

## TERMS AND CONDITIONS

### IT IS AGREED

#### 1 INTRODUCTION

Upon the purchase of an annual subscription of a MAP (including 5 licences for Users) via the AWS Data Exchange (**Commencement Date**) a binding agreement is formed whereby RFI Group agrees to supply the Cloud Services to the Customer on the terms of the Agreement.

#### 2 Definitions and Interpretation

##### 2.1 Defined Terms

In these standard terms and conditions (**Conditions**):

**Agreement** means the agreement between Customer and RFI Group consisting of these Conditions and any other terms agreed and signed in writing by RFI Group and Customer relating to a MAP.

**Available** means that the Cloud Services are accessible from the internet. To avoid doubt, the Cloud Services remain Available even if Customer or a User is unable to access them because of internet connectivity or software issues affecting Customer or the User.

**Business Day** means a day on which banks are open for business in the United Kingdom, other than a Saturday, Sunday or public holiday.

**Cloud Provider** means a service provider that provides the computing infrastructure from which the Cloud Services are provided, as determined by RFI Group from time to time.

**Cloud Services** means the software that is made available to Customer over the internet (rather than provided locally or on-site).

**Commencement Date** has the meaning given in clause 1.

**Confidential Information** means:

- (1) the terms of the Agreement;
- (2) any information relating to the business or financial affairs of a party, including a party's product pricing or pricing strategies;
- (3) any trade secret, technical knowledge, concepts, ideas, designs, programs, processes, procedures, innovations, databases, customer lists or information, sales plans or marketing plans, research, software, records, intellectual property or other information of a party;
- (4) any information that would at law be considered confidential information; or
- (5) any information which is designated as confidential by a party, including for the avoidance of doubt as regards RFI Group, RFI survey details.

**Customer** means the customer entity purchasing the annual subscription of a MAP.

**Customer Data** means all data created by the Customer or the Users and stored on the Cloud Services.

**Data Protection Legislation** means, as applicable, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other relevant local laws, relating to the protection of personal data, the privacy of individuals and the privacy of electronic communications.

**Developed IP** has the meaning given in clause 7.1(2).

**EEA** means European Economic Area.

**Existing IP** has the meaning given in clause 7.1(1).

**Fees** means the fees and charges specified on the AWS Data Exchange.

**Force Majeure** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this Agreement.

**Intellectual Property** means all patents, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, databases and rights in data, know-how, logos, designs, circuit layouts, trade marks, domain names, business names, copyright and similar industrial or intellectual property, whether or not now existing, and whether or not registered or unregistered.

**Intellectual Property Rights** means all intellectual property rights including all rights in the Intellectual Property, any right to have Confidential Information kept confidential, and any application or right to apply for registration of any of these rights.

**MAP** is Metrics Analytics Performance, it is the product name for the Cloud Services and is a data dashboard.

**Maximum Liability Amount** means the Fees actually paid by Customer to RFI Group for the MAP in the 12 month period immediately preceding the event giving rise to a claim.

**RFI Group** means the RFI Group entity registered with the AWS Data Exchange

**User/s** means individual Customer's employees which are assigned a licence.

#### 3 RFI Group's obligations

RFI Group will:

- (1) perform the Cloud Services with due care, skill and judgement, in a proper workmanlike manner, and in accordance with all applicable laws; and
- (2) ensure that only suitably qualified and experienced personnel perform the Cloud Services.

For the avoidance of doubt, RFI Group will not be responsible for:

- (1) anything caused by failure by Customer to comply with this Agreement; or
- (2) anything that does not relate to the Cloud Services provided under this Agreement.

#### 4 Customer's obligations

- (1) Customer must provide or give RFI Group all assistance and timely access (physical and electronic) to all information as reasonably required by RFI Group to enable it to perform the Cloud Services and meet its obligations under the Agreement.
- (2) If RFI Group is required to attend a site for or on behalf of Customer, then Customer must provide RFI Group with (or in the case of a third party site, procure for RFI Group) a safe and clean working environment; and facilities and equipment sufficient to enable RFI Group to meet its obligations under the Agreement.

#### 5 Fees, Payment and Invoicing

- (1) The Fees will be invoiced and paid in accordance with the AWS Data Exchange terms and conditions.
- (2) All Fees and charges payable pursuant to the Agreement are exclusive of any and all relevant taxes, including sales tax, which shall be payable by the Customer at the rate and in the manner for the time being prescribed by law.

#### 6 Confidentiality

- (1) Each party acknowledges that in the course of their association with each other they will have access to Confidential Information.
- (2) Each party will, and will procure that their respective employees and contractors:
  - (a) treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information without the prior written consent of the other party except where required by law or to a party's professional advisers and insurers;
  - (b) take reasonable steps to prevent third parties from gaining access to Confidential Information; and
  - (c) immediately return all of the other party's Confidential Information (including all copies) upon request.
- (3) The provisions of clause 6 shall not apply to;
  - (a) any information in the public domain otherwise than by breach of this Agreement;
  - (b) information in the possession of the receiving party thereof before disclosure by the disclosing party;
  - (c) information obtained without restriction from a third party; and
  - (d) information developed by the receiving party without any reference or regard to the disclosing party's Confidential Information.
  - (e) The Customer permits the RFI Group to identify the Customer as a client and grants the RFI Group a perpetual, non-exclusive, royalty-free and non-transferable licence to use the Customer's logo, name and branding on the RFI Group website and in any marketing and publication materials.

#### 7 Intellectual Property and Rights in Data

##### 7.1 Existing Intellectual Property

- (1) The Intellectual Property Rights owned or controlled under licence by each party before the Commencement Date remain the property

of that party (**Existing IP**) and nothing in this Agreement transfers a party's interest in that party's Existing IP to the other party.

- (2) Without limiting clause 7.1(3), Customer acknowledges and agrees that the Intellectual Property Rights in any ideas, concepts, techniques or materials (including software, data, text, words, graphics, logos, artwork, audio, video or software) developed by or for RFI Group in the course of producing or performing the Cloud Service, remain the sole property of RFI Group (**Developed IP**).
- (3) Subject to Customer paying all Fees payable to RFI Group under this Agreement, RFI Group grants to Customer a non-exclusive, royalty-free, and non-transferable, non-sublicensable licence to access the Cloud Services in accordance with this Agreement.
- (4) Subject to clause 8, and only with prior written permission from RFI Group, the Customer may use the findings from the Cloud Service for external media, third party meeting, institutional updates, PR and marketing as well as for internal strategy and insight purposes, but, in doing so, must quote "Source: RFI Group" when using any graphs or charts and "Global business intelligence provider, RFI Group" for text quotes. However, the Customer must not distribute the Developed IP (or part thereof) outside of the Customer's business nor republish it under the Customer's brand names.

## 7.2 Third Parties

Third party Intellectual Property Rights will remain the property of such third party.

## 8 Non-Competition and Non-Solicitation

During and up to the period of 12 months after the expiry or termination of this Agreement or the date on which the Cloud Services have been performed or provided (whichever is the first to occur), the Customer must not:

- (1) use information (including Confidential Information), product knowledge or experience gained from RFI Group to engage in any activity to the detriment of, or in direct competition with RFI Group. This means that the Customer must not:
  - (a) provide any service in competition to the Cloud Service, either directly or indirectly, to any RFI Group customer or subsidiary of any RFI Group customer; or
  - (b) provide the same or similar service to any other organization which is specifically engaged in providing products or cloud services in competition to the products or cloud services of RFI Group; or
- (2) solicit or endeavour to entice away from RFI Group any employee of RFI Group or any contractor engaged by RFI Group at any time without the prior written consent of RFI Group.

## 9 Limitation of Liability

- (1) Every reasonable effort will be made to verify all work undertaken during this project. Please note that the findings, conclusions and recommendations that RFI Group delivers will be based on information gathered in good faith from both primary and secondary sources, whose accuracy RFI Group are not always in a position to guarantee. As such RFI Group can accept no liability whatever for actions taken based on any information that may subsequently prove to be incorrect.
- (2) The information and comment available to you comes from a wide range of sources and does not necessarily represent the views or policies of RFI Group.
- (3) Neither party limits its liability (if any) to the other for: personal injury or death resulting from negligence; fraud; or any matter for which it would be illegal to exclude or to attempt to exclude its liability.
- (4) Subject to clause 9(3), RFI Group's liability (if any) for breach of any warranty, guarantee or condition, which cannot be lawfully excluded but can be lawfully limited is limited to and completely discharged, at the option of RFI Group to:
  - (a) in the case of goods, by either: the supply by RFI Group of equivalent or replacement goods; or RFI Group repairing or paying the cost of repairing the goods; and
  - (b) in the case of advice or Cloud Services, by supplying or paying the cost of supplying the advice, or Cloud Services again.
  - (c) Except as otherwise expressly set out in this Agreement, RFI Group makes no representation, warranty, or guarantee as to

the Cloud Services. All conditions, representations and warranties implied by statute or common law are hereby disclaimed by RFI Group to the maximum extent permitted by applicable law, including without limitation those of merchantability or fitness for a particular purpose.

## 9.2 Consequential loss

Subject to clause 9(3), under no circumstances will RFI Group be liable to Customer on account of any claim (whether based in contract, negligence or other tort, breach of any statutory duty or otherwise) for any special, consequential, indirect, incidental or exemplary damages, or for any loss of profits, revenue, interest, goodwill, loss or corruption of data or for any loss of or interruption to Customer's business, or for any damages or sums paid by Customer to third parties, even if RFI Group has been advised of the possibility of such damages.

## 9.3 Maximum Liability

Subject to clause 9(3) but otherwise without prejudice to any other provision of the Agreement limiting RFI Group liability, RFI Group' total liability of any kind whatsoever under or connection with this Agreement, will not exceed the Maximum Liability Amount.

## 10 Termination

- (1) Without limiting a party's termination rights under any other provision this Agreement, either party may terminate this Agreement immediately by written notice to the other party if the other party breaches any material provision of this Agreement, and the breach has not been remedied within 20 Business Days after service of written notice of the breach requiring it to be remedied.
- (2) Either party may terminate this Agreement immediately by written notice to the other party if that other party:
  - (a) fails to make a payment within the time period specified under this Agreement;
  - (b) becomes, threatens or resolves to become insolvent or has a receiver, administrative receiver, administrator or similar officer appointed or applies for or has called a meeting of creditors or resolves to go into liquidation; or
  - (c) ceases or threatens to cease conducting its business in the normal manner.

## 10.2 Termination for Convenience

RFI Group may terminate this Agreement by providing 90 days' written notice to the Customer, without liability to pay any termination fee or subject to clause 11(3), compensation, and without limiting RFI Group's rights to recover unpaid Fees in respect of Cloud Services provided up to the date of termination. Services provided up to the date of termination.

## 11 Consequence of Termination

- (1) Upon termination of this Agreement, Customer must pay to RFI Group any outstanding amounts (either billed or accrued) which are payable to RFI Group as at the date of termination.
- (2) Upon termination of this Agreement, each party must return, or destroy, at the other party's option, all documentation and information relating to the other party's business (in whatever form it is held including but not limited to written, graphic or electromagnetic form, and all copies) in that party's possession or control. Such information includes, without limitation, any Confidential Information and any records relating to a party's Intellectual Property.
- (3) Termination of this Agreement will not prejudice any rights or any claim that either party may have accrued against the other party up to the date of termination including, without limitation, any claim for damages as a result of the occurrence of an event giving rise to a right of termination.

## 12 Provision of Cloud Services

- (1) RFI Group will use reasonable efforts to ensure that the Cloud Services are Available to be accessed by Customer from the go-live date specified in the Proposal (or such other date as may be agreed by the parties) until the expiration of this Agreement.
- (2) The provision of the Cloud Services is not exclusive and RFI Group may provide access to the Cloud Services, or similar services, to any third party, including a third party who may be clients or competitors of Customer.

## 13 Restrictions on access and use of the Cloud Services

- (1) The Customer must only access and use the Cloud Services in accordance with this Agreement.

- (2) Customer must, and must ensure that the Users must:
- (a) not permit or allow any other person (other than, in the case of Customer, the Users) to access or use the Cloud Services;
  - (b) ensure that log-in credentials (including passwords) that may be authorised or issued by RFI Group to enable Customer or the User to access the Cloud Services are kept securely and not disclosed, supplied or transferred to any other person, other than, in the case of Customer, the Users;
  - (c) not sub-license, disclose, sell, resell, publish, transmit or otherwise make available to any third party (other than, in the case of the Customer, the Users) any part of the Cloud Services;
  - (d) not modify, copy, or create derivative works based on the Cloud Services (or any data contained therein), reverse engineer the Cloud Services (except to the extent permitted by non-excludable laws), or otherwise infringe RFI Group's or another person's Intellectual Property, in respect of the Cloud Services;
  - (e) not use the Cloud Services for hire or rental, service bureau, or in any other way where a third party may derive benefit from the use of the Cloud Services;
  - (f) do all things necessary so that RFI Group is able to provide the Cloud Services in accordance with this Agreement;
  - (g) comply with RFI Group's reasonable directions relating to the Cloud Services;
  - (h) not store or manage any personal information on the Cloud Services;
  - (i) comply with all applicable laws;
  - (j) not store, or send, unlawful material, viruses, or malicious code on, or by means of, the Cloud Services;
  - (k) not attempt to gain unauthorised access to, disrupt, or bypass, the security, integrity, or performance of, the Cloud Services or any data contained in it;
  - (l) not use the Cloud Services in a manner reasonably likely to adversely affect other users of the Cloud Services;
  - (m) not access or use the Cloud Services in an unlawful manner or for any unlawful purpose; or
  - (n) not use the Cloud Services for the purpose of copying its features or user interface, or for creating a product or service that is in competition to RFI Group or with the Cloud Services.

#### **14 Changes to the Cloud Services**

- (1) RFI Group may make changes to the Cloud Services from time to time (including any Cloud Provider), provided that the change does not materially decrease the functionality of the Cloud Services. Once incorporated, these changes will form part of the Cloud Services.
- (2) Customer agrees that it entered into this Agreement without relying on any warranty, representation, or comments concerning any future functionality or features of the Cloud Services, and that Customer has not relied on any warranty, representation or comments made by RFI Group, including any roadmaps, with respect to future functionalities or features of the Cloud Services.

#### **15 Customer Responsibilities**

The Customer must, and must ensure that the Users:

- (1) provide its own facilities (including computers, terminals, software, telecommunications facilities and internet connectivity) necessary for accessing and using the Cloud Services; and
- (2) maintain the confidentiality of all login credentials that may be provided or allocated to Customer and the Users and not disclose them to any third party.

#### **16 Users**

- (1) The Customer is solely responsible for any access to or use of the Cloud Services by the Users and must ensure that the Users comply with this Agreement as though they were the Customer.
- (2) The Customer acknowledges that any access to or use of the Cloud Services by means of a username that may be provided or allocated to a User (whether or not such use is in fact by that person) is deemed to be access or use by that User.

#### **17 Customer Data**

- (1) The Customer will own and retain all rights, title and interest in and to Customer Data.

- (2) The Customer will be responsible for the content of all Customer Data and for complying with all applicable laws in respect of Customer Data.
- (3) Without limiting the generality of clause 17(2) Customer must ensure that it has obtained all necessary licences, consents, or authorisations, and given all necessary notices, as are required by law, for RFI Group to receive, store, process, use, and disclose Customer Data as part of providing the Cloud Services.
- (4) The Customer acknowledges and agrees that:
  - (a) as part of providing the Cloud Services, RFI Group may store, process, or disclose, Customer Data at a location outside the UK and/or EEA (including on overseas systems operated by the Cloud Provider).
  - (b) the nature of the Cloud Services means that RFI Group may vary the storage location of Customer Data from time to time; and
  - (c) RFI Group may delete or destroy Customer Data stored on the Cloud Services at any time after expiry of this Agreement.

#### **18 Cloud Provider**

- (1) Customer acknowledges and agrees that the availability of the Cloud Services depends upon permissions and services from the Cloud Provider.
- (2) If there is a change in respect of the services provided by the Cloud Provider or if a new Cloud Provider is appointed, RFI Group will use reasonable efforts to:
  - (a) minimise the effect of the change on the Cloud Services; and
  - (b) give reasonable notice of any change in connection with the Cloud Provider that is likely to adversely affect the Cloud Services.
- (3) If RFI Group uses the reasonable efforts in clause 18(2), RFI Group will have no liability whatsoever relating to a change of, or in connection with, the Cloud Provider.

#### **19 Suspension**

- (1) RFI Group may suspend the access to, and use of, the Cloud Services by Customer and the Users, without liability to pay any termination fee or, subject to clause 11(3) of the Conditions, compensation, in the following circumstances:
  - (a) if the Customer fails to make payment within the time period specified under this Agreement;
  - (b) the occurrence of an event due to Force Majeure;
  - (c) any material breach of this Agreement by Customer;
  - (d) if RFI Group reasonably considers that suspension is necessary to protect the Cloud Services, Customer Data, other customers, or any other computer systems or data (including in response to an external attack); or
  - (e) any other circumstances where RFI Group would be entitled to terminate this Agreement.
- (2) RFI Group will give Customer as much practicable prior notice of the suspension as possible, and will promptly end the suspension after the relevant circumstances have abated.
- (3) If RFI Group has the right to terminate this Agreement, RFI Group may exercise those rights during any period of suspension.

#### **20 General**

##### **20.1 Entire Agreement**

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior negotiation, arrangement, understanding or agreement with respect to that subject matter, including any term of this Agreement.

##### **20.2 Nature of engagement**

RFI Group is engaged by Customer as an independent contractor. Nothing in this Agreement creates a relationship between the parties of employer and employee, principal and agent, partnership or joint venture.

##### **20.3 Variation**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

#### **20.4 Assignment**

- (1) Except to a related body corporate, the Customer may not assign or otherwise transfer its rights under the Agreement without the prior written consent of RFI Group.
- (2) RFI Group may sub-contract or delegate the performance of all or part of the Cloud Services to subcontractors. RFI Group will not be relieved of any of its liabilities or obligations under this Agreement if it sub-contracts all or part of the Cloud Services.

#### **20.5 Severance**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability, but will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **20.6 Execution by Counterparts and Electronic Execution**

This Agreement may be executed:

- (1) in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement; and
- (2) by any generally accepted and lawful form of electronic signature including DocuSign. A party who receives an electronic signature may assume that the execution was validly and lawfully performed.

#### **20.7 No Waiver**

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### **20.8 Governing Law and Dispute Resolution**

- (1) This Agreement shall be governed in all respects by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts in respect of any contractual or non-contractual disputes.
- (2) The parties agree that if there is a dispute they will work together in good faith first, to resolve the matter internally by escalating it to higher levels of management and then, if necessary, to use a mutually agreed alternative dispute resolution technique prior to resorting to litigation.

#### **21 Data Protection**

Each Party undertakes, where applicable, to comply fully with the Data Protection Legislation and all other applicable laws and regulations (including guidance and codes of practice) relating to data protection and the processing of personal data and privacy (and any subsequent amendment, re-enactment, consolidation or replacement thereof or implementing legislation) in effect in any relevant territories from time to time and all generally acknowledged international data security principles.

#### **22 Force Majeure**

A party will not be liable for any delay or failure to perform its obligations under this Agreement (other than payment) if such delay is due to Force Majeure. If a delay or failure of a party to perform its obligations (other than payment) is caused or anticipated due to Force Majeure, the performance of that party's obligations (other than payment) will be suspended while the Force Majeure continues.