JitterLabs

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING "I AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. CUSTOMER IS AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF ITS EMPLOYER. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON ITS EMPLOYER'S BEHALF.

Terms of Service - Customer

This agreement is between JitterLabs, LLC, a California limited liability company (**JitterLabs**), and the customer agreeing to these terms (**Customer**).

1. **SOFTWARE SERVICE**. This agreement provides Customer access and usage of an Internet based software service as specified on the online or written order agreed to between the parties (**Order**) and as further outlined at: www.jitterlabs.com (**Service**). See the FAQ located at www.jitterlabs.com/support/faq/ for more information.

2. **DATA ISSUES.**

   a. **What data does Customer own?**

      Input Data - YES
      - Customer owns all data that it enters into the Service.
      - *Example*: data input for personal information, commentary, specifications, and block transfer functions.

      Test Report Data – YES
      - Customer owns the Test Report data provided by JitterLabs in fulfillment of a '*Request For Test*' order submitted by Customer.
      - Test Reports are only accessible under the Premium Plan.

      Shared Data - NO
      - If another customer shares data (that it owns) with Customer using the Service, Customer does not own that data (or any data derived from that data).

         o Customer may not copy, distribute, share, print, or sell shared data, without the explicit written consent from the customer that owns it.
         o See FAQ for more information regarding what data can you publish or distribute.

      Note: If Customer shares data that it owns with another customer using the Service, Customer understands that JitterLabs cannot prevent unauthorized use of that data by the other customer.

         o Customer should enter into a separate contract with the other customer to legally protect the shared data (as the Service does not have any technical means to limit the further distribution or use of the shared data).

         o Customer should exercise the same due diligence in the online world as it does in the physical world, to qualify external businesses before sharing data with them.

   b. **No Sale of JitterLabs Data for Commercial Purposes**. Customer may not use, print, share, modify, distribute, or copy any data from or as output of the Service on a standalone basis for commercial purposes or for any type of direct remuneration (for example, selling report data for a fee, among other things).

   c. **Other Issues.** Customer grants JitterLabs the right to use the Customer data uploaded and inputted by Customer solely for purposes of JitterLabs performing under this agreement. During the term of this agreement and depending on the Service selected by Customer, Customer may export analysis data from within the Service in report format (more information is located in the FAQ located at www.jitterlabs.com/support/faq/).

3. **USE OF SERVICE.**

   a. **Contractor Access and Usage**. Customer may allow its contractors to access the Services in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors (more information is located in the FAQ located at www.jitterlabs.com/support/faq/).

   b. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is responsible for its acts and omissions regarding Customer data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent

unauthorized access to its account, and notify JitterLabs promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.

c. **JitterLabs Support.** JitterLabs must provide customer support for the Service under the terms of JitterLabs' Customer Support Policy (**Support**), which is located at www.jitterlabs.com/support/customer-service/ and is incorporated into this agreement for all purposes.

d. **Free Version.** If Customer has registered for a no-charge use of the Service, Customer may access the Service until it is cancelled by JitterLabs upon notice via email, or by the Customer. The Service is provided AS IS, with no warranty during the no-charge period. All Customer information and data will be deleted after the no-charge period ends, unless Customer converts its account to a paid Service. If Customer downgrades its Service to a no-charge Service, there may be a loss of Customer data (more information is located in the FAQ located at www.jitterlabs.com/support/faq/).

4. **SERVICE LEVEL AGREEMENT & WARRANTY**.

a. **Warranty.** JitterLabs warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, force majeure, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during a paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty	Credit
98%	3% of monthly fee for each full hour of an outage (beyond the warranty)

Maximum amount of the credit is 100% of the fee for such month.

b. **LIMITED REMEDY. The Service may be interrupted or contain an error. Customer's exclusive remedy and JitterLabs' sole obligation for its failure to meet the warranty in section a above will be for JitterLabs to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies JitterLabs of such breach within 30 days of the end of that month.**

c. **DISCLAIMER. OTHER THAN THE ABOVE WARRANTIES, THE SERVICE IS PROVIDED 'AS IS' AND JITTERLABS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE JITTERLABS TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, JITTERLABS DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE AND RESULTING REPORTS MAY NOT BE ERROR FREE. JITTERLABS DOES NOT PROVIDE ANY WARRANTY OR MAKE ANY REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE SERVICE OR THE DOCUMENTATION MEETS CUSTOMER'S NEEDS OR EXPECTATIONS, OR THAT USE OF THE SERVICE WILL NOT INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**

5. **PAYMENT**. Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

6. **MUTUAL CONFIDENTIALITY.**

a. **Definition of Confidential Information**. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). JitterLabs' Confidential Information includes without limitation the Service, Documentation (defined below), underlying technical algorithms, the Service user interface design and layout, and non-public pricing information.

b. **Protection of Confidential Information**. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions**. Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

7. **JITTERLABS PROPERTY**.

   a. **Reservation of Rights**. The software, workflow processes, user interface, designs, know-how, underlying technical algorithms, Documentation, and other technologies provided by JitterLabs as part of the Service are the proprietary property of JitterLabs and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with JitterLabs. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Documentation. JitterLabs reserves all rights unless expressly granted in this agreement.

   b. **Restrictions**. Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) disassemble, decompile, reverse engineer, or alter the Service or the Documentation; or (vi) access the Service or use the Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

   c. **Documentation.** The reports generated by the Service, technical and non-technical documentation, sample data, marketing materials, training material, user guides, and other material provided through the Service or by JitterLabs (**Documentation**) are licensed to Customer as follows: JitterLabs grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Documentation, solely in connection with the Service, and for internal business purposes only.

8. **TERM AND TERMINATION.**

   a. **Term**. This agreement continues until all orders have terminated.

   b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice period, if the breach has not been cured during that time period.

   c. **Upon Termination.** Upon termination of this agreement or an order, JitterLabs has no obligation to maintain the Customer data and may destroy it (except to the extent Customer data has been shared with others and they have not deleted it, or it was copied or stored by others).

   d. **Return JitterLabs Property Upon Termination**. Upon termination of this agreement for any reason, Customer must pay JitterLabs for any unpaid amounts, and destroy or return all property of JitterLabs (except as described in the FAQ at www.jitterlabs.com/support/faq/). Upon JitterLabs' request, Customer will confirm in writing its compliance with this destruction or return requirement.

   e. **Suspension for Violations of Law.** JitterLabs may temporarily suspend the Service or remove the applicable Customer data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law or a restriction in this agreement. JitterLabs will attempt to contact Customer in advance.

   f. **Aggregate Data.** During and after the term of this agreement, JitterLabs may use any aggregate non-identifiable data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

9. **LIABILITY LIMIT**. **JitterLabs is not liable for any indirect, special, incidental, punitive, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of anticipated cost savings; loss of data, records or information; and lost revenue and profits). JitterLabs' total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12 month period prior to the event that gave rise to the liability.**

10. **INDEMNITY**.

    a. **By JitterLabs.** JitterLabs will defend or settle any third party claim against Customer to the extent that such claim alleges that the JitterLabs technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies JitterLabs of the claim in writing, cooperates with JitterLabs in the defense and allows JitterLabs to solely control the defense or settlement of the claim.

       Costs. JitterLabs will pay infringement claim defense costs incurred as part of its obligations above, and JitterLabs negotiated settlement amounts, and court awarded damages.

       Process. If such a claim appears likely, then JitterLabs may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If JitterLabs determines that none of these are reasonably available, then JitterLabs may terminate the Service and refund any prepaid and unused fees.

       Exclusions. JitterLabs has no obligation for any claim arising from: JitterLabs' compliance with Customer's designs, specification, instructions, or technical information; a combination of the Service with other technology where the infringement would not occur but for the combination; use of Customer data; or technology not provided by JitterLabs.

       This section contains Customer's exclusive remedies and JitterLabs' sole liability for intellectual property infringement claims.

b. **By Customer**. If any third-party brings a claim against JitterLabs related to any information, reports or data inputted by Customer or generated by the Service, Customer must defend, indemnify and hold JitterLabs harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.

11. **FEEDBACK**. Customer is not required to provide any feedback or suggestions regarding the Service. Notwithstanding anything contained in this agreement to the contrary, by submitting ideas, suggestions or feedback to JitterLabs regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information; and Customer hereby grants JitterLabs an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.

12. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Santa Clara County, CA, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

13. **OTHER TERMS**.

a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.

c. **Independent Contractors**. The parties are independent contractors with respect to each other.

d. **Enforceability and Force Majeure**. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for force majeure events.

e. **Money Damages Insufficient**. Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

f. **No Additional Terms.** JitterLabs rejects additional or conflicting terms of any Customer form-purchasing document.

g. **Order of Precedence**. If there is an inconsistency between this agreement and an order, the order prevails.

h. **Survival of Terms and no CISG**. Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

i. **Other Sites.** The Service and Documentation may include links to other sites (**Other Sites**). JitterLabs has no control over the Other Sites and no responsibility regarding the contents of the Other Sites. No affiliation with, endorsement of, or sponsorship by JitterLabs should be inferred.

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