Terms of Service

Podlabs provides a suite of services in emotion, mood, cognitive state measurement and reporting it in aggregate form to improve effectiveness of commercials, driver monitoring systems.

Our Services are provided by Podlabs and its affiliates ("Podlabs") and these Terms of Service are set out the basis upon which we provide our services to you ("Client"). Podlabs is located at S.N 53/B, Plot No3, Santanagr, Aranyeshwar, Pune 411009, India.

Podlabs provides a suite of services in emotion , mood and cognation analytics to help improve video advertising and driver monitoring systems of our clients. Our services include surveys, emotion data analysis, insight reporting, access to our proprietary dashboard & analytic tools (our "Services").

When you enter into a Service Agreement ("SA") or a Work Order ("WO") with Podlabs, these Terms & Conditions form the Agreement between us. They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1. License & Use of Services

Podlabs will supply the Services set out in each SA and/or WO for use solely in accordance with this Agreement. Podlabs provides Client with access to its Services via a secure login and password through App. We warrant to you that the Services will be provided using reasonable care and skill. We will use all reasonable endeavours to meet any performance dates specified in the SA / WO, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Agreement.

2. Fees & Taxes

2.1 In consideration of our providing you with the Services, you will pay our Fees which are specified in the SA and/or WO. These fees exclude local taxes and any similar applicable taxes. Where local or any similar sales taxes are payable in respect of any of the Services, you must pay us such additional amounts at the applicable rate, at the same time as you pay the Fees.

2.2 - If you are PODLABS customer located in India, parties agree that this Section 2.2 will be applicable:

2.2.1. If you have provided your Goods and Services Tax (GST) registration number to us so that it can be applied to your purchases, then the information you provide with your registration (including your GST registration number and the name and address associated with your GST registration) will be shared with third to the extent

necessary for those third parties to comply with GST invoicing regulations and requirements.

2.2.2. The purchase fees and charges payable by you will be exclusive of all applicable Taxes, and will be made free and clear of any deduction or withholding, as may be required by law. For clarity, if any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, you will pay such additional amount, as necessary, to ensure that the net amount received by Podlabs is equal to the amount then due and payable by you for your purchases. Podlabs will provide you with such tax forms, as are reasonably requested, in order to reduce or eliminate the amount of any withholding or deduction for taxes, in respect of the payments made by you for purchases on the Podlabs application platform. Podlabs may charge, and you will pay, all applicable Taxes that it or we are legally obligated or authorized to collect from you. Podlabs will not collect, and you will not pay, any Taxes for which you furnish us a properly completed exemption certificate, or a direct payment permit certificate, for which Podlabs may claim an available exemption from such Taxes.

Fees --

Payment for the Services is in advance and Podlabs will send you an invoice on the date of signing of the SA or WO confirming the order.

Payment is due within 30 days of the invoice date.

If Client notifies Podlabs in writing within 7 days after the start of the Term that any part of the Services does not comply with this Agreement and provides explanation of specific discrepancies, Podlabs will work to resolve these discrepancies at no extra charge. If no notification and explanation are provided within such period, the Services will be deemed to be fully and finally accepted.

If an invoice not subject to bona fide dispute is not paid within 30 days:

- Podlabs may suspend the Services until undisputed invoices are paid; and
- You will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

3. Client Materials

Client warrants that in respect of each media sample it provides (Client Materials):

- Client Materials comply with all relevant legislation in all regions where it will be tested and if it does not do so, Client accepts liability for any claims relating to the Client Materials;
- Client has all required permissions and other rights to make the Client Materials available to Podlabs, its subcontractors, and the relevant test audience, so that Podlabs is able to perform its obligations under this Agreement for any method the Client uses to deliver the Client Materials over to Podlabs.

- Client grants to Podlabs a nonexclusive, worldwide and royalty-free licence to use, reproduce, distribute, and digitally display the Client Materials, during the Term of this Agreement, to the extent necessary to provide Client with services under this Agreement.

4. Intellectual Property Rights

All intellectual property rights in any materials provided by Client will continue to belong to Client (or its licensor). All intellectual property rights arising out of or in connection with the Services, including survey data, will continue to belong to Podlabs (or its licensors).

5. Data

Podlabs uses a secure connection to upload all data collected under this Agreement to Podlabs' data servers. Reporting will be made available to Client either via a password protected client account or an API as defined in the SA. Podlabs retains the rights to use aggregated and/or de-identified survey data and results on a basis that does not identify Client. This includes for quality assurance purposes, enhancing its reporting capabilities and otherwise supporting the development, improvement and enhancement of its software, technologies, methods, processes, algorithms, ideas and inventions.

Client will not provide any personal data to Podlabs, other than personal data relating to its employees or representatives working with Podlabs under this Agreement. In respect of such personal data, Podlabs processes this personal data as the data controller, only for the purposes of fulfilling its obligations under this Agreement and in full compliance with the applicable data protection legislation.

6. Confidentiality

All Confidential Information given or made available by the disclosing Party to the receiving Party will be treated by the receiving Party, its employees and subcontractors as confidential and must not be disclosed nor used other than:

1. as strictly necessary for the furtherance of the receiving Party's obligations or rights under this Agreement;
2. in the conduct of a statutory, regulatory and/or self-regulatory audit (subject always to any third parties involved in such an audit being bound by non-disclosure undertakings similar in effect to these, or subject to statutory duties of non-disclosure);
3. by group companies for reporting and management purposes (subject always to that group company being bound by non-disclosure undertakings similar in effect to these); and
4. by professional advisers (to the extent that such professional advisers are subject to a statutory or contractual duty of non-disclosure and provided that such advisers protect Confidential Information to the same extent as detailed herein) in the context of advising the relevant Party.

The foregoing applies notwithstanding that such Confidential Information may have been disclosed prior to this Agreement.

Each Party undertakes

A. To take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, the receiving Party will protect the Confidential Information of the other to at least the same manner as it protects its own and, if this Agreement imposes stricter standards, to the standards set out in this Agreement; and

B. To the greatest practicable extent, not to co-mingle the Confidential Information with its own information.

Confidential Information will not include any information which:

1. is trivial or obvious (for the avoidance of doubt an element that is trivial or obvious in and of itself should not necessarily be taken as trivial or obvious in the context of the whole of the Confidential Information);
2. becomes public knowledge other than by breach of this clause;
3. is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
4. is received from a third party who lawfully acquired or developed it and who is under no obligation restricting its disclosure; and/or
5. is independently developed without use of the other Party's Confidential Information.

However, the receiving Party may disclose the Confidential Information of the disclosing Party pursuant to an order of a court of competent jurisdiction, a regulatory demand or the rules of an internationally recognised stock-exchange. Before such disclosure, so far as reasonably practicable, the receiving Party will give prior written notice of such disclosure and provide reasonable assistance to the disclosing Party in trying to prevent or contain such disclosure.
At the request of the disclosing Party, the receiving Party will promptly (and in any event within 30 days) return to the disclosing Party or destroy all Confidential Information of the disclosing Party and will certify by a signature of a Director (as the term is understood in law) that is has complied with this sub-Clause.
For Confidential Information stored electronically, each party will use its reasonable endeavours to expunge such data from its systems. However, neither party is required to expunge such data from its enterprise level backups or archives unless and until such backups and/or archives are restored to a live environment.

7. Your obligations

Client must not:

1. transmit or make available to Podlabs any personal data (other than personal data relating to its representatives working with Podlabs under this Agreement);

b. Provide passwords or otherwise enable any third party to access Podlabs Technology without Podlabs prior written consent;

1. disclose or make available to a third party any portion of the Services in a manner that competes with Podlabs or the Services or in exchange for compensation of any kind;
2. decompile, reverse engineer or disassemble the Services or its underlying technology (except to the extent expressly permitted by law); or
3. sublicense, distribute, modify, adapt, translate, or remove any proprietary or copyright legend from the Services

Any disclosure of the Services, including Podlabs Technology or Podlabs Information, other than as expressly permitted, is prohibited. Any unauthorized use or disclosure may cause irreparable harm and will entitle Podlabs to seek injunctive relief without having to post bond or prove irreparable injury or lack of an adequate remedy at law.

8. Disclaimer & Limitation of Liability

The Services, including Podlabs information and Podlabs Technology, are provided "as is". Except as expressly stated in this Agreement, Podlabs and its licensors disclaim and Client waives all warranties, whether express, implied or arising by law or otherwise, including but not limited to any warranties of satisfactory quality, merchantability, non-infringement, quality or fitness for a particular purpose, to the fullest extent permitted by law.
In no event will Podlabs or its licensors be liable for any indirect, incidental, special, consequential, exemplary or punitive damages, loss of profits or information, or damages for business interruption, cost of cover or capital, even if advised of the possibility of such damages. Unless otherwise prohibited by applicable law, neither Podlabs nor Client will be liable for any claim brought more than one year after the cause of action accrues. Notwithstanding any provision to the contrary, the maximum aggregate liability of Podlabs relating to this Agreement, whether in contract, tort (including negligence) or any other cause of action, will be limited to the total fees paid by Client for the affected portion of the Services under the applicable SA or WO during the six-month period immediately prior to the date the cause of action accrued.
Nothing in this Agreement limits or excludes our liability for:

- death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- fraud or fraudulent misrepresentation

9. Support & Service Levels

For all ordering and operational queries, please contact the Support Team support@podlabs.in . We try our best to reply to all queries within 3 business hours.

10. Term & Termination

This Agreement will remain in effect unless terminated in accordance with these terms. Either party may terminate this Agreement if:

1. the other party commits a material breach which remains uncured 30 days following written notice;
2. you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial party of your business; or
3. your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Agreement has been placed in jeopardy.

 This Agreement and the Services may be terminated by Podlabs with 30 days written notice if Podlabs is terminating such Service to all clients. Upon termination or expiration of this Agreement, Client will discontinue use of the applicable Services, including Podlabs Information and Podlabs Technology, and all rights and access granted to Client will terminate immediately. Notwithstanding termination of this Agreement, howsoever caused, the Parties' respective obligations in respect of any active study (as defined in the SA or WO) (and those obligations of any agent) will continue in force. Termination of this Agreement will not affect your or our rights and remedies that have accrued as at termination.

11. Force Majure

If either party is delayed or prevented from performing any act required due to a failure of any communication system or on- or off-line computing equipment, labour troubles, inability to procure materials, governmental or judicial orders, acts of God, acts of terrorism, weather conditions, third party interference or other similar reason beyond its reasonable control, then performance of such act will be excused for the period of delay.

12. Entire Agreement

This Agreement sets out the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties relating to its subject matter. In entering into this Agreement each Party acknowledges and

agrees that it has not relied on any warranties or representations made by the other Party other than those expressly set out herein; and all such warranties and representations are hereby expressly excluded.

13. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall, when executed and delivered, be an original and all counterparts will together constitute one and the same instrument. This Agreement is not effective until all Parties have executed a counterpart.

14. No Waiver

No failure or delay by a Party in exercising its rights or remedies will operate as a waiver unless made by written notice to the other Party. No single or partial exercise of any right or remedy of a Party will preclude any other or further exercise of that or any other right or remedy.

15. Miscellaneous

1. Each paragraph of this Agreement operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
2. The Parties are entering into this Agreement as principals and nothing in this Agreement creates an agency or partnership between the Parties.
3. No amendment to this Agreement is valid unless made in writing and signed by authorised representatives of both Parties. Notwithstanding any enforceability by third parties pursuant to sub-Clause (e) below, the Parties may amend this Agreement without the consent of any such third party.
4. All provisions relating to confidentiality, liability, termination and use of Podlabs Information and Technology survive termination of this Agreement.
5. Any notice that a Party wishes to give the other must be sent only by email to the address supplied by the other party for this purpose in the SA.
6. Podlabs may assign or transfer our rights and obligations under this Agreement to another entity but will always notify you if this happens. You may only assign or transfer your rights or your obligations under this Agreement to another person if we agree in writing.
7. The words "including", "include", "in particular", "for example" or similar expressions will be construed as illustrative and will not limit the sense of the preceding words.

16. Data Protection

In the event and to the extent that Podlabs and Client process Personal Data as separate data controllers during their engagement, the following provisions shall govern the data protection relationship of the Parties:

Parties acknowledge that they are separate data controllers of any Personal Data that they process during the performance of their respective obligations under this Agreement and shall, or shall procure that Parties' personnel shall, in performing its obligations under this Agreement, comply in all respects with the GDPR and all other data protection and/or privacy laws, regulations, instruments or codes of practice relating thereto, including the Data Protection Act 2018 ("Data Protection Laws").

Where Employee Personal Data originating from the EEA is transferred by the disclosing party to a receiving party outside of the EEA, or where Employee Personal Data (as specified further below) originating from the UK is transferred to a receiving party outside of the UK and the EEA, on a controller to controller basis, and the receiving party is located in a country that has not been designated by the European Commission (or the relevant regulatory authority) as providing an adequate level of protection for personal data, the parties shall – where required by the Data Protection Laws – enter into the Standard Contractual Clauses for Controllers. For the purposes of the Standard Contractual Clauses for Controllers, the disclosing party shall be deemed the "Data Explorer" and the receiving party shall be deemed "Data Importer", and as the parties act as separate data controllers, the terms of Module 1 of the Standard Contractual Clauses shall apply. If there is a conflict between this Agreement and the Standard Contractual Clauses for Controllers, the latter shall prevail.

In this Section "Standard Contractual Clauses for Controllers" shall mean the COMMISSION IMPLEMENTING DECISION on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as amended or replaced from time to time. Employee Personal Data shall mean the personal data of Podlabs, Podlabs affiliates or Podlabs contractors' personnel or Client or Client affiliates' personnel, as the context requires.

17. Governing Law & Jurisdiction

the parties agree that disputes will be resolved by binding arbitration, rather than in court. Arbitration will be conducted by a panel consisting of three (3) arbitrators, with one (1) nominated by each party and the third chosen by the two (2) arbitrators so nominated. The decision and award will be determined by the majority of the panels and shall be final and binding upon the parties. The arbitration will be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 of India, as may be in force from time to time. The arbitration proceedings will be conducted in English, and the seat of the arbitration will be Pune. The cost of the arbitration,

including fees and expenses of the arbitrator, shall be shared equally by the parties, unless the award otherwise provides. The courts at Pune shall have the exclusive jurisdiction for all arbitral applications. The Parties agree that the existence of and information relating to any such arbitration proceedings will not be disclosed by either party. Notwithstanding the foregoing, any party may seek injunctive relief in any court of competent jurisdiction for any actual or alleged infringement of such party's, its affiliates' or any third party's intellectual property or other proprietary rights.

18. Definition

"Podlabs Information" means the data, information and reports provided and/or used by Podlabs;
"Podlabs Technology" means the software, HTML tags or other codes, internet portals, APIs, dashboards, systems and analytic tools underlying our Services;
"Term" means duration of the Service paid for by Client as set out in the SA or WO;