



# **SaaS Terms & Conditions**

**Dutch Analytics B.V.**



## **1 SAAS TERMS AND CONDITIONS**

- 1.1 These Terms and Conditions apply to all Proposals between Dutch Analytics and Customer for the provision of the Services.

## **2 DEFINITIONS AND INTERPRETATION**

- 2.1 In the Agreement the capitalized words shall have the meaning attributed to them in Annex A.
- 2.2 Unless otherwise agreed in the Agreement:
- a. "written" or "in writing" also includes electronic communication in the form of emails;
  - b. words in the singular include the plural and in the plural include the singular; and
  - c. the word "clause" refers to a clause in these Terms and Conditions.
- 2.3 Clause headings are inserted for convenience or reference only and are to be ignored in construing these Terms and Conditions.
- 2.4 Customer's general terms and conditions (of purchase terms or other terms) shall not apply to the Agreement and any applicability is expressly rejected and excluded.

## **3 AGREEMENT**

- 3.1 Customer may request Dutch Analytics to make a Proposal for the provision of Services.
- 3.2 The Proposal constitutes an offer by Dutch Analytics for the performance of the Services as specified in the Proposal. Aforementioned offer will expire after fourteen (14) calendar days from the date Dutch Analytics sent the Proposal, unless specified otherwise in that relevant offer.
- 3.3 Upon acceptance of the signed and unmodified Proposal by Customer within its validity period, the Agreement enters into effect.
- 3.4 Any counter-offer made by Customer to procure the Services on other conditions than as set out in the Proposal shall only be validly accepted if such

acceptance is in writing and signed by a duly authorised representative of Dutch Analytics.

## **4 DUTCH ANALYTICS' RIGHTS AND OBLIGATIONS**

- 4.1 Dutch Analytics shall provide the Services to Customer: (i) as set out in the Agreement and (ii) in accordance with the laws applicable to Dutch Analytics.
- 4.2 The Services provided by Dutch Analytics are further specified in an annex to the Proposal.
- 4.3 Dutch Analytics shall use best efforts to provide the Services in accordance with the Service Levels, which are further specified in the service level agreement which forms an attachment to the Proposal.
- 4.4 Dutch Analytics is entitled to: (i) use Open Source Software in the provision of the Services; (ii) update, upgrade and/or provide new versions of the software provided through the SaaS Services at any time in its sole discretion, unless agreed otherwise in the Proposal.

## **5 CUSTOMER'S RIGHTS AND OBLIGATIONS**

- 5.1 Customer shall provide all cooperation necessary for Dutch Analytics to provide the Services, including but not limited to:
- a. provision of all documents and information required for Dutch Analytics to fulfil its obligations under the Agreement;
  - b. provision of information on any activity that may impact the provision of the Services and which can be reasonably foreseen, e.g. upcoming changes in the IT environment of the Customer or increases in the workload, in a proactive and timely manner;
  - c. appointment of specific personnel to act as Dutch Analytics' contacts and ensure that these individuals have the appropriate level of skill to assume their responsibilities;



- 5.2 If Dutch Analytics provides Services on the Customer's premises, Customer shall:
- a. provide access to these premises and provide suitable facilities, such as work space and supplies;
  - b. provide access to necessary physical and logical access to systems, specifically the systems to be supported as part of the Services, including where applicable a dedicated network communication link and any system login information that may be required;
  - c. provide any authorizations, decisions and/or investigation of problems required by Dutch Analytics to fulfil its obligations under the Agreement, without delay and in due time; and
- 5.3 Customer ensures that such premises and facilities as set out in clause 5.2 comply with all legal and other applicable work place requirements. The Customer shall provide to Dutch Analytics and all employees and/or other contractors deployed at any of the premises with information of all applicable premises' safety and security rules.
- 5.4 Customer shall prepare any installation site and/or Customer environment in accordance with Dutch Analytics' instructions to ensure that any equipment is properly configured as required and operates in accordance with the relevant manufacturer's specifications. Customer is responsible for any costs associated with preparation of the installation site and Customer environment. If Customer fails to make any preparations required herein and this failure causes Dutch Analytics to incur costs during the Implementation or provision of the Services then Dutch Analytics reserves the right to invoice Customer for such costs.
- 5.5 Customer acknowledges that modifications or changes to the Customer environment may cause interoperability problems or malfunctions of the Services and/or the Customer environment. Customer shall inform Dutch Analytics of any such changes and/or modifications immediately after Customer is or has been made aware thereof. Customer acknowledges that it is Customer's responsibility to ensure that the Customer environment is interoperable with the Services.
- 5.6 Customer shall use the Services in accordance with the laws applicable to Customer.
- 5.7 Only Authorized Users are entitled to access and use the Services, provided that these Authorized Users comply with the Agreement. Customer shall not permit access to the Services by anyone other than Authorized Users.
- 5.8 Customer will not: (i) modify or create derivative works based on the Services or attempt to decode, decipher, decompile, disassemble, or reverse engineer the Services or any Deliverables; and (ii) sell, resell, distribute, license or sublicense the Services.
- 5.9 Customer is solely responsible for purchasing, installing and maintaining, at Customer's expense, any Third Party Products required for Customer to use the Services. Dutch Analytics is not liable for any such Third Party Products.
- 6 PRICE AND PAYMENT**
- 6.1 The applicable Fees for the Services are set out in the Agreement.
- 6.2 Dutch Analytics shall invoice, and Customer shall pay the Fees to Dutch Analytics in conformity with the Proposal.
- 6.3 All sums payable under the Agreement, shall be paid in EURO.
- 6.4 The Fees are exclusive of value added tax (VAT).
- 6.5 Customer shall pay the invoice in full within thirty (30) calendar days of the date of the invoice ("Due Date"). Payment shall be made to the bank account nominated in the invoice of Dutch Analytics. The Due Date is considered to be a strict deadline (*fatale termijn*). In case of non-payment and after expiration of the Due Date, ten (10)% interest shall start to accrue monthly on the outstanding undisputed invoice amount from the date after the Due Date.



- 6.6 Dutch Analytics shall invoice, and Customer shall pay the then current hourly rates for the provision of Additional Services by Dutch Analytics.
- 6.7 Each contract year, Dutch Analytics may increase the Fees per: (i) then current Labour Price Index (where 2015 = 100) as provided by the Netherlands Bureau for Economic Policy Analysis (CPB) or (ii) with five (5) percent, whichever is higher.
- 6.8 Customer may not set-off (*verrekenen*) any outstanding payments due by Dutch Analytics with any Fees or other payments to Dutch Analytics.
- 6.9 In case of non-payment by Customer of invoices for which the Due Date has lapsed, Dutch Analytics is entitled to suspend (*opschorten*) the provision of any Services to the Customer and/or to terminate the Agreement for cause, provided that Dutch Analytics has sent a payment reminder to Customer offering the Customer an extended payment term of 15 calendar days and the Customer failed to make the payment within this additional payment term.

## 7 IMPLEMENTATION

- 7.1 Dutch Analytics shall carry out the Implementation of the Services as set out in the Proposal.

## 8 CONFIDENTIAL INFORMATION

- 8.1 Neither Party shall use the other Party's Confidential Information other than in the exercise and performance of its rights and obligations under the Agreement.
- 8.2 The restrictions imposed by clause 8.1 shall not apply to the disclosure of any Confidential Information which:
- follows from Customer's instructions;
  - is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 8;
  - before any negotiations or discussions leading to an agreement was already known by the receiving Party and was obtained or acquired in circumstances under which the receiving Party

was not bound by any form of confidentiality obligation;

- is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing Party to limit disclosure to such authorised person to the extent necessary); or
- is required by law or for the purposes of legal proceedings.

- 8.3 Each Party shall notify the other Party if it (or any of its employees connected with the performance of the Agreement) becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, at that other Party's reasonable cost, in connection with any enforcement proceedings which that other Party may elect to bring against any person.

- 8.4 At the request of the other Party, once the Agreement terminates, the Party holding the Confidential Information of the other Party shall return or destroy all the Confidential Information of the other Party in its possession within thirty (30) working days, unless the Party is required to retain Confidential Information by applicable law. In the event of the destruction of the Confidential Information, the Party holding the Confidential Information of the other Party shall confirm to the other Party in writing that such destruction has taken place.

## 9 INTELLECTUAL PROPERTY RIGHTS

### 9.1 *General*

- 9.1.1 Except as explicitly agreed otherwise, nothing in the Agreement shall constitute a transfer, assignment, license or other way of granting any Party any right or interest in an IP Right of any Party.

### 9.2 *Customer Materials and Data*

- 9.2.1 All IP Rights in Customer Materials and Data shall remain vested in Customer.



9.2.2 For the duration of the Agreement, Customer grants Dutch Analytics a royalty-free, non-exclusive license to:

- a. use all required Customer Materials and Data for the sole purpose of providing the Services to Customer; and
- b. permit Affiliates of Dutch Analytics and/or Sub-Contractors the same as referred to in the previous clause 9.2.2a;

as is agreed under the Agreement and for as long as is required for Dutch Analytics to perform its obligations under the Agreement.

### 9.3 *Dutch Analytics Materials*

9.3.1 Dutch Analytics shall retain all IP Rights in Dutch Analytics Materials, including any modifications made to them by or on behalf of a Party under the Agreement.

9.3.2 If Parties did not agree to specific license terms in the Proposal, Dutch Analytics grants, upon payment in full of the associated Fees, Customer a limited, non-exclusive, revocable, non-transferable and non-sub licensable license to use the Dutch Analytics Materials for its internal business purposes during the term of the Agreement.

### 9.4 *Deliverables*

9.4.1 All IP Rights in Deliverables shall vest in Dutch Analytics. If Parties did not agree to specific license terms in the Proposal, Dutch Analytics grants, upon payment in full of the associated Fees, Customer a limited, non-exclusive, revocable, non-transferable and non-sub licensable license to use, copy and distribute the Deliverables for execution of the Agreement, for its internal business purposes during the term of the Agreement.

9.4.2 To the extent required, Customer hereby irrevocably assigns and delivers (*draagt over en levert*) – in the broadest possible sense – all IP Rights in the Deliverables on creation to Dutch Analytics with full title guarantee, at no cost to Dutch Analytics and without imposing any further conditions. Customer shall provide assistance and execute all documents necessary to perfect Dutch Analytics' title to the Deliverables under this clause

on first request by Dutch Analytics. Customer hereby waives all its moral rights (*persoonlijkheidsrechten*), in accordance with article 25 of the Dutch Copyright Act (*Auteurswet*) or any comparable rights under any other copy rights act, with respect to the IP Rights in the Deliverables.

9.4.3 If there are Third Party IP Rights used by Dutch Analytics which are embedded in the Deliverables, Dutch Analytics shall identify these and Customer's right to use such Third Party IP Rights is governed by the license terms of the owner or licensor of the Third Party IP Rights.

### 9.5 *IP Rights indemnification*

9.5.1 Customer shall be liable for and shall indemnify and hold Dutch Analytics harmless against all losses, liability and/or claims, including but not limited to all direct and reasonable costs and expenses, reasonable attorney's fees, suffered or incurred as a result of any actual or alleged infringement of any IP Right in connection with use of or modifications to any Materials and/or Data other than Dutch Analytics Materials used in provision of the Services.

9.5.2 Dutch Analytics indemnifies Customer against all loss or damages suffered or incurred as a result of any actual infringement of any IP Right to any Dutch Analytics Materials in connection with the receipt of the Services, unless the infringement was caused by:

- a. modifications to Dutch Analytics Materials made by or on behalf of Customer without Dutch Analytics' prior written consent; or
- b. any use of Dutch Analytics Materials other than consistent with all applicable terms of use;
- c. Customer's failure to use corrections or enhancements made available by Dutch Analytics.

9.5.3 The indemnified Party shall:

- a. notify the indemnifying Party promptly after becoming aware of a claim;



- b. permit the indemnifying Party to exclusively conduct any litigation and negotiations to settle a claim, giving the indemnifying Party reasonable assistance at the indemnifying party's expense; and
- c. not make any admission in respect of a claim without the consent of the indemnifying Party;
- d. provided that the indemnifying Party shall consult in good faith with the indemnified Party on an ongoing basis in respect of all such litigation and negotiations, and shall at all times avoid any interruption of the Services.

## 10 DATA SECURITY AND DATA PROCESSING

### 10.1 General

- 10.1.1 Where Dutch Analytics processes Personal Data pursuant to the Agreement, Dutch Analytics shall qualify as a "data processor" as defined in the GDPR.

This clause 10 constitutes a data processing agreement as required under article 28 GDPR.

- 10.1.2 The Parties shall duly observe all its respective obligations under the applicable data protection laws. Customer warrants (*garandeert*) that it has lawfully obtained the Personal Data it provides to Dutch Analytics in order for Dutch Analytics to provide the Services and that Customer will indemnify and hold Dutch Analytics harmless from and against all claims for damages and/or penalties brought against Dutch Analytics in relation to its use of the Services and/or Personal Data or its violation of applicable data protection laws.

### 10.2 Obligations Dutch Analytics

#### 10.2.1 Dutch Analytics shall:

- a. not process any Personal Data other than in accordance with Customer's documented instructions which are to process Personal Data only to the extent necessary to carry out the Services for the purposes as further set out in the Proposal;

- b. ensure that the only persons able to process Personal Data in Dutch Analytics' or Sub-Processor's possession, custody or control in the performance of the Services are Dutch Analytics' or Sub-Processor's employees who need to process such Personal Data in order to carry out their duties in connection with the Services, which persons shall be bound by confidentiality obligations;

- c. provide reasonable assistance to ensure that Customer is able to fulfil its legal obligations when a Data Subject exercises his or her rights under applicable data protection laws, provided that any costs to Dutch Analytics for providing such reasonable assistance to Customer will be borne by Customer;

- d. provide reasonable assistance to the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR, taking into account the nature of processing and the information available to the processor, provided that any costs to Dutch Analytics for providing such reasonable assistance to Customer will be borne by Customer;

- e. inform the Customer if, in Dutch Analytics' opinion, an instruction infringes the GDPR or other applicable data protection laws;

- f. not process or transfer any Personal Data outside the European Economic Area, without the prior written consent of Customer, which consent shall not be unreasonably withheld.

### 10.3 Sub-Processor

- 10.3.1 Dutch Analytics may engage one or more Sub-Processors provided it enters into sub-processing agreements with the relevant Sub-Processors which requires the Sub-Processor to abide by similar obligations as Dutch Analytics under this clause 10. Customer consents to the engagement of the Sub-Processors listed in the Proposal or an annex thereto for the provision of the Services.

- 10.3.2 Dutch Analytics may replace a Sub Processor at any time and Dutch Analytics will notify Customer of such replacement. If Customer does not object to



such replacement within thirty (30) days and on reasonable grounds, consent to such replacement is considered granted. Dutch Analytics shall, and shall procure that its Sub-Contractors, at all times co-operate with any reasonable audit performed under this clause 10 at Customer's sole expense.

#### 10.4 *Security*

10.4.1 Dutch Analytics shall implement appropriate technical and organisational measures against accidental destruction, loss, alteration, disclosure or access from or to Customer's Data, including Customer's Personal Data or any form of unlawful processing in accordance with article 32 GDPR.

#### 10.5 *Security Breach*

10.5.1 Dutch Analytics shall notify Customer without undue delay after becoming aware of the occurrence of a Security Breach.

10.5.2 The notification referred to in clause 10.5.1 shall at least:

- a. specify the time, date and location of the Security Breach and a detailed account of the Security Breach, including a characterization of affected and potentially affected Personal Data and Data Subjects;
- b. include an assessment of the likely consequences of the Security Breach; and
- c. include measures taken or to be taken to mitigate the consequences of the Security Breach.

10.5.3 If a Security Breach occurs, Dutch Analytics shall further:

- a. provide all other information and assistance reasonably required by Customer in order to comply with Customer's obligations related to a Security Breach under applicable data protection laws, provided that any costs to Dutch Analytics for providing such reasonable assistance to Customer will be borne by Customer;
- b. keep Customer apprised of any additional information that is related to the Security

Breach that it becomes aware of after sending the notification referred to in clause 10.5.1;

- c. unless Dutch Analytics is compelled by applicable data protection laws, (i) not inform any Third Party of such Security Breach without Customer's prior written consent and (ii) obtain Customer's approval regarding the content of such disclosure to minimize the adverse impact to Customer; and
- d. ascertain whether a Security Breach may be repeated or is ongoing and Dutch Analytics will undertake immediate action to prevent a repeat occurrence of the breach.

#### 10.6 *Audit*

10.6.1 Insofar necessary for Customer to comply with applicable law, Dutch Analytics shall allow Customer and any auditors of Customer or the relevant supervising authority to conduct an audit once per calendar year to assess compliance with Dutch Analytics' obligations set out in this clause 10. Customer shall bear the costs relating to such audits.

10.6.2 In no event is Dutch Analytics required to grant aforementioned auditors access to Personal Data or Confidential Information from Third Parties.

10.6.3 The types of personal data and categories of data subjects shall be specified in the Proposal.

### 11 **CHANGE**

11.1 Customer may request a Change from time to time. If Customer decides to propose a Change, Customer shall notify Dutch Analytics of its request for a Change in writing and describe the proposed Change, as well as the grounds for needing such Change.

11.2 Dutch Analytics shall upon receipt of such notification, assess availability, feasibility and/or consequences for, inter alia, the Agreement and the Services that may ensue from the requested Change.

11.3 If after such assessment, Dutch Analytics agrees to make a proposal for the requested Change, then



Dutch Analytics shall complete an appropriate change control note setting out in writing an offer to amend the Agreement.

- 11.4 If signed by both Parties, said offer will constitute an amendment to the Agreement, which will from there on forward be an integral part of the Agreement. Until an unmodified offer for a Change by Dutch Analytics has been accepted by Customer in writing, Dutch Analytics shall continue to perform the Services unchanged.

## 12 ESCALATION GOVERNANCE

- 12.1 Any disputes regarding a breach in the performance of either Party's obligations under the Agreement which cannot be resolved within five (5) working days, may be referred by either Party for resolution in accordance with the escalation procedure set forth in this clause 12.

- 12.2 If there is a dispute which is not resolved within five (5) working days, the Party shall formally notify the other Party in writing that there is a dispute and that the escalation procedure is to be initiated.

- 12.3 After receipt of such notification as referred to in clause 12.3, the project team lead's of each Party will discuss the dispute and try to find a suitable solution.

- 12.4 In case the project team leads are not able to find a suitable solution within fourteen (14) calendar days, they will escalate the dispute to the board of directors of each Party in order to have them discuss the dispute and try and find a suitable solution.

- 12.5 In case the board of directors of each Party are not able to find a suitable solution within fourteen (14) calendar days, the escalation procedure will be exhausted.

## 13 LIABILITY

- 13.1 Where Dutch Analytics is liable, then irrespective of the grounds for liability, including indemnities and/or breached warranty obligations, it shall have no obligation to compensate for Indirect and

Consequential Damages and any obligation to compensate shall be limited to Direct Damages only and subject to the limitations as set forth in clause 13.2.

- 13.2 Dutch Analytics' total aggregate liability under the Agreement per calendar year for Direct Damages, irrespective of the grounds for liability including indemnities and breached warranties, for any and all events will be limited to the lower amount of: (i) EUR 10.000 (ten thousand Euro's) or; (ii) 50% of the Fees paid under the Agreement in the same calendar year.

- 13.3 Clause 13.2 is not applicable to liability arising in connection with (i) willful default or (ii) gross negligence.

- 13.4 Each claim for compensation or damages of Customer arising out of or in connection with the Agreement, regardless of its nature, grounds or terms, lapses due to the expiry of a period of one (1) year after the loss or damages occurred, or after the date that the Customer became aware of it.

## 14 DURATION AND TERMINATION

- 14.1 The Agreement shall enter into force on the date of acceptance of the Proposal by Customer.

- 14.2 The Agreement is entered into for the Initial Term, unless it is terminated by either of the Parties as set out in this clause 14. Upon expiration of the Initial Term, the Agreement shall be automatically renewed for consecutive terms equal to one (1) month (each a "Renewal Term") unless either Party terminates (*opzeggen*) the Agreement effective at the end of the Initial Term or a Renewal Term subject to a one (1) month written notice period.

- 14.3 After exhaustion of the Escalation Procedure, each Party may terminate the Agreement for cause (*ontbinden*) as permitted under the Dutch Civil Code.

- 14.4 Each Party may immediately terminate the Agreement for cause (*ontbinden*) by written notice to the other Party, if any action or proceedings under any bankruptcy or insolvency law are taken





- by or against the other Party, or if any event analogous to any of the foregoing under the law of any jurisdiction has occurred in respect of the defaulting Party.
- 14.5 Irrespective of the grounds for termination, termination shall neither affect any of Customer's payment obligations accrued until termination takes effect, nor shall termination affect payments made by Customer prior to such termination.
- 14.6 Termination shall not affect clauses which by their nature are intended to continue to apply after termination, amongst these clauses are: 7.1 (Confidentiality), 9 (Intellectual Property Rights), 13 (Liability) and 17 (Governing Law and Jurisdiction).
- 15 FORCE MAJEURE**
- 15.1 In case of Force Majeure Dutch Analytics may suspend the provision of the Services and cannot be held liable.
- 15.2 If the period of Force Majeure lasts longer than three (3) calendar months, Dutch Analytics may terminate (*opzeggen*) the Agreement in whole or in part without being liable for any compensation or damages.
- 16 MISCELLANEOUS**
- 16.1 The rights and obligations of Customer hereunder cannot be assigned without Dutch Analytics' prior written consent. This clause expressly intends to have effect on contract law and property law (*goederenrechtelijke werking*).
- 16.2 In relation to Dutch Analytics' obligations under the Agreement:
- a. any and all terms and dates as set out in the Agreement shall be estimates only and time for performance by Dutch Analytics shall not be considered to be strict deadlines (*fatale termijnen*); and
  - b. all obligations shall be considered to be an efforts obligations (*inspanningsverplichtingen*), unless Dutch Analytics specifically agreed to achieve a specific result (*resultaatsverbintenis*) in writing.
- 16.3 Dutch Analytics is entitled to sub contract part of the Services and/or its obligations under the Agreement to a Sub-Contractor.
- 16.4 No provision of the Services creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority to bind, to contract in the name of, or to create a liability for the other party in any way or for any purpose.
- 16.5 Customer is not entitled to suspend (*opschorten*) performance of any of its obligations under the Agreement.
- 16.6 If any provision of the Agreement (or part of a provision) is found by any court or administrative body or competent jurisdiction to be invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the other provisions shall remain in force.
- 16.7 Any variation or amendment to the Agreement must be in writing and signed by or on behalf of Parties.
- 17 GOVERNING LAW AND JURISDICTION**
- 17.1 The Agreement shall be governed by and construed in accordance with the laws of the Netherlands. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 17.2 After exhaustion of the Escalation Procedure, the competent court of The Hague (location The Hague) shall have exclusive jurisdiction over all disputes, controversies or claims between the Parties arising in connection with the Agreement.
- 17.3 Parties retain the right to obtain preliminary relief, by means of summary proceedings (*kort geding*) at all time and without exhaustion of the Escalation Procedure.



## DEFINITIONS

**Additional Services** means all services other than Services provided to Customer by Dutch Analytics in relation to the provision of the Services under the Agreement;

**Affiliate** means in relation to an entity, another entity Controlling, Controlled by, or under common Control with that entity;

**Agreement** means the agreement entered into between Dutch Analytics and the Customer regarding the provision of Services by Dutch Analytics, consisting of the Proposal (including schedules, appendices, annexes and/or any other documents specified therein) and these Terms and Conditions;

**Annex** means every annex, schedule, appendix and/or other document, as attached to these Terms and Conditions and/or the Agreement, constituting an integral part of the Agreement;

**Authorized User** means any employee, agent, or representative of the Customer that is registered with Dutch Analytics and has been authorized under the Agreement to access and use the Services for the Customer's internal business purposes in accordance with the Agreement;

**Change** means modification of the scope of the Services and/or Service Levels;

**Confidential Information** means information of commercial value, in whatever form or medium, which has been kept confidential by the Party from whom the information originates including, without limitation, (i) information relating to the commercial or technical know-how, technology, (ii) information pertaining to business operations and strategies, (iii) information pertaining to customers, pricing and marketing of a Party, (iv) the terms of the Agreement and (v) Dutch Analytics Materials;

**Control** means the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of an entity ordinarily having voting rights, or the equivalent right under contract to control management decisions with regard to relevant subjects;

**Customer** means the legal entity and/or its Affiliates designated as such in the Proposal;

**Customer Materials and Data** means Materials and/or Data of which the IP Rights are held by Customer;

**Data** means all data and information including Personal Data provided by Customer in connection with the use of the Services and/or all data obtained, developed, produced or processed by Dutch Analytics or its Sub-Contractor in providing the Services;

**Deliverables** means the agreed work products specifically developed by Dutch Analytics for Customer under the Agreement, which are defined as such in the Proposal;

**Direct Damages** means the reasonable costs in order to correct defects in the Services;

**Dutch Analytics** means Dutch Analytics B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), incorporated under the laws of the Netherlands, with a registered office at Wilhelmina van Pruysenweg 104, (2595 AN) The Hague, the Netherlands, registered with the Dutch Chamber of Commerce (*Kamer van Koophandel*) under number 66849381, or any of Dutch Analytics' Affiliates designated in the Proposal as such, but in no event both Dutch Analytics and such Affiliate;

**Dutch Analytics Materials** means any Materials developed by or on behalf of Dutch Analytics (including any of its Affiliates) and/ or its Sub Contractors prior to or independent of or outside the scope of the Agreement or otherwise owned by any of them and used by Dutch Analytics in connection with the provision of the Services or any improvements, enhancements, modifications or customizations made thereto as part of or in the courses of performing the Services;

**Due Date** has the meaning as set out in clause 6.5;

**Escalation Governance** means the escalation governance procedure as set out clause 12;

**Fees** means the payable fees for the Services as set out in the Proposal;

**Force Majeure** has the meaning as set out in article 6:75 Dutch Civil Code, and includes but is not limited military actions, government actions, failure or breakdown of



telecommunication and internet connections, delay or non-performance of obligations by Sub-Contractors and strikes of personnel;

**GDPR** means the General Data Protection Regulation (EU) 2016/679;

**Good Industry Practice** means in relation to the performance by Dutch Analytics of Services, and any part thereof, Dutch Analytics' reasonable effort to provide the Services with such skill, diligence, prudence and foresight which would reasonably be expected from another service provider in the same industry as Dutch Analytics;

**Indirect and Consequential Damages** means all indirect and consequential loss, including loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of, damage to or corruption of data, loss of goodwill, loss of reputation, loss resulting from the use of the Services, software, (analysis)models and scripts used in provision of the Services and/or the results generated when using the Services, data and errors related to Customer Materials and any other damages that are not Direct Damages;

**Initial Term** means the initial term as set out in the Proposal;

**Implementation** means the implementation of the Services;

**IP Right(s)** means patents, trade marks, service marks, logos, trade names, internet domain names, rights in designs, copyright (including rights to computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**Materials** means software, documents, manuals, equipment, servers, infrastructure, databases, programming tools, (analysis)models, methodology, reports, designs, drawings, trade secrets and trademarks, machine readable text and files (both hard copy and electronic) and all other documentation and information;

**Open Source Software** means software of which the source code is available to the general public for use and/or modification from its original design free of charge;

**Party or Parties** means Dutch Analytics and/or Customer;

**Personal Data** means any information relating to an identified or identifiable natural person ("Data Subject") as set out in article 4(1) GDPR;

**Platform** means the Dutch Analytics' specific platform referred to as UbiOps which serves to host data science models;

**Proposal** means Dutch Analytics' proposal for provision of the Services, including any attachments, schedules or appendices thereto;

**Renewal Term** has the meaning as defined in clause 14.2;

**SaaS Services** means the SaaS services, Implementation services and other services as set out in the Proposal;

**Service(s)** means the SaaS Services provided by Dutch Analytics to Customer;

**Service Level** means the performance standards associated with specific Services, where applicable and agreed as set out in the Proposal;

**Sub-Contractor** means any person or entity to whom Dutch Analytics sub-contracts the performance of any of its obligations under the Agreement;

**Sub-Processor** means any data processor as defined in the GDPR engaged by Dutch Analytics in relation to the Agreement;

**Terms and Conditions** means these SaaS Terms and Conditions, including any modifications thereto;

**Third Party** means a legal entity, company or person(s) that is not, (i) a Party to the Agreement, and (ii) is not an Affiliate of a Party;

**Third Party Products** means any hardware, software or other services offer by a Third Party.