

## ANALYTICS ENGINES CLOUD SOFTWARE PURCHASE ORDER

<b>DATE OF EXECUTION:</b>	
<b>NAME AND ADDRESS OF CUSTOMER:</b>	

This Agreement comprises this Purchase Order, any subsequent Purchase Order executed by Analytics Engines and the Customer, the schedule to each such Purchase Order and the Terms of Service. No terms or conditions endorsed upon, delivered with or contained in the Customer's (or any other person's) purchase order or other documentation will form part of the Agreement.

Signed: _____ on behalf of <b>ANALYTICS ENGINES</b>	Signed: _____ on behalf of <b>CUSTOMER</b>
Printed Name:	Printed Name:
Title:	Title:



# Analytics Engines

## SCHEDULE

*[The Schedule contains the statement of work outlining the following:*

- *Initial Term: the start date and end date of the initial term need to be identified.*
- *Fees payable.*
- *The Services: a description of any additional services, whether implementation or ongoing support, required for the provision of The Software.*
- *The Software: a description of the Cloud Software being purchased.*
- *Key Assumptions.]*



# Analytics Engines

## TERMS OF SERVICE

### 1. DEFINITIONS

1.1 In this Agreement the following defined terms shall have the following meanings:

**Analytics Engines** means Analytics Engines Limited, registered with company number NI070848 and registered address of 1 Chlorine Gardens, Belfast, BT9 5DJ.

**Analytics Engines IP** means all Intellectual Property Rights owned by Analytics Engines in the Analytics Engines Code.

**Analytics Engines Code** means in relation to Software identified in a Purchase Order, all software code, content, processes and/or algorithms contained in such Software other than Third Party Code.

**Agreement** means each Purchase Order, the schedules thereto and these Terms of Service.

**Customer IP** means all Intellectual Property Rights in the Customer Content.

**Customer Content** means all applications, content, data, information and code provided by Customer and Users in the course of (a) Analytics Engines' design/creation of the Software and/or (b) the accessing and/or using the Software by Customer and/or any User.

**Force Majeure** means circumstances beyond the relevant party's control, including without limitation acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood or other weather event, epidemic, disease, infestation, restrictions on transport or movement, lock outs, strike or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable goods, or computer failure including any failure or breakdown of related systems upon which the operation of such computer depends.

**Initial Term** means in relation to a Purchase Order the period identified as such in the schedule to the Purchase Order.

**Intellectual Property Rights** means any and all intellectual property rights including trademarks, copyright, moral rights, database rights, know-how, and all other intellectual property and proprietary information rights (including confidential information) as may exist now or hereafter come into existence; all modifications, continuations, renewals and extension of any of the foregoing arising under the laws of any country, state or jurisdiction in the world.

**Legislation** means any statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party.

**Purchase Order** means a purchase order in materially the same form as the opening pages of this document (with such changes as the Customer and Analytics Engines may agree from time to time).

**Services** means in relation to any Purchase Order the services described as such in the schedules to such Purchase Order.

**SLA** means the service level agreement for Analytics Engines' provision of the Services, as annexed to this SOW.

**Software** means in relation to a Purchase Order the solution described as such in the schedule to such Purchase Order.

**Start Date** means in relation to a Purchase Order the date stated as such on the Purchase Order.

**SOW or Statement of Work** means the opening pages of this document outlined in the schedule to a Purchase Order.

**Term** means the period set out in clause 2.

**Terms of Service** means these terms of service.

**Third Party** means a party other than Analytics Engines or Customer.



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**Third Party Code** means in relation to Software identified in a Purchase Order, all software code, content, processes and/or algorithms contained in such Software the Intellectual Property Rights in which belong to a Third Party.

**User** means each user nominated by Customer to use the Software.

- 1.2 In this Agreement (except where the context otherwise requires) reference to a clause or to a schedule means a clause of or schedule to this Agreement; clause headings are included for convenience only and shall not affect the interpretation of this Agreement; use of the singular includes the plural and vice versa; use of any gender includes the other genders; any reference to a statute shall be construed as referring to such legislation as amended and in force from time to time; any phrase introduced by the term **including, include**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

## 2. TERM

- 2.1 Subject to earlier termination in accordance with clause 9, this Agreement shall last for the Initial Term, and shall then continue for successive periods of twelve months (each a **Renewal Period**) unless the schedule to the SOW states that no such renewal shall occur.
- 2.2 If, during the Term, Analytics Engines and Customer wish to agree the supply of any further services or software in relation to the Software, Analytics Engines and Customer shall procure that the supply is governed by the terms of a separate Purchase Order into which these Terms of Service shall be expressly incorporated.

## 3. APPOINTMENT, LICENCE, SCOPE OF USE

- 3.1 Analytics Engines grants to Customer a non-exclusive, non-assignable, non-sublicenseable and non-transferable license for the duration and on the terms of this Agreement:

3.1.1 to use the Intellectual Property Rights in the Analytics Engines Code; and

3.1.2 (to the extent that Analytics Engines is able to permit the same) to use the Intellectual Property Rights in the Third Party Code

in each case solely for the purposes of using, and allowing the Users to use, the Software on a software as a service basis.

- 3.2 Customer grants to Analytics Engines a non-exclusive, non-assignable, non-sublicenseable and non-transferable license for the duration and on the terms of this Agreement to use the Customer IP for the fulfilment of its obligations imposed by this Agreement.

- 3.3 Customer undertakes to Analytics Engines to procure that:

3.3.1 [the maximum number of Users that it authorises to access and use the Analytics Engines Software shall not exceed the number of User subscriptions it has purchased from time to time;]

3.3.2 each User shall keep a secure password/username for his use of the Analytics Engines Software confidential; and

3.3.3 each User shall during the course of using the Analytics Engines Software comply at all times with any acceptable use policy notified by Analytics Engines to Customer from time to time. Analytics Engines reserves the right, without liability or prejudice to its other rights to Customer, to disable any access that breaches the provisions of such acceptable use policy.

- 3.4 Customer undertakes to Analytics Engines to procure that neither Customer nor any User shall (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement):

3.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or



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- 3.4.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 3.4.3 access all or any part of the Software in order to build a product or service which competes with the Software; or
  - 3.4.4 resell the Software, and/or use the Software to provide software bureau services to third parties; or
  - 3.4.5 in any circumstances use, nor allow any third party to use, any automated software, process, programme, robot, web crawler, spider, data mining, trawling, screen scraping or other similar software to gain any unauthorised access to the Software (regardless of whether or not the resulting information would then be used for its internal purposes) and not disclose any passwords to any third party for the purposes of using any such technology; or
  - 3.4.6 interfere or attempt to interfere with the proper working of the Software or engage in any activity that interferes with or disrupts the Software or the servers or networks which are connected to the Software.
- 3.5 Customer acknowledges and agrees that:
- 3.5.1 Analytics Engines may monitor the Customer's and/or any User's use of the Software. Where, in its reasonable opinion, Analytics Engines suspects that any breach of this Agreement has occurred, it reserves the right immediately to suspend or terminate access to the Software;
  - 3.5.2 Analytics Engines may suspend access to the Software if there is an attack on servers or other event for which Analytics Engines reasonably believes that the suspension of the Software is necessary to protect Customer or the network;
  - 3.5.3 Analytics Engines may collect and use for its own business purposes aggregate usage data relating to how Customer and Users access and use the Software;
  - 3.5.4 the Intellectual Property Rights in the Analytics Engines name, products names and logos and in the Analytics Engines Code belong to Analytics Engines and/or its licensors (and Customer receives no right and/or interest therein except as expressly stated in this Agreement).
- 3.6 Each party shall indemnify the other party from and against all claims and expenses (including reasonable legal expenses) incurred as a result of a claim that (where Analytics Engines is the indemnifying party) the use of the Analytics Engines IP by Customer and/or any User, or (where Customer is the indemnifying party) the use of the Customer IP, infringes any third party's Intellectual Property Rights **provided that** the indemnified party promptly notifies the indemnifying party in writing of the claim, allows the indemnifying party exclusive control of the defence, and reasonably cooperates with the indemnifying party in the defence at the indemnifying party's reasonable expense.
- 3.7 Each party acknowledges and accepts as reasonable that in relation to the other party's protection of its Intellectual Property Rights, and without affecting any rights or remedies that such party may have, damages may not be an adequate remedy for any breach of such party's Intellectual Property Rights so that such party shall be entitled to apply for the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of Intellectual Property Rights, and that no proof of special damages shall be necessary for the enforcement of this clause.

## 4. ANALYTICS ENGINES OBLIGATIONS

- 4.1 Analytics Engines undertakes that it shall provide the Services in accordance with the SLA.
- 4.2 Analytics Engines may reference the Customer as a Customer on its web site and in its marketing materials.

## 5. CUSTOMER OBLIGATIONS



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- 5.1 Customer acknowledges that Analytics Engines' ability to fulfil its obligations imposed by this Agreement is dependent upon the reasonably full and timely co-operation of Customer (which Customer agrees to provide), Customer's fulfilment of any requirements imposed on it by any specification or SOW and/or as part of the agreement of the scope of any specification or SOW, and the accuracy and completeness of any information and data the Customer provides to Analytics Engines.
- 5.2 Customer shall use all reasonable endeavours:
  - 5.2.1 to ensure that its employees and other independent contractors co-operate reasonably with Analytics Engines and its employees;
  - 5.2.2 promptly to furnish Analytics Engines with such information and documents as it may reasonably request for the proper performance of its obligations under this Agreement;
  - 5.2.3 to ensure that its representative is available as reasonably required by Analytics Engines; and
  - 5.2.4 during the term of this Agreement, to not, without Analytics Engines' prior written approval, allow any person other than a representative of Analytics Engines to modify, repair or maintain the Software.
- 5.3 Customer acknowledges and agrees as reasonable that where:
  - 5.3.1 Customer's failure to perform any task required of in accordance with this; and/or
  - 5.3.2 the failure by Customer to provide access to any Customer employee, to any Customer system, or to any comprehensive or accurate information (including information about Customer's own and/or licensed information technology systems and/or utility supplies) as may be reasonably required to enable Analytics Engines to fulfil any obligation imposed by this Agreement; and/or
  - 5.3.3 Customer's delay or unreasonable withholding of approvalprevents Analytics Engines from fulfilling its own obligations, Analytics Engines shall be relieved from such obligations.
- 5.4 Upon Customer's subsequently remedying any failure, delay or unreasonable withholding of approval as referred to in clause 5.3 the parties will act in good faith and use all reasonable endeavours to agree a new timetable for the fulfilment by Analytics Engines of its obligations. Upon such new timetable being agreed, Analytics Engines and the Customer shall use all reasonable endeavours to comply with it provided that to the extent that Analytics Engines, in meeting the requirements of the new timetable, reasonably determines that it needs to deploy extra resources to meet such timetable, the Customer shall pay Analytics Engines in full for such extra resources on a time and materials basis at Analytics Engines' standard rates applicable at that date.
- 5.5 Customer shall not, during the term of this Agreement or for a period of 1 year from the date of its termination (except with Analytics Engines' prior written consent) directly or indirectly solicit or entice away (or attempt to solicit or entice way) from the employment of Analytics Engines, any employee of Analytics Engines who is employed or engaged in any Services.
- 5.6 The Customer shall ensure that each User uses the Software in accordance with these Terms of Service.
- 5.7 The Customer shall (and shall procure that any and all Users shall):
  - 5.7.1 not store, distribute or transmit any material to the Software that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities, or
  - 5.7.2 not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability and Analytics Engines may remove any violating content posted on the Software or transmitted through the Software, without notice to the Customer.

## 6. CHARGES



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- 6.1 Customer shall pay Analytics Engines the fees and costs set out in the Purchase Order. Unless otherwise stated, such amounts are exclusive of any VAT for which the Customer shall be additionally liable at the applicable rate from time to time.
- 6.2 Except as otherwise provided in the Purchase Order, invoices will be submitted on a monthly basis. All invoice/financial queries must be made within 5 working days of the date of the invoice under query. Analytics Engines will not be liable for any claims after this period and will not grant deferment of payments.
- 6.3 Payment terms are net thirty (30) days unless explicitly stated otherwise in the Purchase Order. Time for payment shall be of the essence. No payment shall be deemed to have been received until Analytics Engines has received cleared funds.
- 6.4 Without limiting any other rights Analytics Engines may have, amounts past due are subject to interest at a rate of 2.5% per month (or part thereof) both before and after any judgement from the due date for payment until payment has been received in full. Payments will be credited first to late payment charges and next to the unpaid balance. Customer shall be responsible for all collection or legal fees necessitated by lateness or default in payment.
- 6.5 In addition to the fees and costs, Customer shall reimburse Analytics Engines for all expenses actually, reasonably and directly incurred at Customer's specific request or with the Customer's written consent.
- 6.6 The Customer shall make all payments without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

## 7. WARRANTIES

- 7.1 Each party represents, warrants and undertakes that:
  - 7.1.1 it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that this Agreement is executed by its duly authorised representative and represents a binding commitment on it; and
  - 7.1.2 without affecting its other obligations under this Agreement, it shall comply with all applicable Legislation in the performance of its obligations under this Agreement.
- 7.2 With the exception of the warranties stated in clause 7.1, neither Customer nor Analytics Engines makes any warranty or representation of any kind, whether statutory or implied (and including in the case of Analytics Engines and in relation to the Software any warranty as to merchantability or fitness for purpose and/or use). All other warranties, representations conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded.

## 8. LIABILITY

- 8.1 Notwithstanding any other provision of this Agreement, neither party excludes or limits liability to the extent that the same may not be excluded or limited under governing law.
- 8.2 Analytics Engines does not warrant that the operation of the Software will be uninterrupted or error free.
- 8.3 While Analytics Engines intends to use all reasonable efforts to provide the Services in accordance with any timetable set out in the Proposal, it shall incur no liability whatsoever (whether in contract, negligence, or otherwise) for any loss or damage resulting from delay of the Customer (including any failure by the Customer to fulfil any dependency, assumption and/or responsibility placed on it by the SOW) and/or any third party acting on Customer's behalf, however caused.
- 8.4 The parties acknowledge and agree that:
  - 8.4.1 Analytics Engines shall have no liability to Customer for any liability arising from:
    - (a) use of, analysis, evaluation, advice, data, or other material provided or generated as part of the operation of the Software;



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- (b) use or performance of Customer's equipment, machinery, systems, processes, or products by Customer and/or any User;
  - (c) use by Customer and/or any User of any hardware provided by Analytics Engines in the course of its performance of obligations imposed by this Agreement;
- 8.4.2 Analytics Engines shall not be liable in contract, tort, or in relation to breach of statutory duty or any other right of action for the following losses:
  - (a) loss of, damage to or corruption or destruction of, data or other information belonging to Customer or any other third party;
  - (b) loss of or damage to software;
  - (c) any economic losses, including loss of revenues, profits, contracts, goodwill, reputation, business, use of money or anticipated savings;
  - (d) loss of use or downtime;
  - (e) damages relating to the procurement by Customer of any substitute products or services; and
  - (f) any special, incidental, indirect or consequential losses (whether or not such loss or damage is of the type specified in clauses 8.4.2 (a) to (e) above);
- 8.4.3 the aggregate liability of Analytics Engines in respect of any loss or damage suffered by Customer and arising out of or in connection with this Agreement shall not exceed the amount of the total fees actually paid in accordance with the Purchase Order in relation to which such liability is incurred, and as paid by Customer to Analytics Engines in the twelve months preceding the date such liability is incurred (and for the avoidance of doubt Customer will act at all times to mitigate any such loss or damage). For the avoidance of doubt this limitation shall not apply to any liability indemnified by Analytics Engines in accordance with clause 3.6.
- 8.5 Customer agrees and acknowledges:
  - 8.5.1 that it is in a better position than Analytics Engines to foresee and evaluate any potential damage or loss which Customer may suffer in connection with the Software; and
  - 8.5.2 that the fees payable by Customer have been calculated on the basis that Analytics Engines shall exclude liability in accordance with the provisions of this clause 8.
- 9. TERMINATION**
- 9.1 Either party may terminate this Agreement forthwith by notice in one or more of the following events:-
  - 9.1.1 if the other is in material default of any obligation imposed by this Agreement, and in the case of a default capable of remedy, fails to remedy such default within thirty days of receipt of a notice specifying the default and requiring its remedy; and/or
  - 9.1.2 if:
    - (a) the relevant party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    - (b) the relevant party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;





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- (c) a person becomes entitled to appoint a receiver over the assets of the relevant party or a receiver is appointed over the assets of the relevant party;
- (d) a creditor or encumbrancer of the relevant party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the relevant party's assets and such attachment or process is not discharged within 14 days;
- (e) the relevant party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the relevant party; and/or the holder of a qualifying floating charge over the assets of that party has become entitled to appoint or has appointed an administrative receiver; and/or
- (g) any event occurs, or proceeding is taken, with respect to the relevant party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.

9.2 Either party may terminate a Purchase Order if the other is in material default of any obligation imposed by the Purchase Order, and in the case of a default capable of remedy, fails to remedy such default within thirty days of receipt of a notice specifying the default and requiring its remedy.

9.3 Termination of any Purchase Order shall not:

9.3.1 relieve Customer of its obligations to make any payments due to Analytics Engines which are outstanding as at the date of termination;

9.3.2 terminate any other Purchase Order.

9.4 Should Customer undergo a significant change in ownership such that a competitor of Analytics Engines obtains effective control of Customer, Analytics Engines shall have the right to terminate this Agreement immediately upon becoming aware of the same by giving notice to Customer.

9.5 Either party may terminate this Agreement upon three months' written notice, provided that such notice may not be given until three months before the end of the Initial Term. Termination will take effect at the end of the Initial Term or Renewal Term (as the case may be) in which the three months' notice was given.

9.6 On termination or expiry of this Agreement:

9.6.1 the licences granted at clauses 3.1 and 3.2 shall terminate; and

9.6.2 clauses 3.6, 7.2, 8, 9 and 11 shall survive termination of this Agreement; and

9.6.3 termination shall not affect the rights or liabilities of either party which may have accrued up to the date of termination.

## 10. ASSIGNMENT AND SUBCONTRACT

10.1 This Agreement is personal to Customer and Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Analytics Engines.

## 11. CONFIDENTIALITY AND DATA PROTECTION

11.1 Each party shall keep secret and confidential all information disclosed by or on behalf of the other about its business and products, which is marked or reasonably understood to be confidential (**confidential**



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information), and shall not use such confidential information, nor disclose such information to any third party, except to the extent that will enable the recipient to fulfil its obligations under this Agreement.

11.2 If either party hereto receives from the other party confidential information, the receiving party agrees not to use such information except in the performance of this Agreement, and to treat such information in the same manner as it treats its own confidential information, and to prevent unauthorized use or disclosure, of the other party's confidential information. The obligation to keep information confidential shall not apply to any such information that is in the public domain other than by breach of this Agreement or is required to be disclosed by operation of law.

11.3 Customer hereby acknowledges that the source code and object code constituting the Analytics Engines Code comprise Analytics Engines' confidential information.

11.4 Each of Customer and Analytics Engines shall comply with the provisions of the data protection annex to these Terms of Service.

## 12. GENERAL

12.1 Neither party shall be under any liability to the other party for any breach of this Agreement which arises by reason of Force Majeure (provided that this shall not relieve any breach of any obligation to pay).

12.2 If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, that part shall be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

12.3 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of the same or other provision of this Agreement and no waiver shall be effective unless made in writing.

12.4 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreement or understanding between them relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on any representation or warranty except as expressly set out in this Agreement.

12.5 No variation of this Agreement shall be valid unless agreed in writing by the parties.

12.6 Failure or neglect by either party to enforce any of the provisions of this Agreement at any time shall not be construed or deemed to be a waiver of that party's rights, nor shall this in any way affect the validity of the whole or any part of this Agreement, nor prejudice that party's rights to take subsequent action.

12.7 Any notice to be given by either party to the other shall be in writing and delivered by hand or sent by post or email to the address of the other party as set out in the Purchase Order or such other address as a party may from time to time have communicated to the other in writing. Any such notice shall take effect if delivered or posted, upon delivery or (if emailed) at the point of reasonably evidenced transmission.

12.8 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

12.9 This Agreement shall be governed by and construed in accordance with the laws of Northern Ireland and the parties hereto hereby agree to submit to the non-exclusive jurisdiction of the Northern Irish courts.



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## DATA PROTECTION ANNEX

### 1. DEFINITIONS AND INTERPRETATIONS

In this annex the following definitions shall apply:

**controller** shall have the meaning given in article 4 of the GDPR.

**data subject** means an identified or identifiable natural person who is the subject of any personal data.

**Data Protection Laws** means in relation to either of Customer and Analytics Engines any and/or all domestic and foreign laws, rules, directives and regulations, on any local, provincial, state or deferral or national level, pertaining to data privacy, data security and/or the protection of personal data, including GDPR, to the extent that the same is applicable in accordance with its own terms to that party.

**GDPR** means General Data Protection Regulation (EU) 2016/679 as in force from time to time as transposed into domestic legislation of the United Kingdom and as amended, replaced or superseded from time to time, including laws implementing or supplementing GDPR.

**personal data** shall have the meaning given in article 4 of the GDPR.

**processor** shall have the meaning given in article 4 of the GDPR.

**Services** means the access to the Software provided by Analytics Engines to Customer under the relevant Purchase Order.

**sub-processor** means a natural or legal person, public authority, agency or any other body contracted by Analytics Engines to process personal data.

**supervisory authority** shall have the meaning given in article 4 of the GDPR.

### 2. WHERE A PARTY IS A CONTROLLER

2.1 Where either party acts as controller in relation to any Personal Data in the course of the operation of a Purchase Order, such party undertakes that it will comply with the Data Protection Laws when processing such Personal Data.

### 3. WHERE CUSTOMER ENTITY IS CONTROLLER, AND ANALYTICS ENGINES IS PROCESSOR

3.1 Where, in relation to any Personal Data, Customer is controller and Analytics Engines is processor in the course of the operation of the relevant Purchase Order, the provisions of paragraphs 3 to 6 apply.

3.2 Analytics Engines acting as processor shall:

3.2.1 only carry out processing of Personal Data in accordance with Customer's documented instructions, including where relevant for transfers of Personal Data outside the European Economic Area (unless Analytics Engines is otherwise required to process Personal Data by European Union, Member State and/or UK law to which Analytics Engines is subject, in which case Analytics Engines shall inform Customer of that legal requirement before processing unless prohibited by that law), and shall immediately inform Customer if, in Analytics Engines' opinion, any instruction given by Customer to Analytics Engines infringes Data Protection Laws;

3.2.2 notify Customer without undue delay of any requests received from a Data Subject exercising their rights under Data Protection Laws and, taking into account the nature of the processing, assist Customer by taking appropriate technical and organisational measures, insofar as this is compatible with Analytics Engines' fulfilling its obligations in respect of Data Subject rights under Data Protection Laws, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of Personal Data, or for restriction of processing or objections to processing of Personal Data;

3.2.3 take all security measures required in accordance with Data Protection Laws (including Article 32 GDPR), and at the request of Customer provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the Personal Data against accidental or unlawful destruction of, loss, alteration, unauthorised



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disclosure of, or access to Personal Data transmitted stored or otherwise processed; and detect and report Personal Data breaches without undue delay;

- 3.2.4 taking into account the nature of the processing and the information available to Analytics Engines, use all measures to assist Customer in ensuring compliance with Customer's obligations to:
- (a) keep Personal Data secure (Article 32 GDPR);
  - (b) notify Personal Data breaches to the Supervisory Authority (Article 33 GDPR);
  - (c) advise Data Subjects when there has been a Personal Data breach (Article 34 GDPR);
  - (d) carry out data protection impact assessments (Article 35 GDPR); and
  - (e) consult with the Supervisory Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 36 GDPR).
- 3.2.5 without undue delay, inform Customer of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed. Analytics Engines accepts and acknowledges that Customer shall direct in its sole discretion any and all steps and measures taken to remedy a breach by Analytics Engines under Data Protection Laws, including but not limited to any communications with a Supervisory Authority. Analytics Engines agrees not to act in any way upon such disclosure without the prior written consent of Customer;
- 3.2.6 make available to Customer all information necessary to demonstrate compliance with the obligations laid down in this schedule and allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer as set out in paragraph 4; and
- 3.2.7 in addition to the confidentiality obligations contained within the relevant Purchase Order, ensure that persons authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

3.3 On expiry or termination of the relevant Purchase Order, Analytics Engines shall immediately cease to use Personal Data (and all existing copies) and shall arrange for its safe return or destruction as shall be required by Customer (unless European Union, Member States and/or UK law requires storage of any Personal Data contained within Personal Data or an exemption under GDPR applies).

## 4. AUDIT RIGHTS

- 4.1 Upon Customer's reasonable request, Analytics Engines agrees to provide Customer with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this schedule) which will enable it to verify and monitor Analytics Engines' compliance with its data protection and security obligations under the terms of this schedule, within 14 days of receipt of such request, and to notify Customer of the person within Analytics Engines' organisation who will act as the point of contact for provision of the information required by Customer.
- 4.2 Where, in the reasonable opinion of Customer, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, Customer will be entitled, upon reasonable prior written notice to Analytics Engines and upon reasonable grounds, to conduct an audit of Analytics Engines, solely to confirm compliance with its data protection and security obligations under this schedule.
- 4.3 Any audit carried out by Customer will be conducted in a manner that does not disrupt, delay or interfere with Analytics Engines' performance of its business. Customer shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the relevant Purchase Order.

## 5. USE OF SUB-PROCESSORS

- 5.1 Customer provides its consent for Analytics Engines to use Sub-processors in the delivery of the Services. Where Analytics Engines uses any other third party Analytics Engines shall:



# Analytics Engines

- 5.1.1 enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this schedule to the extent applicable to the nature of the services provided by such Sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR;
  - 5.1.2 remain liable for any act or omission of a Sub-processor that does not comply with the data protection obligations as set out in this schedule.
- 5.2 Analytics Engines shall inform Customer of any intended changes concerning the addition or replacement of a Sub-processor with access to Personal Data and give Customer the opportunity to object to such changes. clause
- 6. TRANSFERS OF PERSONAL DATA TO NON-EEA COUNTRIES**
- 6.1 Where a transfer to an end user whose organisation is established outside of the EEA is necessary for the purposes of the relevant Purchase Order, the Parties acknowledge and accept that the end user shall either provide adequate safeguards as set out in Article 46 GDPR or rely on one of the derogations for specific situations set out in Article 49 GDPR to transfer Personal Data to a third country or an international organisation.
- 6.2 In the event of the United Kingdom departing the European Union and being deemed by the European Commission to have inadequate levels of protection, in accordance with Article 45 of the GDPR, the parties undertake promptly to enter into the appropriate versions of such model standard data protection clauses as the European Commission may from time to time publish in accordance with Article 46 (2) of GDPR.
- 7. CUSTOMER OBLIGATIONS**
- 7.1 Customer warrants and represents to Analytics Engines that:
  - 7.1.1 all instructions provided to Analytics Engines in relation to the processing of Personal Data are lawful and are provided in accordance with the Data Protection Laws;
  - 7.1.2 it shall only provide instructions to Analytics Engines that are in accordance with the terms of the relevant Purchase Order and this schedule; and
  - 7.1.3 all Personal Data is sourced lawfully and that it is solely responsible for determining the purpose for which Personal Data may be processed by Analytics Engines.
- 7.2 Customer acknowledges and agrees that Analytics Engines is reliant on Customer for direction as to the extent to which Customer is entitled to use and process Personal Data. Consequently, Analytics Engines shall not be liable for any claim brought by a subject of Personal Data and arising from any breach by Analytics Engines of the Data Protection Laws to the extent that such action or omission resulted from Customer's instructions.

**OVERVIEW OF DATA PROCESSING ACTIVITIES**

Categories of Individuals	The Personal Data concerns the following categories of Individuals:  [ ]
Categories of Personal Data	[ ]
Nature and purpose of the Processing	[ ]
Location of processing	[ ]
Duration of processing	[ ]