

Applied Insight

Effective April 24, 2020, V1.1

1. **** Definitions****. The following definitions shall apply to these terms and conditions ("this Agreement"):
 1. "AI" means Applied Insight
 2. "Aggregate Information" means data recorded by "SHIFT," the AI system in the course of providing Services that has been combined to show general demographic or similar trends or values without identifying individuals within the data.
 3. "AWS" means Amazon Web Services.
 4. "Documentation" means available functional specifications, reference manuals, user guides, and any other materials (if any) supplied by AI to Customer in written or machine-readable form pursuant to this Agreement.
 5. "Malicious Code" means viruses, worms, time bombs, cancel bots, Trojan horses and other harmful or malicious code, files, scripts, agents, or other unwanted computer programming routines.
 6. "AI Platform" means any proprietary software platform used by AI to provide the Services purchased by Customer under this Agreement, including "SHIFT".
 7. "Services" means the proprietary software-based services provided by AI to Customer.
 8. "Third Party" means a person or entity other than AI or Customer that is not a Party to this Agreement.
2. **** Provision of Services by AI****. Subject to payment of fees set forth in associated Subscription Agreement document, AI shall provide the following Services to Customer:
 1. Web Application. AI shall provide to Customer access to a web application that will provide the ability to create and maintain user accounts, projects, subscriptions and access to data analytics dashboards for analyzing web traffic captured by the SHIFT Platform, based on subscription purchased.
 2. AI shall use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week except for: (1) planned downtime, and/or (2) Force Majeure events as set forth in Section 12.i. hereof. Notwithstanding anything to the contrary contained in this Agreement, AI cannot guarantee or promise that AWS services/products used in these Services will be timely, uninterrupted, or continuous. Customer understands and agrees that Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to injury or death to persons or damage or harm to property or business.
 3. Compliance with Law. AI shall provide the Services only in accordance with applicable laws and government regulations.
3. **** Customer Responsibilities****. Customer shall:
 1. use commercially reasonable efforts to prevent unauthorized access to or use of the AI Platform, and notify AI promptly of any such unauthorized access or use;
 2. use the AI Platform only in strict compliance with the subscription purchased;

3. use the AI Platform only in accordance with the Documentation and applicable laws and regulations;
4. provide such records and such access (including without limitation, access upon reasonable prior notice to any physical location of Customer) to audit such records and to obtain such information as AI reasonably determines is necessary to verify Customer's compliance with this Agreement;
5. take full responsibility for all workloads, software, code, data, and any other content within their AWS account, and will take the appropriate safeguards to protect sensitive data;

Further, Customer acknowledges that:

6. by inputting their AWS credentials and/or role(s), they are allowing the SHIFT platform to make AWS API calls on their behalf;
 7. by using a CloudFormation template provided to them through use of the SHIFT platform to launch resources in their AWS Account that they are creating a VPC Peering connection to the SHIFT platform and are allowing SHIFT to accept the VPC Peering request which will create a network connection between the SHIFT platform and the VPC created by the CloudFormation template;
 8. the CIDR block associated with their project will be held until 30 days after a project has been disabled; after that date, the CIDR block will be released and disassociated with the project. If a project is reactivated or re-enabled after being disabled for 30 days, a new CIDR block will be assigned.
4. **** Restrictions.**** Customer shall not, and shall not allow any Third Party to:
1. sell, resell, rent or lease the Services;
 2. use the AI Platform to store, transmit or disseminate Malicious Code;
 3. create derivative works based on the AI Platform;
 4. copy, frame or mirror any part or content of the AI Platform, or otherwise for its own internal business purposes;
 5. decompile, disassemble, reverse engineer or otherwise attempt to discover any source code or underlying ideas or algorithms of the AI Platform;
 6. access the AI Platform in order to build a competitive product or service.
 7. interfere with or disrupt the integrity or performance of the AI Platform or access, copy, download, delete or damage any Third-Party data contained therein, or
 8. attempt to gain unauthorized access to the AI Platform or any related systems or networks.
5. **** Proprietary Rights****
1. AI acquires no right, title or interest from Customer under this Agreement in or to any data stored or provided in connection with accessing the AI Platform, including any intellectual property rights therein.
 2. AI reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer other than as expressly set forth herein.

3. AI shall own all right, title and interest in and to any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the operation of the Services or the AI Platform ("Feedback").
6. **** Representations and Warranties****
 1. In General. Each of the Parties represents and warrants that it has validly entered into this Agreement and has the legal power to do so, and to fully perform its responsibilities hereunder.
 2. By AI. AI warrants that the Services, including the AI Platform, shall be materially in accordance with the Documentation.
 3. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6**** , NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**
7. **** Term and Termination****
 1. This Agreement commences on the date above and shall continue for a period equal to that of the associated Subscription Agreement.
 2. Notwithstanding the expiration or termination of this Agreement, §4, §5, and §6 shall survive any such expiration or termination.
8. **** Miscellaneous****
 1. Use of Aggregate Information. The Parties acknowledge that the AI system collects certain usage information and related data in the course of providing Services under this Agreement and combines it to show general trends or values without identifying individuals within the data ("Aggregate Information" as defined above). Notwithstanding anything to the contrary in this Agreement, the Parties agree that AI may use the Aggregate Information obtained by the AI Platform for its own internal purposes, including without limitation, for managing its operations, identifying problems, correcting errors and improving its delivery of products and services. AI shall not provide any personally-identifiable information ("PII") obtained from Customer to any third party, but AI may use any information obtained from Customer to target any individual for promotional purposes or advertising if such individual is located in the United States. AI operates from the United States, and does not intend to collect and Customer shall not provide any PII with respect to any individual located outside the United States.
 2. Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld), and any such attempted assignment shall be void *ab initio*. Notwithstanding the foregoing, either Party may assign this Agreement in its entirety, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its equity or its assets used to perform its obligations under this Agreement. This

Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their successors and permitted assigns, and other legal representatives.

3. Notice. All notices required or permitted to be given hereunder shall be in writing and shall be sufficient if sent by nationally recognized overnight delivery services (such as Federal Express), as follows: (1) in the case of AI, to 12005 Sunrise Valley Drive, Suite 202, Reston, VA 20191, and (2) in the case of Customer, documented in associated document Schedule 1 for the subscription purchase information. A Party may by notice given in accordance with this Section 12.c to the other Party designate another address for receipt of notices hereunder.
4. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
5. No Waiver. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom sought to be enforced. The failure of a Party at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement or understanding at a future time.
6. No Agency. Each Party expressly disclaims any intention to create a partnership, joint venture, corporation or other business entity. This Agreement shall not be construed to make any Party the partner, joint venturer or agent of another Party with respect to the subject matter hereof.
7. Export Control. The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Subscribers to access or use the AI Platform in a U.S.-embargoed country or in violation of any U.S. export law or regulation.
8. No Third-Party Beneficiaries. There are no Third-Party beneficiaries to this Agreement.
9. Force Majeure. Neither Party shall be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder or for failure to give the other Party prior notice thereof when such delay or failure is due to flood, fire, earthquake, an act of God, government action, an act of terrorism, riot, civil unrest, an act of Third Parties, external systems, software, networks, or other causes beyond that party's reasonable control ("Force Majeure"). Notwithstanding the foregoing, Force Majeure shall not act to excuse the timely payment of amounts due and payable under this Agreement.
10. Entire Agreement; Amendments. This Agreement sets forth all of the promises, agreements, conditions, understandings, warranties and representations of the Parties hereto with respect to the subject matter hereof and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them with respect to such subject matter, except as set forth herein. This Agreement is, and is intended by the Parties to be, an integration of any and all prior agreements or understandings, oral or written, with respect to such subject matter. This Agreement may be amended or otherwise modified only by a written instrument which is executed by both Parties.

11. Change in Law or Regulation. The Parties acknowledge and agree that the transactions contemplated in this Agreement are subject to federal and state legal and regulatory schemes that may require changes in the relationship between the Parties, the Services or the manner of providing the Services. As a consequence, in the event that a change in law or regulation affects a material provision of this Agreement, the Parties agree that they will promptly cooperate in good faith to amend the Agreement as necessary to implement such change so as to remain in compliance.
12. Irreparable Harm. Strict compliance by the Parties shall be required with respect to each and every provision of this Agreement. The Parties hereto agree that a Party's failure to perform the obligations provided by this Agreement may result in irreparable harm to the non-breaching Party and that specific performance of a Party's obligations may be sought by suit in equity. The Parties agree to waive the posting of any bond with respect to the grant of such injunctive relief.
13. Limitation of Actions. No action, regardless of form, arising out of this Agreement may be brought by either Party more than one (1) year after the cause of action has arisen, or, in the case of nonpayment, more than two (2) years after the date of the last payment.
14. Governing Law and Venue. The construction, interpretation, and performance of this Agreement, and any and all transactions under it, shall be governed by the laws of the Commonwealth of Virginia, without regard to conflict of law provisions thereof. The Parties further agree that any action arising out of or brought in connection with this Agreement shall be brought in the state courts located in Loudoun County, Virginia, or the U.S. District Court for the Eastern District of Virginia located in Alexandria, Virginia. The Parties agree that such courts shall have personal jurisdiction over each of them, and hereby waive and all objections to the authority of such court to hear any such action, including without limitation, any objection to such court exercising *in personam* jurisdiction over such party with respect to such action, any objection on the basis of forum *non conveniens*, or otherwise.
15. Headings. The headings and other captions of this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.
16. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. If executed in multiple counterparts, this Agreement shall become binding when any counterpart or counterparts, individually or taken together, bear the signatures of all of the Parties. Facsimile signatures shall be accepted.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective for all purposes and in all respects as of the day and year first above written.