

## STANDARD TERMS AND CONDITIONS

Please read the following terms and conditions before using the Software, API, the Documentation and the Content (all as defined below). In this Agreement, “You” means the entity identified as the Client in the Order Form to which these Standard Terms are attached. This Agreement may refer to You and Affinda individually as a “Party” and collectively as the “Parties”. Other capitalised terms used herein are defined in clause 19.

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### 1 Software and API

#### 1.1 Licence(s)

Subject to these Standard Terms, Affinda will:

- (a) provide the Software to You and grants You a limited, revocable, non-exclusive, non-sublicensable, non-transferable licence (subject to clause 1.1(b)) to:
  - (i) access and use the Software and the Documentation, and make calls to the API, solely for the Permitted Purpose; and
  - (ii) use, copy, modify, adapt, reformat, reproduce, publicly perform and publicly display the Content solely within Your Application (and not for any other purpose).
- (b) permit You to extend the rights provided under subclause 1.1 to a User, but only to the extent required to enable the User to access the Content via Your Application, subject to clause 4.2.

#### 1.2 Access and use

You and each User must:

- (a) not corrupt, misuse, compromise or functionally impair the API, the Software or Our Systems (or its security);
- (b) not copy, reproduce, modify, decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the API or the Software (including any code, algorithms, methods or techniques);
- (c) not access or use the API or the Software:
  - (i) to distribute, publish or allow access to the API or the Software from any location or source other than through Your Application;
  - (ii) to engage in any activity which breaches any law or infringes any Intellectual Property Rights;
  - (iii) to store, distribute or transmit any Unlawful Material or any Virus (or other software or code of a similarly destructive or disruptive nature);
  - (iv) in any other way not permitted under this Agreement; or
- (d) keep a secure password for the use of the Software or API (and keep such password confidential) and use all reasonable endeavours to prevent any breach or contravention of this clause 1.2 (and must promptly notify Affinda if You become aware of or suspect any such breach or contravention).

#### 1.3 Limitations or restrictions

- (a) Affinda may not change or suspend access to the API unless it is reasonably necessary to do so to address a security vulnerability or to protect the integrity of (or to prevent any damage or degradation to) Our Systems or the Software. Affinda accepts no liability for any costs or expenses that You incur in upgrading Your System in order to access to and use the API accordingly.
- (b) Affinda may renegotiate, restrict or suspend Your rights under this clause 1 if this clause 1 is breached, if You fail to pay Fees when due, or if the Usage Limits are

exceeded. Excessive usage will incur additional fees in accordance with clause 7 (unless otherwise agreed).

- (c) In the unlikely event that this clause 1.3 applies, Affinda will provide You with as much prior notice as is reasonably practicable in the circumstances.

#### 1.4 Updates

We may provide enhancements or improvements to the features or functionality of the Software, which may include all new versions, new releases, patches, bug fixes, updates, upgrades, and other modifications of the Software provided under or in connection with our Agreement (each an “Update”). If Affinda provides access and use of the Update, then these Standard Terms will continue to apply to the Update. You will only be entitled to receive an Update if agreed under this Agreement.

#### 1.5 Trial Software

Any Trial Software provided to You may only be used for internal evaluation purposes and as directed by Affinda (including before the Initial Term, in which case the terms of these Standard Terms will apply as necessary but without charge).

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### 2 Support Services; Service Levels

#### 2.1 Support Services

Affinda will provide You with Support Services and will use commercially reasonable endeavours to make the Software and API available to You at the Service Level Percentage. The Service Level Percentage will not apply to, and its calculation will exclude time referable to, any performance or availability issues during any period of non-payment of Fees or in connection with:

- (a) scheduled or requested maintenance;
- (b) any Trial Software or trial features;
- (c) events or circumstances beyond Affinda’s control;
- (d) faulty input, instructions or arguments, or use of any third party service, hardware or software;
- (e) unauthorised or unadvised use of the Software or action (or lack of action) by or from You (Your Representatives) or any User;
- (f) a failure to adhere to any required configurations or use supported platforms or follow any appropriate security practices, guidance or policies; or
- (g) attempts to perform operations that exceed prescribed limits or quotas or that result from Affinda’s efforts to stop real or suspected abusive behaviour.

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### 3 Data

#### 3.1 Your Data

- (a) You will own all rights, title, and interest in or to Your Data, and will have sole responsibility for the legality, reliability, integrity, accuracy, and quality of Your Data, the Content, and any component or conclusions drawn from the same.
- (b) Affinda will notify You of any loss of or damage to, or any unauthorised use or disclosure of, Your Data as soon as is reasonably practicable and will use reasonable commercial endeavours to restore Your Data from the latest back-up of Your Data maintained by Affinda. Affinda will not be responsible for any loss, damage or disclosure of Your Data caused by any third party or not otherwise within its control.

#### 3.2 Personal Data

- (a) Affinda will process Personal Data only in accordance with the terms of the Agreement (to the extent permitted

by Applicable Privacy Laws) and any lawful instructions reasonably given by You from time to time.

- (b) For the purpose of Applicable Privacy Laws, You acknowledge that, in respect to the processing of any Personal Data under this Agreement and, as the case may be, that You are either the controller (and Affinda is the processor) or You are the processor (and Affinda is the sub-processor).
- (c) You will comply with all Applicable Privacy Laws, including in respect of the disclosure or transmission of Personal Data, the obtaining of any required consents (or utilising other lawful grounds of processing of Personal Data).
- (d) Affinda will comply with its Privacy and Data Protection Policy (<https://affinda.com/privacy-and-data-protection-policy/>), as amended from time to time.
- (e) The Parties agree to renegotiate in good faith the terms of this Agreement should any of the Applicable Privacy Laws be replaced, updated or amended.

### 3.3 Permitted Usage Data

Affinda may collect, access and use usage data (excluding any Personal Data) related to the use of the API, the Software or the Content for any business purpose, including to develop, enhance or provide Updates or new products or services.

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## 4 Your Obligations

The obligations in this clause 4 apply in addition to, and do not derogate from, Your (and any User's) obligations set forth elsewhere in this Agreement.

### 4.1 General obligations

You must:

- (a) comply with all applicable laws and regulations;
- (b) provide Affinda with access to information reasonably required by it in order to provide the Software, API or Support Services;
- (c) procure any third party performance of any obligations by or to You which relate to Affinda's ability to provide the Software, API or Support Services;
- (d) carry out responsibilities and obligations under this Agreement in a timely and efficient manner; and
- (e) ensure that Your System and networks comply with relevant specifications provided from time to time.

### 4.2 User compliance

You must ensure that each User's access to and use of the Software or API complies with this Agreement. Without qualification or limitation, You are responsible for such compliance, as if those acts or omissions were Yours.

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## 5 Confidentiality

### 5.1 Disclosure of Confidential Information

The Recipient must not disclose the Discloser's Confidential Information except:

- (a) to its Representatives, legal advisers, auditors, and other consultants that need to know it for the purposes of this Agreement;
- (b) in Affinda's case – to its Affiliates, for the purposes of our Agreement;
- (c) with the Discloser's written prior consent;

- (d) if required to do so by law, a stock exchange, or in connection with proceedings relating to this Agreement (or any other agreement between the Parties).

### 5.2 Disclosure by Recipient

The Recipient must:

- (a) for the purposes of clause 5.1(a) or 5.1(b), use reasonable endeavours to ensure that any permitted recipient discloses the Confidential Information as permitted by clause 5.1(a) or 5.1(b); or
- (b) for the purposes of clause 5.1(d), notify the Discloser of the requirement as soon as practicable and provide any assistance reasonably requested in order to limit the nature and extent of the disclosure required.

### 5.3 Use of Confidential Information

Subject to clauses 5.1 and 5.2, the Recipient must not use the Discloser's Confidential Information except for the purpose of exercising its rights or performing its obligations under this Agreement (or any other agreement between the Parties).

### 5.4 Return of Confidential Information

If requested, the Recipient must deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control (or are in the possession, power or control of persons who have received Confidential Information from the Recipient under this clause 5) except to the extent that the Recipient needs to retain it for the purpose of performing its obligations or exercising its rights under this Agreement (or any other agreement between the Parties) or is otherwise legally entitled to retain the Confidential Information.

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## 6 Intellectual Property

### 6.1 Ownership

Affinda (or its licensors) will own and retain all right, title and interest in and to the Software, and any software, applications, inventions, or other technology developed by Affinda under or in connection with this Agreement. You will do all things reasonably requested to perfect such ownership.

### 6.2 Restrictions

Except where void under applicable law or expressly permitted otherwise by this Agreement, You must not (and will not permit any User or third party to) nor attempt to:

- (a) sell, license, sub-license, lease, assign, transfer, pledge, or share your rights under this Agreement;
- (b) copy any functions, features, or graphics of the API, Software, Documentation or Content;
- (c) sell, assign, transfer, lease, rent, license, sublicense, distribute, publicly perform, display or communicate, frame, mirror, link to, use in a time-sharing, outsourcing, or service bureau environment, or otherwise commercially exploit, the API, Software, Documentation or Content;
- (d) modify, duplicate, creative derivative works from, frame, mirror, republish, download, display, transmit, distribute, alter, adapt, arrange, or translate the API, the Software, the Documentation or the Content in any form or media or by any means, or use any of them to develop any service or product that is the same as or substantially similar to the API, Software, Documentation or Content;
- (e) decompile, disassemble, reverse compile or engineer, otherwise reduce or attempt to discover the source code or non-literal aspects (such as underlying, structure,

sequence, organization, ideas, and algorithms) of, the API, Software, Documentation or Content;

- (f) (except to the extent contemplated otherwise in the Order Form) remove, delete, alter, obscure, or conceal, in whole or in part, any copyright, trademark, or other proprietary notices or disclaimers displayed or contained on or in the API, Software, Documentation or Content;
- (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the API, the Software, the Documentation and/or the Content, such as features that restrict or monitor or measure the use of Your Application;
- (h) use the API, the Software, the Documentation and/or the Content to infringe, misappropriate or violate any third party's Intellectual Property Rights, moral rights, or other personal right, or any applicable law or regulation (including any Applicable Privacy Law).

### 6.3 Learnings

Affinda will own all Intellectual Property Rights (if any) in any Learning of Affinda or its Software which Affinda creates, learns, generates or otherwise discovers during the Term which relates to the Software or its provision.

### 6.4 Feedback

Affinda may use, copy, disclose, license and distribute any Feedback provided to it, including in the course of receiving Support Services, without restriction or obligation. Feedback will not be considered Confidential Information of You or any User, and Affinda may independently develop, evaluate, use or market products or services using Feedback.

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## 7 Other Software Terms

### 7.1 Open Source Software

The Software may include Open Source Software, in which case such Software will be supplied in accordance with the applicable open source software licence. To the extent required by that licence, the terms of that licence will apply to that Open Source Software in lieu of these Standard Terms, including any provisions governing access to source code, modifications, or reverse engineering.

### 7.2 Embedded Software

The Software may include Embedded Software, in which case the Parties agree that third party license terms may apply to its use, and that third party licensors retain ownership of all Intellectual Property Rights in the Embedded Software (and are intended third party beneficiaries of these Standard Terms for this purpose).

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## 8 Fees and payment

### 8.1 Fees

- (a) Fees will be invoiced per the Payment Terms. Any late payment of Fees will attract interest on that amount, calculated at the Interest Rate at the applicable date.
- (b) Additional fees and costs will be charged if Usage Limits are exceeded.
- (c) Unless stated otherwise in the Order Form, proposed Fee changes will be notified at least thirty (30) days prior to expiration of the Term.

### 8.2 Taxes

All amounts payable hereunder shall not be subject to any set-off or deduction of any kind. All Fees are exclusive of any applicable taxes, levies, imposts, duties or similar charges imposed, levied or assessed by any government agency (such

as sales tax, value added tax (VAT), goods and services tax (GST), withholding taxes, export, import and other duties) together with any related interest, penalties, fines and expenses in connection with them, and, except with respect to income taxes of Affinda, You are responsible for payment of all such amounts imposed, levied or assessed in connection with this Agreement. If, under applicable law, You have to withhold any amount, You will gross up the amount of the Fees by an additional amount as necessary to ensure that the net amount paid to and received by Affinda is equal to the amount which would have been received by Affinda had no such payment, deduction or withholding been made. You agree to defend, hold harmless and indemnify Affinda from any and all Claims arising from or in connection with Your failure to timely report or pay such amounts imposed, levied, or assessed.

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## 9 Warranties and Indemnities

### 9.1 Warranties

- (a) Each Party represents and warrants that:
  - (i) it has full capacity and authority to enter into and to perform this Agreement, and
  - (ii) these Standard Terms will constitute legal, valid, and binding obligations on it.
- (b) Affinda represents and warrants to provide the Software and the API, and (if applicable) perform the Support Services, with due care and skill.
- (c) You represent and warrant that You (personally or on behalf of the entity that You represent) are not a person or entity barred from accessing or using any part of Our Systems, the Software, the API, the Documentation, and the Content under applicable law or regulation.

### 9.2 Indemnification in favour of Affinda

- (a) You indemnify and hold harmless Affinda, Affinda's Affiliates, and/or any of their respective directors, officers, employees, agents, Representatives, customers, suppliers, or licensors (each, an "**Affinda Indemnitee**") from and against any loss, costs (including reasonable attorneys' fees) or damages incurred or suffered by the Affinda Indemnitee in connection with any Claim brought by a third party (including, without limitation, a governmental entity or supervisory authority) which results or arises from Your use of the Software, the API and/or the Content other than in accordance with this Agreement or Your (including any User's) breach of any material provision of this Agreement.
- (b) Affinda agrees to promptly notify You after becoming aware of any Claim.

### 9.3 Indemnification in favour of You

- (a) Affinda indemnifies You and Your directors, officers and employees (each, an "**Indemnified Party**") from and against any losses, costs (including reasonable attorneys' fees) or damages incurred or suffered by an Indemnified Party as a result of any third party Claims (including reasonable attorney's fees) finally awarded against an Indemnified Party by a court of competent jurisdiction, or any supervisory authority, or agreed by Draftable to be paid in settlement, resulting from:
  - (i) the use of the Software by You in accordance with this Agreement infringing or violating any Intellectual Property Rights of a third party ("**Infringement Claim**")
- (b) In relation to an Infringement Claim, Affinda's obligation will apply only if:

- (i) You immediately notify Affinda on becoming aware of the Infringement Claim;
  - (ii) You allow Affinda to take full control of the defence or settlement and provide any assistance reasonably requested by Affinda in connection with such defence or settlement; and
  - (iii) You do not do nor purport to do anything that may compromise Affinda's ability to defend or settle (including making or purporting to make any admission).
- (c) Affinda's obligation with respect to an Infringement Claim(s) will not apply where the Infringement Claim results from or arises out of:
- (i) the combination of the Software or the API by You with any items not supplied by Affinda;
  - (ii) a modification of the Software, the API, or Documentation by Affinda in compliance with specific written design specifications or instructions provided by You and required by You to be followed by Affinda;
  - (iii) use of the Software, the API, the Content, or the Documentation by You not in accordance with this Agreement;
  - (iv) Your failure to install any maintenance release or Updates within thirty (30) days after notice from Affinda; or
  - (v) an unknowing breach by Affinda of a patent right held by a third party.
- (d) In the event of an Infringement Claim, Affinda may, at its sole option, (i) modify the Software to make it non-infringing, or replace the Software with non-infringing alternatives of equal or greater functionality; (ii) procure from the relevant third party the right for You to continue to use the Software under the terms of this Agreement; or (iii) immediately terminate this Agreement upon written notice to You and refund the Fees (pro-rata) for the remainder of the Term.
- (e) This clause 9.3 states Affinda's entire liability and an Indemnified Party's exclusive remedy for any of Infringement Claims.

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## 10 Limitations of liability

### 10.1 Exclusion of implied terms

- (a) Our Systems, Software, APIs, Documentation and Content are provided to You on an "as is" and "as available" basis. To the maximum extent permitted by law, except as expressly set out in this Agreement, Affinda excludes all conditions, representations, warranties and statutory guarantees, whether express or implied and including any implied warranties of merchantability or fitness for purpose, in relation to the Our Systems, Software, APIs, Documentation, Content, Support Services and the other subject matter of this Agreement. In addition, Affinda makes no representation, guarantee, warranty or condition regarding the content, effectiveness, usefulness, reliability, availability, or completeness of any of the Software, the API, the Documentation and/or the Content, or that Your use of the Software, the API, the Documentation or the Content will meet your requirements or expectations or will be uninterrupted, secured or error-free.
- (b) If a condition, representation, warranty or guarantee cannot, by law, be excluded in accordance with clause 10.1(a), then to the extent permitted by law Affinda limits

its liability in relation to that condition, representation, warranty or statutory guarantee to:

- (i) in relation to services, the resupply of those services or the cost of resupply; and
- (ii) in relation to goods, the repair or replacement of those goods or the cost of repair or replacement.

### 10.2 Limitations of liability

- (a) To the maximum extent permitted by law, each Party's aggregate liability under or in connection with this Agreement is limited to the Liability Cap Amount. However, this limitation does not apply to a breach of clause 1.2, 3.2, 5 or 6.
- (b) A Party will not be liable for any indirect, special or consequential damages (being damages other than damages that may fairly and reasonably be considered arising naturally or directly from the event by which they are caused) arising out of or in connection with this Agreement, including damages for loss of profit, loss of opportunity, loss of anticipated savings and loss resulting from third party Claims. However, this exclusion will not apply to any liability of a Party under an indemnity given in this Agreement.
- (c) A Party must use commercially reasonable endeavours to mitigate loss or damage it incurs or suffers under or in connection with this Agreement.
- (d) The liability of a Party to the other Party under this Agreement is reduced to the extent that the liability is caused or contributed to by an act or omission of the other Party or any of the other Party's Representatives.

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## 11 Term and termination

### 11.1 Term

- (a) This Agreement commences on the date specified in the Order Form and remains in full force and effect until expiry of the Initial Term, unless earlier terminated under clause 11.2.
- (b) Upon expiry of the Initial Term, this Agreement continues in full force and effect for a further period of twelve (12) months (the "**Further Term**") on the same terms as the Initial Term (subject to any consequential modifications agreed by the Parties) unless a Party notifies the other Party, at least thirty (30) days prior to the expiration of the Initial Term or Further Term (as applicable), in writing of its intention to not renew.

### 11.2 Termination rights

- (a) You may terminate this Agreement for convenience upon thirty (30) days prior written notice.
- (b) A Party may terminate this Agreement with cause by notice if the other Party is insolvent or the other Party commits a material breach of this Agreement which is not remedied within fourteen (14) days of notification.

### 11.3 Effect of termination

On termination of this Agreement:

- (a) if terminated by You without cause, You must pay all Fees (excluding any Fees payable for Support Services) that would have been payable for the rest of the Term and that have not been paid as a termination;
- (b) all unpaid Fees payable by You will become immediately due and payable;
- (c) all rights and licences granted under this Agreement will cease and You must immediately stop accessing or using Our Systems, API, Software, Documentation and Content; and

- (d) You must immediately delete or dispose of (as directed) all copies of the Documentation and Content in your possession or control.

#### **11.4 Survival**

Upon termination of this Agreement, those rights and obligations that by their nature ought to survive termination will survive, as well as clauses 1.2, 5, 6, 9, 10, 11.2(a), 17 to 19 (inclusive).

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#### **12 Dispute resolution**

A Party may not commence legal proceedings (other than for urgent interlocutory relief) in relation to any dispute under this Agreement unless the procedures set out in this clause 12 have been followed. A Party must promptly notify the other Party in writing of the details of the dispute. The Parties will work together in good faith to attempt to resolve the dispute, and if unable to do so within fourteen (14) days of receipt of the dispute notice, then a Party may pursue other forms of resolution.

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#### **13 Force majeure**

A Party will not be liable for any delay or failure in performance due to circumstances beyond its reasonable control, including without limitation: acts of God, disease, pandemic, war, terrorism or the public enemy, riot, civil commotion or sabotage, expropriation, condemnation of facilities, national or state emergency or other governmental action, strikes, lockouts, work stoppages or other such labour difficulties, floods, droughts or other severe weather, fires, explosions or other catastrophes or accidents causing (in whole or in part) damage to or destruction of the equipment or property necessary or desired to provide the API or Software.

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#### **14 Notices**

##### **14.1 Address**

Any notice required to be given under the Agreement must be in writing and be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in the Order Form, or such other address as may have been notified by that Party for such purposes, or sent by email to the other Party's email address as set out in the Order Form.

##### **14.2 Receipt**

A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email will be deemed to have been received at the time of transmission (as shown by the time sent by the sender) unless the sender receives a sent email failure message.

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#### **15 Assignment**

A Party may not assign or novate any right or obligation under this Agreement without the other Party's prior written consent (not to be unreasonably withheld, conditioned or delayed), except that Affinda may do so as part of a corporate reorganisation or restructure.

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#### **16 Miscellaneous**

##### **16.1 UN Convention on the Sale of Goods**

The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

##### **16.2 Export restrictions**

Our Systems, API, and Software may be subject to United States export laws and regulations. Each Party must comply with any

such laws and regulations in respect of the materials licensed or otherwise provided under this Agreement.

#### **16.3 Publicity Rights**

Unless you notify otherwise, Affinda may identify You as a customer of Affinda on its website as well as within any marketing material relating to Affinda's products or services.

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#### **17 General**

##### **17.1 Changes to this Agreement**

No modification or amendment of this Agreement is effective except by agreement in writing.

##### **17.2 Remedies cumulative**

The rights and remedies provided in this Agreement are in addition to those given by law independently of this Agreement.

##### **17.3 Indemnities**

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

##### **17.4 No partnerships**

Nothing contained or implied in this Agreement constitutes a party the partner, agent, or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way.

##### **17.5 Variation and waiver**

A provision of this Agreement, or a right created under it, may not be varied or waived except by agreement in writing.

##### **17.6 Entire agreement**

This Agreement constitutes the entire Agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. Each Party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, assurance or warranty not expressly set out in this Agreement.

##### **17.7 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

##### **17.8 Counterparts and Electronic Signature**

This Agreement may be executed in counterpart, each of which will be deemed an original copy and both of which will constitute one and the same agreement. A party may execute and deliver a counterpart by facsimile or other electronic signature (including portable document format) and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

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#### **18 Governing law and jurisdiction**

This Agreement and any disputes or Claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or Claims) are governed by, and construed by, the Governing Law. The Parties irrevocably agree that the courts of the Governing Law, have non-exclusive jurisdiction to settle any dispute or Claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or Claims).

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## 19 Interpretation

### 19.1 Definitions

These meanings apply unless the contrary intention appears:

**Affiliates** means an entity that Controls, is Controlled by, or is under Common Control with, another entity.

**API** means the application programming interface materials which interfaces or interacts with the Software.

**Applicable Privacy Laws** means, as amended from time to time, all privacy and data protection laws which apply to the processing (including without limitation, the GDPR) and any replacements thereof.

**Claim** means any allegation, cause of action, claim, debt, demand, liability, proceeding, or suit of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Confidential Information** means, in relation to Affinda, all information in any form, including (but not limited to) information comprised in the unique key that Affinda assigns to You which allows you to access and use the API, Our Systems, API or Software, disclosed by or on behalf of the Discloser (whether before, on or after the date of this Agreement), including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Discloser;
- (b) information derived or produced partly or wholly from the information including any calculation, conclusion, summary or computer modelling; and
- (c) information which is capable of protection at law or equity as confidential information,

but does not include the Excluded Information.

**Content** means the data generated from Your Data and which is made available through the Software and the API.

**Control** (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, management, contract, or otherwise, including the ownership, directly or indirectly through one or more intermediaries, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such entity.

**Customer** means any customer or client of Yours.

**Discloser** means the party disclosing Confidential Information.

**Documentation** means Affinda’s proprietary programming tools and other instructional documentation for the API, Software and Content, as updated from time to time.

**Embedded Software** means any third party software embedded in or provided with the Software.

**Excluded Information** means all information:

- (a) which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
- (b) which the Recipient can prove by contemporaneous written documentation was already known to it at the time it was received from the Discloser, unless such knowledge arose from disclosure of information in breach of an obligation of confidence; or
- (c) which the Recipient acquires from a source (but not the Discloser) where such source is entitled to disclose it.

**Extended Support** has the meaning set out in the Support Services Schedule.

**Feedback** means any comments, information, questions, ideas, description of processes, or other information that You or a User submits or provides, including User modifications.

**Fees** means the fees payable under clause 7.

**Further Term** has the meaning in clause 11.1(b).

**GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance).

**Governing Law** means the jurisdiction stated on the Order Form.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency, or entity.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Interest Rate** means official cash rate (as determined by the Reserve Bank of Australia).

**Liability Cap Amount** equals the amount of the Fees payable or paid to Affinda in the twelve (12) month period before the event giving rise to the liability, minus any amounts previously paid by You to Affinda in discharge of liability under or in connection with this Agreement.

**Open Source Software** means Software (or a component of Software) which is subject to an open source software licence.

**Order Form** means the signed order form to this Agreement.

**Our Systems** means any information technology systems that Affinda owns, licenses, controls or utilizes.

**Permitted Purpose** has the meaning set forth in the Order Form.

**Personal Data** means Your Data to that extent that it contains personal information or personally identifiable information for the purposes of Applicable Privacy Laws.

**Recipient** means the party receiving Confidential Information.

**Representative** means an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor, or sub-contractor of that party (or its Affiliate).

**Service Level Percentage** means, if applicable, the percentage specified in the Support Services Schedule.

**Software** means the software provided to You under this Agreement, and includes any Updates, customizations, the Documentation, and Embedded Software.

**Standard Support** has the meaning set out in the Support Services Schedule.

**Support Services** means the Standard Support or Extended Support (as applicable) as selected on Your Order Form.

**Support Services Schedule** means the schedule (if any) attached to this Agreement.

**Term** means the Initial Term together with each additional Further Term (as applicable).

**Trial Software** means Software provided to You by Affinda for trial or evaluation purposes only.

**Unlawful Material** means, in any jurisdiction, any material which (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (f) is otherwise illegal or causes damage or injury to any person or property.

**Updates** means all new versions of and patches, fixes, upgrades, and other updates for the Software which are provided to You by Affinda under or in connection with this Agreement.

**Usage Limits** has the meaning set out in the Order Form, as may be updated by agreement from time to time.

**User** means You or Your employees, Representatives, consultants, contractors, agents, and Customers.

**Virus** means any item, thing, or device (including without limitation any software, code, file, or program) which may: (a) prevent, impair, or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair, or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any program or data (whether by re-arranging, altering, or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

**Your Application** means any software application, website or other interface You own, operate, have developed or will develop, to interface or interact with the Software and which relates to the API, including the integration of the Content into Your website or any other service You own or operate.

**Your Data** means data inputted into the API or Software by You or Users.

**Your System** means any information technology systems owned, licenced, controlled, or utilized by You.

## 19.2 References to certain general terms

Unless the contrary intention appears, a reference in this Agreement to:

- (a) (*variation or replacement*) a document (including this Agreement) includes any variation or replacement of it;
- (b) (*clauses, annexures and schedules*) a clause, schedule, annexure, attachment or exhibit is a reference to a clause in, or a schedule, annexure, attachment or exhibit to, this Agreement;
- (c) (*references to statutes*) a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) (*law*) law includes common law, principles of equity, and laws made by parliament (including state, territory, provincial and national laws and regulations and other instruments under them, and including any consolidations, amendments or replacements of any of them);
- (e) (*singular includes plural*) the singular includes the plural and vice versa;
- (f) (*person*) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, any Government Agency, or any other entity of any kind;
- (g) (*executors, administrators, successors*) a particular person includes a reference to the person's executors,

administrators, successors and substitutes (including, persons taking by novation) and assigns;

- (h) (*reference to a group of persons*) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) (*dollars*) an amount of money is a reference to the lawful currency of the United States of America;
- (j) (*calculation of time*) a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) (*other grammatical forms*) where a term is defined its other grammatical forms have the corresponding meaning;
- (l) (*reference to a day*) a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending twenty-four (24) hours later; and
- (m) (*meaning not limited*) the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

## 19.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this Agreement.