personal Data"** means any data that can be used to identify an individual, whether directly or indirectly (e.g. name, identification number, location data, an online identifier, etc.). This definition includes any equivalent definition in the Applicable Law;

1.15 **"Platform"** means the products and services (as applicable) provided by Us as further described on [Our Site](#) or by our Affiliates under an Order Form. Such products and services may include software or other technology licensed to Us or our Affiliates from third parties and embedded into the services that We or our Affiliates provide to You. The Platform may also include additional products and services offered by Us or our Affiliates to You, as agreed in writing with You, in connection with Your evaluation of such additional products and services.

1.16 **"Site/s"** means hotjar.com, in addition to any sub-pages that are integrated within it;

1.17 **"Sub-Processing"**, means the processing of Personal Data on behalf of the Processor by a subcontractor (each a **"Sub-Processor"**). In this Agreement, it does not include ancillary services, such as telecommunication services, postal / transport services;

1.18 "**Third Party/ies**" means any persons, whether natural or legal, which are neither You nor Hotjar or their respective Affiliates;

1.19 "**Third-Party Services**" means services, software, products, applications, integrations, and other features or offerings that are provided by You or obtained by You from a third party or Us or our Affiliates at your request.

1.20 "**Trial Period**" means free access provided to You by Hotjar for a limited and established period of time, to the Platform.

In this Agreement, (a) the meaning of defined terms will be equally applicable to both the singular and plural forms of the terms defined, (b) the captions and headings are used only for convenience and are not to be considered in construing or interpreting this Agreement, and (c) the words "including," "includes" and "include" will be deemed to be followed by the words "without limitation." All references in this Agreement to sections, paragraphs, exhibits, linked documents and schedules will refer to sections and paragraphs hereof and exhibits, linked documents and schedules attached hereto, all of which exhibits, linked documents and schedules are incorporated into this Agreement by this reference.

2. Account Registration, Access, and Use

2.1 **Account Registration.** To use the Platform, You must create an Account by providing Hotjar with all required information and accepting this Agreement. You agree to (a) provide Hotjar with complete and accurate information upon registration, (b) be responsible for maintaining the security of the Account, log-in information and password(s), including all user information, and (c) take all reasonably necessary steps to protect the Account password from loss, theft, or unauthorized disclosure. You will promptly notify Us of any breach or threatened breach of this Section and will hold us harmless from any damages we sustain as a result of this breach.

If You use Our Site or Platform on behalf of a legal entity (such as Your employer or a client), You represent and warrant that You have the authority to bind that legal entity. If You no longer have this authority, then You will inform Hotjar and the legal entity will provide Hotjar with a new authorized representative. Hotjar will not be held liable should a person without the necessary authorization enter into this Agreement for and on behalf of a legal entity.

2.2 **Your Right to Use Platform.** Subject to this Agreement and during the Term, Hotjar grants You a limited, revocable, non-exclusive, non-transferable, non-sublicensable and non-assignable license to use the Site and/or access the Platform

as a software as a service (SaaS) solution for Your internal business purposes and subject to the terms of this Agreement.

2.3 Your Restrictions. You hereby agree not to:

a. license, sub-license, sell, re-sell, rent, lease, transfer, distribute, timeshare or otherwise make any part of the Platform available to third parties except as otherwise expressly provided in this Agreement;

b. access or use the Platform for the purpose of: (i) developing or operating products or services intended to be offered to third parties in competition with the Platform, or (ii) allowing access to the Account or the Platform by a direct competitor of Hotjar;

c. reverse engineer, decompile, disassemble, copy any of the Platform or technologies, derive source code, object code, trade secrets or create any derivative works from or about any of the Platform or technologies or use the output generated from the Platform to train, calibrate, or validate, in whole or in part, any other systems, programs or platforms, or for benchmarking, software-development, or other competitive purposes (or attempt to do any of the same), except pursuant to Your non-waivable rights under applicable law;

d. use the Platform in a way that: (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;

e. use the Platform to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the Platform or any host, network, or account related thereto or use any aspect of the Platform components other than those specifically agreed with Us; or

f. use the Platform in violation of the [Acceptable Use Policy](#).

2.4 Suspension of Access. Hotjar may suspend any use of the Platform or remove or disable any Account or content that We reasonably and in good faith believe violates the Agreement, including any usage restrictions. We will use commercially reasonable efforts to notify You prior to any such suspension or disablement, unless: (a) We are prohibited from doing so under Applicable Law; or (b) it is necessary to delay notice in order to prevent harm to the Platform or a third party.

2.5 Third-Party Services. You may choose to obtain Third-Party Services from third parties and/or Hotjar or its Affiliates. Any acquisition by You of Third-Party Services is

solely between You and the applicable Third-Party Service provider and neither Hotjar nor its Affiliates warrant, support, or assume any liability or other obligation with respect to such Third-Party Services. If You choose to integrate or interoperate Third-Party Services with the Platform in a manner that requires Hotjar or its Affiliates or the Platform to exchange Data with such Third-Party Service or Third-Party Service provider, You: (a) grant Hotjar and its Affiliates permission to allow the Third-Party Service and Third-Party service provider to access Data and information about Your usage of the Third-Party Services as appropriate and necessary to enable the interoperation of that Third-Party Service with the Platform; (b) acknowledge that any exchange of data between You and any Third-Party Service is solely between You and the Third-Party Service provider; and (c) agree that Hotjar and its Affiliates are not responsible for any disclosure, modification, or deletion of Data resulting from access to such data by Third-Party Services. If Hotjar determines, in its sole discretion, that a) any Third-Party Service materially compromises or degrades the performance of the Platform; or b) the integration of such Third-Party Service raises issues relating to Applicable Law or could otherwise be detrimental to the legal standing or reputation of Hotjar or its Affiliates, it may suspend or terminate the integration of such Third-Party Service.

2.6 We reserve the right to access Your Account, the information that You have provided and the Data You have stored with Us for support, maintenance and servicing purposes or for any security-related, technical or billing reasons.

2.7 **Early Access Programs.** If and to the extent You are invited to participate in Hotjar Early Access Programs, such participation shall be governed by Hotjar's [Early Access Program Terms and Conditions](#).

3. Proprietary Rights

3.1 **Intellectual Property Rights.** Except as otherwise stated in this Agreement, all rights, titles, and interest in Our Site and/or the Platform and any content and Intellectual Property Rights contained in Our Site, the Platform or the content (including any machine learning algorithms output by the Platform) is the exclusive property of Hotjar and/or its Affiliates or licensors. Unless otherwise specified, the Platform is for Your limited use only and if You copy or download any information from this Site and/or Platform, You agree that You will not remove or obscure any copyright or other notices contained in any such information.

3.2 **Data.** Data processed through the use of the Platform is and will remain, owned by You. You hereby grant Us and Our Affiliates a limited, revocable, non-exclusive, non-sublicensable, worldwide, royalty-free, right and license to process, transmit and use the Data and any Intellectual Property Rights in such Data solely to the extent necessary to perform its obligations under this Agreement during the Term.

3.3 Feedback. You may from time to time provide recommendations, suggestions, or other feedback for enhancements or functionality to Us and our Affiliates with respect to the Platform ("**Feedback**"). To the extent You provide Feedback, You grant to Us and our Affiliates a royalty-free, fully paid, sub-licensable, transferable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit Feedback (including by incorporation of such feedback into the Platform) without restriction. You will ensure that: (a) Feedback does not identify You, Your Affiliates, or users, or include any Data; and (b) Customer has obtained requisite authorization from any User or other third party to grant the license described in this Agreement. For the avoidance of doubt, Feedback does not constitute Customer Confidential Information.

4. Subscription Term and Payment

4.1 We offer several different subscription plans for Our Platform (the "**Subscription Plan**"). Information about Our Subscription Plans can be found on Our [Site](#). Unless otherwise required by Applicable Law and subject to the requirements of Applicable Law, Fees quoted on Our Site do not include taxes that may be applicable in Your jurisdiction. You are responsible for paying all taxes in connection with the purchase of any Platform. For additional information on Our Subscription Plans and for Platforms with our Affiliates, please [Contact Us](#). You may upgrade or downgrade Your Subscription at any time during Your Subscription Term, upon which We will apply the respective fees on a pro-rata basis. Any failure or delay to issue or deliver an invoice will not excuse Your payment obligations.

4.2 Trial Period: At the end of the Trial Period, You will be prompted to enter Your payment details if You have not already done so. If You've already updated Your payment method You will be automatically charged on the date shown on the billing section associated with Your Account.

4.3 Renewal Term: Unless the owner of Your Account [upgrades or downgrades Your Subscription Plan](#), You will be enrolled into an automatic renewing cycle for the same term at the conclusion of the Subscription Term (the "**Renewal Term**" and together with the Subscription Term, the "**Term**"). This applies to all Subscription Plans involving payment including monthly and annual renewals. For all Subscription Plans or Order Forms with a term of one year or more, You agree to give written notice to Us to terminate the Order Form not less than thirty (30) days before the end of the Term. Termination of any Order Form shall leave other Order Forms unaffected; termination of this Agreement shall terminate any existing Order Forms.

5. Termination

5.1 Either You or Hotjar may terminate this Agreement or an Order Form for cause as a result of a material breach by the other party of this Agreement if the defaulting party fails to cure such material breach within thirty (30) calendar days of its receipt of written notice of the breach from the non-defaulting party. In addition, We may immediately terminate this Agreement if You do not pay the fees when due in accordance with Your [Subscription Plan](#).

5.2 In the event this Agreement is properly terminated pursuant to Section 5.1, You will be entitled to a *pro-rata* refund of all fees previously advanced to Us from the date of the termination through the end of the Subscription Term.

5.3 You may terminate this Agreement by [downgrading the Subscription Plan](#) associated with Your Account to Our free plan, during or by the end of Your Subscription Term or Renewal Term. For all Subscription Plans or Order Forms with a committed term including an annual subscription, all fees are nonrefundable and non excusable except if you properly terminate under Section 5.1. Hotjar may suspend and/or terminate Your right to use the Site and/or Platform with or without cause at any time. Hotjar will notify You via email to Your registered email account if We terminate Your Account.

5.4 Your obligation to pay accrued charges and fees accrued up to the date of termination will survive any termination of this Agreement. In the event of any termination of this Agreement, the limitations on Your use of the Platform outlined in this Agreement will survive such termination.

6. Technical and Organizational Security Measures

6.1 Hotjar establishes data security in accordance with Applicable Law. The measures to be taken must be designed to guarantee a protection level appropriate to the risk concerning confidentiality, integrity, availability, and resilience of the systems. The state of the art, implementation costs, the nature, scope and purposes of processing, as well as the probability of occurrence and the severity of the risk to the rights and freedoms of natural persons, must also be taken into account.

6.2 Hotjar has set out a number of [security measures](#) and may implement alternative adequate measures from time to time, provided such measures will not materially reduce Hotjar's security level.

6.3 Hotjar will provide You, upon reasonable request, with adequate proof of compliance with its Data Processing obligations under this Agreement.

7. Access to Your Data

7.1 Hotjar commits to securely storing Your Data in accordance with the time frames corresponding to each [Subscription Plan](#). All Data exceeding the stated timeframe will be automatically deleted from Our systems. You expressly acknowledge and accept that Hotjar does not provide any archiving or backup services, and may delete Data that is no longer in use and exceeds the timeframes stipulated in the applicable [Subscription Plan](#).

7.2 In the course of providing its Platform to You, Hotjar will have access to some of Your Data. All rights, title, and interest in the Data is Your exclusive property, except as otherwise provided for throughout this Agreement.

7.3 Except as otherwise stated in this Agreement, Hotjar will not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, frame, create derivative works from, transfer, or otherwise use in any other way for commercial or public purposes, in whole or in part, any of Your Data, except for the purposes of the provision of the Platform in accordance with this Agreement, without any further prior need of approval or consent from You.

7.4 You grant Hotjar and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free, right and license to (i) compile and use Data, strictly in order to research, develop, modify, improve or support the services provided by Hotjar and its Affiliates; (ii) use Data in an anonymous or aggregated form where no such information could directly identify or will reasonably be used to identify You, Your users or visitors, for benchmarking or machine learning purposes; and (iii) collect and use data, information, or insights generated or derived from the use of the Platform for its business purposes, including industry analysis, analytics, marketing, and developing, training and improving its products and services. In no event will Hotjar or its Affiliates sell Data to third parties for any marketing or advertising purposes whatsoever.

8. Confidential Information

8.1 During and after the Term, we each agree to (a) use Confidential Information solely for the purposes of this Agreement, (b) not copy, disseminate, or disclose Confidential Information to any person, except at the Your request or the request of the Receiving Party's or its Affiliates' employees, authorized representatives, contractors and advisers who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this Section, and (c) protect all Confidential Information with at least the same degree of care as it protects its own information of a similar nature. Nothing in this Agreement will transfer the ownership of Confidential Information to the Receiving Party.

8.2 We each agree that if the Receiving Party is required by law to disclose Confidential Information, such Party will give prompt written notice to the Disclosing Party before making the disclosures, unless prohibited by law or administrative process. including Confidential Information if Hotjar is required to do so by mandatory law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with a legal process; (b) enforce this Agreement; (c) respond to claims that any of Your content and/or Data violates the rights of Third Parties; or (d) protect the rights, property, or personal safety of Hotjar, the Site, the Platform, its users, and the public.

9. Warranties

9.1 Each party represents and warrants to the other party that: (a) the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; (b) no authorization or approval from any third party is required in connection with its execution of the Agreement; and (c) it will materially comply with all applicable federal, state, local, court orders, or other laws and regulations applicable to the performance by it of its obligations under this Agreement or the use of the Platform and will obtain all applicable permits, consents and licenses required of it in connection with its obligations under.

9.2 You agree to provide and maintain a legally adequate privacy policy that accurately discloses Your practices with respect to the collection, use, and disclosure of Personal Data, including Personal Data, collected through Your use of Our Platform. You are responsible for determining whether You are subject to any sector-specific privacy laws or regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA), the Children's Online Privacy Protection Act (COPPA), the Family Education Rights and Privacy Act (FERPA) or any law concerning the privacy of any collected Personal Data or other laws as may be applicable to You, and for determining whether Our Platform is suitable for You to use in light of the application or potential application of any such laws or regulations. If You are subject to specific laws or regulations, You represent and warrant that Your use of Our Platform will be in accordance with such laws or regulations. Hotjar will not be held liable for Your failure to comply with any such laws or regulations.

9.3 If You are located in a jurisdiction with privacy and data protection laws or have any end users that visit Your Hotjar Enabled Site from such jurisdictions, You represent and warrant that You use the Platform in accordance with the laws applicable to You. You further represent and warrant that You:

a. will clearly describe in writing how You plan on using any Data processed, including for Your use of Our Platform and make such description available for users of Your Hotjar Enabled Site(s). We have developed some [model wording](#) You can reference as a starting point for this, but You should seek advice from Your own counsel before using any information provided by Hotjar. Hotjar will not be liable for any use, verbatim or otherwise, of the model wording;

b. will obtain unambiguous, specific, freely given, informed, and revocable consent of natural persons whose Personal Data is Processed by Your use of the Platform where required by laws applicable to You; and

c. You agree to indemnify and hold Us harmless from any losses, including attorney fees and costs, that result from Your breach of any part of these warranties.

9.4 To the fullest extent permitted by law, Hotjar and its Affiliates (a) make no, and hereby disclaim any and all, representations warranties, conditions and all other terms of any kind whatsoever with respect to the Platform, scripts, Testers, integrations and documentation, whether express or implied, by operation of law, or statutory, oral or written, including, any warranties of accuracy, quality, performance, merchantability, suitability and fitness for a particular purpose; (b) do not warrant that the Platform is or will be error-free, uninterrupted, or meet Your requirements; or (c) are not liable for delays, failures or problems inherent in Your systems or infrastructure or any inability, error or fault on Your part in the installation or operation of the Platform and/or scripts. Access to and performance of the Platform may be subject to limitations, delays, and other problems inherent to the use of the internet and electronic communications. Hotjar will not be responsible for any delays, performance issues, delivery failures, or other damage resulting from such problems.

10. Third Party Claims

10.1 *Our Indemnification Obligations:* Hotjar agrees to defend You against any claim, suit or proceeding brought by Third Parties (the “**Claim(s)**”) to the extent arising from any infringement of any third-party intellectual property right occurring from Your use of the Platform. Hotjar will not be responsible for: (i) any Claim arising out of or in connection with You or Your user’s combination of Platform with goods or services provided by third parties, including any Third-Party Services; (ii) adherence to specifications, designs, or instructions furnished by You; (iii) Your modification of the Platform not described in the documentation or otherwise expressly authorized by Hotjar in writing; (iv) Your failure to use any enhancements, modifications, or updates to the Platform that have been provided by Us; (v) Your breach of the Agreement, negligence, willful misconduct, fraud or violation of Applicable Law, including applicable data protection laws, or any third-party rights, including but not

limited to Personal Data and privacy rights or (vi) any Claim arising out of or in connection with any act, omission or negligence of any Tester.

10.2 *Your Indemnification Obligations:* You will indemnify, hold harmless and defend Hotjar's Indemnified Parties, to the maximum extent permitted and in full at Your own cost, from any demands, disputes, liabilities, Claims, obligations, losses, damages, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with:

- a. Your unauthorized use of any material obtained through Our Site and Platform;
- b. Your use and access to Our Site and Platform which is not in accordance with this Agreement;
- c. Your Processing of Personal Data in connection with Your use of Our Platform;
- d. Use by Us of Your Data or Testers' data in providing the Platform;
- e. Your violation of the Agreement;
- f. Your gross negligence or willful misconduct; and
- g. Your violation, whether alleged or actual, of any Third Party rights.

10.3 *Indemnification Procedures:* The Parties' respective obligations in this Section are conditioned on:

- a. the Indemnified Parties giving the Indemnifying Party prompt written notice of the Claim, except that the failure to provide prompt notice will only limit the indemnification obligations to the extent the Indemnifying Party is prejudiced by the delay or failure;
- b. the Indemnifying Party being given full and complete control over the defense and settlement of the Claim; and
- c. the relevant Indemnified Parties providing assistance in connection with the defense and settlement of the Claim, as the Indemnifying Party may reasonably request.

The Indemnifying Party will indemnify the Indemnified Parties against: (i) all damages, costs, and attorneys' fees finally awarded against any of them with respect to any Claim; (ii) all out-of-pocket costs and expenses (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defense of the Claim (other than attorneys' fees and costs incurred without the Indemnifying

Party's consent after it has accepted defense of such Claim); and (iii) all amounts that the Indemnifying Party agreed to pay to any third party in settlement of any Claims arising under this Section and settled by the Indemnifying Party or with its approval. The Indemnifying Party will not, without the relevant applicable Indemnified Parties' prior written consent, agree to any settlement on behalf of such Indemnified Parties which includes either the obligation to pay any amounts, or any admissions of liability, whether civil or criminal, on the part of any of the Indemnified Parties.

10.4 *Infringement Remedy.* If You are enjoined or otherwise prohibited from using any of the Platform or part thereof based on a Claim covered by Hotjar's indemnification obligations under Section 10.1, then Hotjar will, at its sole expense and option, will either:

- a. obtain for You the right to use the affected part of the Platform;
- b. modify the allegedly infringing part of the Platform so as to avoid the Claim without substantially diminishing or impairing its functionality; or
- c. replace the allegedly infringing part of the Platform with items of substantially similar functionality so as to avoid the Claim.

If We determine that the foregoing remedies are not commercially reasonable and notify You of such determination, then either Party may terminate the Agreement or Order Form (if any), and in such case, Hotjar will refund You on a pro rata basis, based on the then current Term, those prepaid fees which relate to the unexpired part of the Term for the infringing part of the Platform. These remedies are Your sole and exclusive remedies for any actual or alleged infringement by the Platform of any third-party intellectual property right.

11. Limitations

11.1 In no event will Hotjar or any of its representatives be liable to You or any Third Party for any direct, indirect, special, exemplary, punitive or other consequential or incidental damages (including but not limited to any lost profits or revenue, interruption, loss of programs or other information, or any other measurable loss) arising directly or indirectly from:

- a. Your use of or access to Our Site and/or Platform, or any content, products or services distributed on or provided through Our Site and/or Services;
- b. for any failure or interruption of Our Site and/or Platform; or

c. the information, acts, omissions or negligence of or relating to any Internal Testers or External Testers;

whether arising out of errors, omissions, loss of Data, defects, viruses, interruptions or delays in operations or transmission or any other cause, whether based on warranty, contract, tort (including negligence) or any other legal theory, even if Hotjar or its suppliers have been expressly advised of the possibility of such damages. This limitation of liability does not apply to direct damages for which Hotjar is liable due to Hotjar's violation of a Third Party's Intellectual Property Rights.

11.2 In any event, Hotjar's total maximum aggregate liability under this Agreement, will not exceed Your monthly subscription fee.

11.3 These limitations do not apply in case Hotjar has willfully caused the damage.

12. Links

12.1 Hotjar's Site and/or Platform may include links to certain websites, materials, or content developed by Third Parties. Use of any such linked material is at Your own risk.

13. Advertising

13.1 Unless You specifically withdraw Your consent to this clause by filling in [this form](#), You acknowledge and consent that Hotjar may make use of any of Your marks, logos and trade names to identify You as Hotjar's user/customer on Hotjar's Site and/or Platform, in addition to any other marketing material.

14. Enforcing Security

14.1 Actual or attempted unauthorized use of any of Our Site and/or Platform may result in the institution by Us of criminal and/or civil prosecution. For Your protection, We reserve the right to view, monitor, and record activity on Our Site and/or Platform without notice or further permission from You, as permitted by the Applicable Law and this Agreement. This right extends to Our review of tracking activity and details pertaining to claimed violations by You. Any information obtained by monitoring, reviewing, or recording is subject to review by law enforcement organizations in connection with the investigation or prosecution of possible criminal activity on any of Our Site and/or Platform.

15. Hotjar Contracting Entity, Governing Law, Venue and Dispute Resolution

15.1 Unless otherwise agreed in writing, the Hotjar Contracting Entity, the governing law in any dispute or lawsuit arising out of or in connection with this Agreement and the courts that have jurisdiction over any such dispute or lawsuit, depend on where You are domiciled. This Agreement is governed by the applicable governing law indicated below without regard to conflicts of laws provisions and without regard to the United Nations Convention on the International Sale of Goods. Both Parties submit to the personal jurisdiction of the applicable courts indicated below:

For all Hotjar Limited Order Forms:

If you are domiciled in: USA, Canada or Mexico

- **Hotjar Contracting Entity:** Hotjar Limited
- **Registered Office:** Dragonara Business Centre 5th Floor, Dragonara Road, Paceville St Julian's STJ 3141 Malta
- **Governing Law:** New York
- **Jurisdiction and Venue:** AAA Arbitration held in New York, NY under New York, NY law
- **Local Addendum (if any):** N/A

If you are domiciled in: Any other country

- **Hotjar Contracting Entity:** Hotjar Limited
- **Registered Office:** Dragonara Business Centre 5th Floor, Dragonara Road, Paceville St Julian's STJ 3141 Malta
- **Governing Law:** England and Wales
- **Jurisdiction and Venue:** Courts of England and Wales
- **Local Addendum (if any):** N/A

For Affiliate Contentsquare and its Affiliate's Order Forms:

- **If you are domiciled in:** See Local Addendum
- **Hotjar Contracting Entity:** See Local Addendum
- **Registered Office:** See Local Addendum
- **Governing Law:** See Local Addendum
- **Jurisdiction and Venue:** See Local Addendum
- **Local Addendum (if any):** <https://web.archive.org/web/20250616095534/https://contentsquare.com/legal/terms-conditions/>

16. Additional Terms Applicable to Engage Product

16.1 Additional Definitions:

- a. Solely with respect to Engage Product, "**Confidential Information**" will include all information provided directly or indirectly by or on behalf a Disclosing Party to Testers; and
- b. "**Tester**" means any participant who has properly registered a tester account with Us or our Affiliates to take part in research relating to the Engage Product.

16.2 Additional Engage Product Terms:

- a. Engage Product Researchers. The Engage Product facilitates user interviews and user tests between You ("**Researcher**") and Testers.
- b. Testers:
 - i. Testers are private individuals who have properly registered with Hotjar and its Affiliates as capable and willing research participants. Testers are not Hotjar or Affiliate employees, agents or representatives. Hotjar and its Affiliates will have no liability to You whatsoever for the acts or omissions of Testers, including any use of Your Confidential Information that You make available to them as a result of this Agreement or otherwise.
 - ii. You may refer individuals to be Testers through a unique link generated by you in the Engage Product in order for You to request their participation in Your research project.
 - iii. Testers are compensated by Hotjar at the end of a session for taking part in a session with You.
 - iv. You may only communicate with Testers through the Engage Product unless You have an existing relationship with the Tester before inviting them to participate in a session.
- c. Cancellation of Sessions and Refunds for Engage Product. Additional terms relating to the cancellation of sessions and refunds for the Engage Product may be found in [Hotjar's Refund Policy](#).
- d. Additional Warranties and Disclaimers for Engage Product.
 - i. Additional Warranties. You warrant and represent that: (1) You have the sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data;

(2) You rightfully own all right, title and interest in and to Your Data and have the right to use Your Data and grant Hotjar, its Affiliates, its employees, agents and subcontractors the right to use Your Data for the purposes set out in this Agreement; (3) any use of Your Data by Hotjar, its Affiliates, its employees, agents, subprocessors and subcontractors with or through any Platforms will not breach any rights of a third party.

ii. Additional Disclaimers. You agree and acknowledge that Testers are neither employees nor agents of Hotjar or its Affiliates, but are independent contractors who use the platform to provide services to You by participating in sessions. All information or content provided by Testers through the Engage Product is provided "as is". Hotjar and its Affiliates provide no warranties in relation to such content or information and will have no liability whatsoever to You for Your use or reliance upon such content or information of Testers nor for the acts or omissions of any Testers.

17. Waiver of Jury Trial

17.1 You and Hotjar waive their rights (if applicable) to a trial by jury relating to all claims and causes of action (including counterclaims) related to or arising out of this Agreement. This waiver will also apply to any subsequent amendments or modifications to this Agreement.

18. No Class Actions

18.1 All claims between the parties, including parent companies and subsidiaries, related to this Agreement will be litigated individually and You will not consolidate or seek class treatment for any claim with respect to the Services.

19. Waiver of Compliance of this Agreement

19.1 Our failure to enforce, at any time, any of the provisions, conditions or requirements of the Agreement, or the failure to require, at any time, the performance by You of any of the provisions of the Agreement, will in no way waive Your obligation to comply with any of the provisions of the Agreement or Our ability to enforce each and every such provision as written.

19.2 Any and all waivers by either party hereto of any provision, condition or requirement of the Agreement will only be effective against the other Party if it is in writing and signed by an authorized officer of that Party, and any such written waiver will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

20. Assignment and Delegation

20.1 Both parties may only assign their rights and obligations under the Agreement in connection with a consolidation, merger, acquisition or sale of all or substantially all of their assets, shares or activities without the prior written consent of the other party.

21. Relationship of the Parties

21.1 Nothing contained in this Agreement will be interpreted or construed to create a partnership, agency, single employer, joint employer or any other type of employment relationship between the parties hereto, or to impose liability attributable to such relationship upon either party. Neither party will have any right, power or authority to enter into any agreement on behalf of, to incur any obligation or liability of, or to otherwise bind the other party.

22. Severability

22.1 If any provision of this Agreement is found, by any court having competent jurisdiction, to be unenforceable, the other provisions of this Agreement will remain in effect to the maximum extent possible.

23. Survival

23.1 Rights and obligations under this Agreement which by their nature are intended to survive termination, including without limitation the indemnification and liability limitations provisions set forth in this Agreement, will remain in full effect after termination or expiration of the Agreement.

24. Notices

24.1 Unless otherwise specifically indicated, all notices under this Agreement, must be in English, in writing, and addressed as follows: (i) in the case of Hotjar, to support@hotjar.com, and (ii) in the case You, to the email address provided at the time of subscription, or in either case, such other address as either Party has notified the other, in accordance with this Section.

Previous Versions of this Terms of Service

Version 6.1 ([compare markup changes between versions 6.1 and 7](#))