



## General Terms and Conditions

### UbiOps by Dutch Analytics B.V.

Our General Terms and Conditions are split up in separate modules. The applicability depends on the Service(s) you make use of.

#### MODULE A - GENERAL

#### **1 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 1.
- 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.

- 3.5 If at the request of Customer or at its own request, with the prior written consent of Customer, Dutch Analytics has performed any work or performed any other performance that goes beyond the content or scope of the Agreement, such work or performance shall be paid for by Customer in accordance with the usual rates of Dutch Analytics.

#### **4 RIGHT OF WITHDRAWAL**

- 4.1 The Customer acting as a consumer may dissolve a distance contract or a contract concluded outside the sales area without giving reasons until a period of 14 (fourteen) days has passed, after:

- a. In case of a contract for the provision of services: the day the contract is concluded. This right of withdrawal expires when the performance of the service, with the consent of the consumer, has begun before the end of this cooling-off period.

- 4.2 The right of withdrawal does not apply if Customer is not a Consumer.

- 4.3 The risk and burden of proof for the correct and timely exercise of the right of withdrawal lies with Customer.

*Extension of right of withdrawal for products in case of non-informed right of withdrawal.*



4.4 If Dutch Analytics has not provided Customer with the legally required information about the right of withdrawal or the model form for withdrawal, the cooling-off period will expire twelve months after the end of the original cooling-off period determined in accordance with the previous paragraphs of this article.

4.5 If Dutch Analytics has provided the information referred to in the previous paragraph to Customer within twelve months after the start date of the original cooling-off period, the cooling-off period will expire 30 days after the day on which Customer received this information.

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

5.1 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.

5.2 The Services provided by Dutch Analytics are further specified in an Annex to the Proposal.

5.3 Dutch Analytics shall use best efforts to provide the Services in accordance with the Service Levels, to the extent specified in the service level agreement which forms an attachment to the Proposal.

5.4 Dutch Analytics is entitled to: (i) use Open Source Software in the Software; (ii) oblige Customer to update, upgrade and/or provide new versions of the Software at any time in its sole discretion, unless agreed otherwise in the Proposal.

5.5 Dutch Analytics reserves the right not to implement an Agreement, for example if it has reasonable doubt or information that the Customer will not be able to meet its (financial) obligations.

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

6.1 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;

6.2 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

6.3 Customer ensures that such premises and facilities as set out in clause 6.2 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.

6.4 Customer is responsible for an adequate IT environment, including but not limited to the necessary hardware, software and internet-connections, in order to facilitate the proper functioning of the Software. 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.
- 6.5 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.
- 6.6 Customer shall use the Services in accordance with the laws applicable to Customer.
- 6.7 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.
- 6.8 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.
- 6.9 Customer is solely responsible for purchasing, installing and maintaining, at Client's expense, any Third Party Products required for Customer to use the Services. Dutch Analytics is not liable for any such Third Party Products.
- 7 ACCEPTABLE AND FAIR USE**
- 7.1 Services provided by us may only be used for lawful purposes. As a user, you agree to comply with all applicable laws, rules and regulations in connection with use of the services provided by Dutch Analytics (UbiOps).
- 7.2 It is prohibited to use the services to violate the legal rights of others or to engage in any illegal or unlawful activity.
- 7.3 Customer is responsible and liable for all activity originating from its account or any data transmitted using the services related to its account.
- 7.4 Customer will not engage in any activity to intentionally interfere with the use of the services provided by Dutch Analytics, its affiliated software and/or websites.
- 7.5 It is prohibited to intentionally distribute viruses, worms, Trojan horses and/or any other items of destructive or deceptive nature.
- 7.6 It is prohibited to engage in any activity aimed at gaining unauthorized access to data or to breach the security of any service, network, server or other device related to the services.
- 7.7 Customer will not create services, websites or content that pretend to be part of Dutch Analytics or its affiliates.
- 7.8 All Agreements with Dutch Analytics are subject to a fair use policy. Use of the services must be reasonable and abuse is not permitted.
- 7.9 Customer must be a natural person. Accounts registered by robots or other automated methods are not allowed.
- 7.10 Customer must provide his/her own personal information during the sign-up process. Login details are strictly personal and may not be shared with Third Parties.
- 7.11 Customer is at all times responsible for maintaining the confidentiality of user name and password. Dutch Analytics cannot be held responsible for this.
- 7.12 Customer will not use any manual or automated means to circumvent or avoid any use limitations placed on the services.
- 7.13 Upon violation of any of the provisions as set out in this clause 7, Dutch Analytics reserves the right to block Customer's account and/or terminate the Agreement and access to the services at any time



## 8 PRICE AND PAYMENT

- 8.1 The applicable Fees for the Services are set out in the Agreement.
- 8.2 Dutch Analytics shall invoice, and Customer shall pay the Fees to Dutch Analytics in conformity with the Proposal.
- 8.3 All sums payable under the Agreement, shall be paid in EURO.
- 8.4 The Fees are exclusive of value added tax (VAT).
- 8.5 Dutch Analytics shall invoice, and Customer shall pay the then current hourly rates for the provision of Additional Services by Dutch Analytics.
- 8.6 Dutch Analytics reserves the right to apply an adjustment for the inflation once a year..
- 8.7 The agreed amounts are based on cost-determining factors at the time of the offer. Dutch Analytics reserves the right three months after the conclusion of the Agreement to pass on to the Customer any changes in costs-determining factors, on which Dutch Analytics cannot reasonably exert influence, such as increasing excise duties, social security contributions, insurance proceeds or sales tax, up to a maximum of 20% of the original amount.
- 8.8 Customer may not set-off (*verrekenen*) any outstanding payments due by Dutch Analytics with any Fees or other payments to Dutch Analytics.
- 8.9 Unless set out otherwise in the Proposal, 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.
- 8.10 In case the Customer has left two installments unpaid, Dutch Analytics is entitled to block the Customer's account. Dutch Analytics does not owe

any compensation to Customer for blocking the account. Dutch Analytics is also entitled to dissolve the Agreement.

## 9 IMPLEMENTATION

- 9.1 Dutch Analytics shall carry out the Implementation of the Services when set out in the Proposal.

## 10 CONFIDENTIAL INFORMATION

- 10.1 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.
- 10.2 The restrictions imposed by clause 10.1 shall not apply to the disclosure of any Confidential Information which:
  - a. follows from Customer's instructions;
  - b. is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 10;
  - c. 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;
  - d. 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
  - e. is required by law or for the purposes of legal proceedings.
- 10.3 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.

- 10.4 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.

## 11 INTELLECTUAL PROPERTY RIGHTS

### 11.1 General

- 11.1.1 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.

### 11.2 Customer Materials and Data

- 11.2.1 All IP Rights in Customer Materials and Data shall remain vested in Customer.
- 11.2.2 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 11.2.2a;
- as is agreed under the Agreement and for as long as is required for Dutch Analytics to perform its obligations under the Agreement.

### 11.3 Dutch Analytics Materials

- 11.3.1 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.

- 11.3.2 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.

### 11.4 Deliverables

- 11.4.1 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.

- 11.4.2 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.

- 11.4.3 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.

### 11.5 IP Rights indemnification

- 11.5.1 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.

11.5.2 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.

11.5.3 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 an 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.

## 12 DATA SECURITY AND DATA PROCESSING

### 12.1 General

12.1.1 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 12 constitutes a data processing agreement as required under article 28 GDPR.

12.1.2 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.

### 12.2 Obligations Dutch Analytics

12.2.1 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.

### 12.3 *Sub-Processor*

12.3.1 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 12. Customer consents to the engagement of the Sub-Processors listed in the Proposal or an Annex thereto for the provision of the Services.

12.3.2 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 12 at Customer's sole expense.

### 12.4 *Security*

12.4.1 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.

### 12.5 *Security Breach*

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

12.5.2 The notification referred to in clause 12.5.1 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.

12.5.3 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 12.5.1;
- 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.

### 12.6 *Audit*

12.6.1 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 12. Customer shall bear the costs relating to such audits.





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

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

### **13 CHANGE**

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 Dutch Analytics is entitled to change the (non-)technical facilities of its Services. Any change which in the reasonable opinion of Dutch Analytics requires a substantial, non-temporary adjustment on the part of the Customer will be communicated to the Customer as soon as possible. The Customer cannot claim any compensation or damages.

### **14 ESCALATION GOVERNANCE**

14.1 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 14.

14.2 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.

14.3 After receipt of such notification as referred to in clause 14.3, the project team lead's of each Party will discuss the dispute and try to find a suitable solution.

14.4 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.

14.5 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.

### **15 LIABILITY**

*In case Customer is a Consumer:*

15.1 The total liability of Dutch Analytics shall be limited to compensation for damages up to the amount of the fee (excluding VAT) stipulated for that agreement. In no event shall the total compensation for damages exceed the amount to be paid out by the liability insurance of Dutch Analytics.

15.2 If the agreement is a continuing performance agreement with a term of more than six months, the fee stipulated for that agreement will be set at the total of fees (excluding VAT) for the past six months prior to the event causing the damage.

15.3 Not limited is the liability of Dutch Analytics for any damage that is the result of intent or conscious recklessness on the part of Dutch Analytics.

*In case the Customer is acting in the course of a profession or business:*

15.4 Dutch Analytics shall not be liable for any indirect or direct loss. Not excluded is the liability of Dutch





Analytics for any damage caused by intent or conscious recklessness on the part of Dutch Analytics.

15.5 If Dutch Analytics is nevertheless liable for any direct damage, the total liability of Dutch Analytics shall be limited to compensation of damage up to the amount of the fee (excluding VAT) stipulated for that agreement.

15.6 The amount of compensation will never exceed the amount paid out by the liability insurance.

15.7 If the agreement is a continuing performance contract with a term of more than six months, the fee stipulated for that contract shall be set at the total of the fees (excluding VAT) for the past six months.

15.8 Direct damages should be taken to mean:

- a. Reasonable costs that the Customer would have to incur to have the performance of Dutch Analytics comply with the agreement; however, this replacement damage shall not be compensated if the agreement is dissolved by or at the suit of the Customer;
- b. Reasonable costs incurred in determining the cause and extent of the damage insofar as the determination relates to damage within the meaning of these Terms and Conditions;
- c. Reasonable costs incurred to prevent or limit damage as far as Customer proves that these costs have led to limitation of damage within the meaning of these terms and conditions.

15.9 The Customer shall indemnify Dutch Analytics against any claims by Third Parties that may suffer damage in connection with the performance of the Agreement.

*General provisions regarding liability:*

15.10 It is always a condition for the existence of any right to compensation that the Customer reports the loss to Dutch Analytics in writing as soon as possible after it arises. Any claim for compensation against Dutch Analytics lapses by the mere expiry of 12 (twelve) months after the claim arises.

15.11 Dutch Analytics is not liable for any damage caused by helpers as referred to in Article 6:76 Dutch Civil Code.

15.12 Dutch Analytics is not liable for any damage of any kind caused by the fact that Dutch Analytics has relied on incorrect and/or incomplete data provided by the Customer.

## **16 DURATION AND TERMINATION**

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

16.2 The Agreement is entered into for the Initial Term, unless it is terminated by either of the Parties as set out in this clause 16. 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.

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

16.4 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.

16.5 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.

16.6 If Customer fails to fulfil one or more of its obligations, fails to do so on time or properly, is declared bankrupt, applies for (temporary) suspension of payments and/or deferral of payments, proceeds to liquidate its business, as well as if its assets are seized in whole or in part,



- Dutch Analytics has the right to suspend the execution of the Agreement or to terminate and/or dissolve the Agreement in whole or in part by means of a written statement ipso jure and without prior notice of default, all this at its own discretion and always without prejudice to any of its rights to compensation for costs, damages and interest.
- 16.7 If the Agreement is terminated on the grounds of force majeure, Dutch Analytics shall be entitled to payment for the hours already worked or the investments already made at the time of termination of the agreement.
- 16.8 Termination shall not affect clauses which by their nature are intended to continue to apply after termination, amongst these clauses are: 9.1 (Confidentiality), 11 (Intellectual Property Rights), 15 (Liability) and 20 (Governing Law and Jurisdiction).
- 17 FORCE MAJEURE**
- 17.1 In case of Force Majeure Dutch Analytics may suspend the provision of the Services and cannot be held liable.
- 17.2 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.
- 18 MISCELLANEOUS**
- 18.1 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*).
- 18.2 In relation to Dutch Analytics' obligations under the Agreement:
- d. 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
- e. all obligations shall be considered to be an efforts obligations (*inspanningsverplichtingen*), unless Dutch Analytics specifically agreed to achieve a specific result (*resultaatsverbintenis*) in writing.
- 18.3 Dutch Analytics is entitled to sub contract part of the Services and/or its obligations under the Agreement to a Sub-Contractor.
- 18.4 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.
- 18.5 Customer is not entitled to suspend (*opschorten*) performance of any of its obligations under the Agreement.
- 18.6 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.
- 18.7 Any variation or amendment to the Agreement must be in writing and signed by or on behalf of Parties.
- 19 AMENDMENT OF GENERAL TERMS AND CONDITIONS**
- 19.1 Dutch Analytics is entitled to unilaterally amend or supplement these General Terms and Conditions. In this case Dutch Analytics will inform the Customer of any changes or additions in a timely manner.
- 19.2 There will be at least 30 (thirty) days between this notification and the entry into force of the amended or supplemented terms and conditions.
- 19.3 If the change gives Dutch Analytics the power to provide a performance which materially differs from the promised performance, Customer who is a consumer has the right to refuse the changed terms or to terminate the Agreement.



## 20 GOVERNING LAW AND JURISDICTION

- 20.1 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.
- 20.2 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.
- 20.3 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.

## MODULE B - ON-PREMISE SOFTWARE LICENSE

The provisions of Module B apply, in addition to the provisions of Module A, if there is a on-premise software license.

## 21 ON-PREMISE SOFTWARE LICENSE

- 21.1 If the services agreed upon in the Proposal contain an On-Premise installation of UbiOps, Dutch Analytics hereby grants to Customer a limited, non-exclusive, non-transferable license, without the right to grant sub-licenses, to use the Software at the Location for its internal business purposes in accordance with and during the term of the Agreement, unless terminated pursuant to this Agreement.
- 21.2 The Software shall be used only by Customer's Authorized Users at the Location for Customer's business or organization.
- 21.3 Customer may not transfer the Software to a location other than the Location without Supplier's prior written consent in writing, which may be withheld by Supplier or conditional upon payment to Supplier of additional or revised Fees.
- 21.4 Upon termination or expiration of the Agreement, the license granted to Customer shall automatically terminate and Customer shall immediately though ultimately within two (2) business days: (i) de-install and permanently delete all Software including

copies thereof and Dutch Analytics Materials and (ii) provide Dutch Analytics with a written confirmation of such de-installment and deletion. Dutch Analytics shall not be obliged to provide Customer with assistance on or after expiry of the right of use with respect to data conversion or other transition services required by Customer.

## 22 DELIVERY

- 22.1 Dutch Analytics shall deliver the Software in a manner as set out in the Proposal.
- 22.2 Unless an acceptance procedure has been agreed and specified in the Proposal, the Software shall be delivered to Customer on an 'as is'-basis, in the condition that it is in at the time of delivery, therefore with possible errors and defects. Upon delivery, the Software is accepted by the Customer.
- 22.3 Customer is responsible for the installation of the Software on it's premises, unless the Proposal sets out otherwise.

## 23 CUSTOMER OBLIGATIONS AND RESTRICTIONS

- 23.1 Customer is responsible for making maximum (2) back-up copies of the Software and the data and records used in connection with the Software solely for internal business purposes, unless set forth otherwise in the Proposal.
- 23.2 Customer shall not alter or modify the Software in any way, nor permit the Software to be combined with any other programs to form a combined work.
- 23.3 Customer may not reverse engineer, decompile or otherwise attempt to discover the source code for the Software.
- 23.4 Customer shall not request, permit or authorize anyone other than Dutch Analytics to provide maintenance and support services in respect of the Software.
- 23.5 Customer shall provide Dutch Analytics, free of charge, with all information facilities and services reasonably required by Dutch Analytics to perform such services, including, but not limited, remote



access to the test environment and office accommodation.

## **24 DISCLAIMER**

- 24.1 Dutch Analytics does not guarantee that: (i) errors will be remedied; (ii) that the Software will work without interruption or errors; (iii) the Software will be fit for purpose.

## **MODULE C – MAINTENANCE AND SUPPORT**

The provisions of Module C apply, in addition to the provisions of Module A, if maintenance and support are involved.

## **25 MAINTENANCE AND SUPPORT**

- 25.1 Dutch Analytics shall not provide maintenance- and support services in relation to the Software, unless agreed otherwise in the Proposal.
- 25.2 If and when maintenance- and support services are agreed in the Proposal, Customer shall:
- a. make available to Dutch Analytics free of charge all information facilities and services reasonably required by Dutch Analytics to enable Dutch Analytics to perform these maintenance- and support Services, including without limitation remote access to the testing environment, the production environment and office accommodation;
  - b. co-operate fully with the Dutch Analytics' personnel in diagnosis of any errors or defects in the Software.

## **MODULE D – DEVELOPMENT OF SOFTWARE**

If development of software is involved, the provisions of Module D shall apply in addition to the provisions of Module A.

## **26 DEVELOPMENT OF SOFTWARE**

- 26.1 Dutch Analytics will not provide any Deliverables to Customer, unless otherwise agreed upon in the Proposal.

- 26.2 If and when Parties agree upon the delivery of specific software as part of the Deliverables ("**Software Deliverables**"), Customer shall provide Dutch Analytics with sufficient and accurate information regarding these Software Deliverables, including but not limited to technical and functional specification.

- 26.3 Unless an acceptance procedure has been agreed and specified in the Proposal, the Software Deliverables shall be delivered to Customer on an 'as is'-basis, in the condition that it is in at the time of delivery, therefore with possible errors and defects. Upon delivery, the Deliverables are accepted by the Customer.

- 26.4 Customer is responsible for the installation of the Software Deliverables, unless the Proposals sets out otherwise.

## **MODULE E – CONSULTANCY, TRAINING AND OTHER SERVICES**

If consultancy or training is involved, the provisions of Module E shall apply in addition to the provisions of Module A.

## **27 CONSULTANCY, TRAINING AND OTHER SERVICES**

- 27.1 Dutch Analytics will not provide consultancy-, training- and/or other services to Customer, unless agreed upon otherwise in the Proposal.
- 27.2 The Client shall provide a suitable training space and necessary facilities. The costs associated with this shall be at the expense of the Client.
- 27.3 If at the request of Customer or at its own request, with the prior written consent of Customer, Dutch Analytics has performed any work or performed any other performance that goes beyond the content or scope of the Agreement, such work or performance shall be paid for by Customer in accordance with the usual rates of Dutch Analytics.
- 27.4 Cancellation of a consultation or training is done by e-mail. The date of the email applies as the date of cancellation.



- 27.5 In case of cancellation up to 24 (twenty-four) hours before the start of the training or consultation Dutch Analytics is entitled to charge the full agreed amount for the training or consultation.
- 27.6 If Dutch Analytics deems that not enough persons have signed up for the training and/or consultation Dutch Analytics is entitled to cancel or reschedule the training and/or consultation.
- 27.7 If due to force majeure including but not limited to sickness absence, extreme weather conditions or power or network failures Dutch Analytics must cancel the training or the consultation then the Client shall not be entitled to any compensation.
- 27.8 Dutch Analytics is at all times entitled to make changes to the training and/or consultation.



## ANNEX 1: 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 use the Software 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;

**Cluster** means a set of nodes (virtual machines), with a single Kubernetes installation, in the Customer cloud environment, on which a single UbiOps instance is installed;

**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;

**Consumer** the Customer who is not acting in the course of a business or profession;

**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 Pruisenweg 35, (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 also acts under the registered trade name UbiOps;

**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 8.9;

**Escalation Governance** means the escalation governance procedure as set out clause 14;

**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 Software at Customer's premise;

**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, semiconductor 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;

**Location** means the location specified in the Proposal;

**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;

**On-Premise** means that UbiOps shall be located on a server managed by or on behalf of Customer;

**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 16.2;

**Service(s)** means the services as specified in the Proposal provided by Dutch Analytics to Customer, which may include but are not limited to the provision of the Platform-as-a-service, the provision a Software license, the development of software, maintenance services and support services, consultancy-, training- and other services;

**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;

**Software** means the software as specified in the Proposal which is licensed to Customer under the terms of the Agreement;

**Software Deliverables** has the meaning as set out in clause 26.2;

**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 General 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.

**UbiOps** means Dutch Analytics' hosting & management platform for data science models. for data science models. Dutch Analytics also acts under the officially registered trade name UbiOp;

**Usage Limits** means the maximum allowed of certain Usage Metric for a certain period as defined in the Proposal;

**Usage Metric** means one of the following concepts within UbiOps:

- **Organizations.** An organization is the entity that holds a single license or subscription to UbiOps. An organization can have multiple users and projects.
- **Projects.** A project is an entity within an Organization.
- **Users or Regular Users.** Regular users are individual user accounts linked to a single person's email address. An organization can have multiple users, as do projects.
- **Service Users.** Service users are artificial users which are related to API tokens for accessing the

UbiOps API. Service Users can be assigned roles just like normal users to specify their permissions.

- **Users.** Is defined as the total sum of Regular Users and Service Users, within an Organization.
- **Deployments.** Deployments are objects within UbiOps that serve a user's Python code. A model is a container that can receive requests to transform input data into output data.
- **Deployment versions.** Every deployment in UbiOps consists of one or more versions. Each version of the model can have different implementation, resource allocations or Python runtime, however they must have an identical data input and output specification in order for them to be used interchangeably.
- **Compute or Compute Credits.** Is defined as the total active time of a model version in seconds multiplied by its provisioned amount of RAM usage in Gigabytes within UbiOps. The total compute for a subscription constitutes of the cumulative amount of GB RAM x seconds for all deployment versions. Compute includes the (cold) start time, total uptime and shutdown time of a model version instance.