

# Infutor Data Subscription Agreement for AWS Marketplace

This Data Subscription Agreement for AWS Marketplace applies to data subscriptions between Infutor Data Solutions LLC ("Infutor"), and the party subscribing to data through AWS Marketplace ("Subscriber"). Infutor's offer of the Data via an Offer on AWS Marketplace or AWS DataExchange or other subsections of AWS Marketplace, and Subscriber's purchase of the corresponding subscription to the Data on AWS Marketplace constitute each party's acceptance of this agreement.

## **1. DATA SUBSCRIPTION**

Infutor will provide Data to Subscriber as set forth in the Offer. Data will be distributed via AWS Marketplace and may be downloaded via Amazon Simple Storage Services ("Amazon S3") or other available functionality. The frequency of updates to the Data, the Products to be provided to Subscriber, and the fees for those Products will be set forth in the applicable Offer.

Infutor may modify the sources, content, or format of Data it delivers to Subscriber.

## **2. DEFINITIONS**

### **A) Data-related Definitions**

"Data" means the data identified in the applicable Offer and any other information provided by Infutor under this Agreement that relates to the identity or characteristics of individual entities.

"Infutor Data" means the Data provided to Subscriber by Infutor.

"Data Element" means an individual piece of information included in the Data, such as a name, a phone number, or a characteristic score.

"Record" means the set of all Data Elements related to a single entity. For example, a Record may contain Data Elements related to an individual person such as phone number, address, email, and the VIN of their automobile.

"Product" means the Infutor Data and the processes for delivering that Data to Subscriber.

"Infutor File" or "On-Premise Product" means a collection of Data in a set format provided by Infutor to Subscriber and stored in a location or locations under Subscriber's control.

"Data Enhancement" means performing operations on Data in order to improve the accuracy or relevance of the Data. Enhancement operations include:

1. Append or Reverse Append: adding new Data Elements to a Record.
2. Filter: generating a set of Records based on the values of Data Elements in each Record.
3. Enhance: changing the value of existing Data Elements.

"List" means the set of Data generated from a Filter operation.



“Input” means a query from Subscriber to Infutor that contains the parameters of a particular Data Enhancement to be performed.

“Match” means a set of Data Elements provided to Subscriber as a result of an Input.

“End User” means an entity that uses Infutor Data for its own internal purposes and does not provide the Infutor Data to one or more third parties who are not Data Service Providers.

“Reseller” means an entity that provides Infutor Data to one or more third parties who are not Data Service Providers.

“Data Service Provider” means an entity that provides Data Enhancement on behalf of Subscriber solely for that Subscriber’s benefit.

“Batch” means any Data transfer or delivery method in which the Data is transferred from one party to the other in bulk, generally via FTP or SFTP.

“API” means a Data transfer or delivery method based on individual queries to Infutor’s web application program interface.

“Offer” means the public or private offer by Infutor for a subscription to Infutor Data, as set forth in the detail page on AWS Marketplace.

“AWS Marketplace” means the marketplace operated by Amazon Web Services, Inc.

“PII” means Data that meets the definition of PII in Section 2.1 of NIST Special Publication 800-122. The definition is reproduced here for convenience: *“PII is any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.”*

### **3. DATA USES AND LIMITATIONS**

Infutor grants to Subscriber a license to the Infutor Data in accordance with the terms of this Agreement and the Offer. The Parties shall transmit files containing PHI, PII, or other protected data only via SFTP or Amazon S3. Such files must be encrypted using public key encryption and each Party shall provide their public key to the other Party upon request.

The following conditions apply to Subscriber’s use of the Products:

#### **A) Permitted Data Uses**

Subscriber may use the Products only for the following purposes:

1. Performing Data Enhancement on Data owned by Subscriber for use by Subscriber.
2. Using Infutor Data to perform analysis or build models for use by Subscriber.

3. Marketing Licensee's products and services to potential customers in accordance with all applicable laws and regulations.

## **B) Data Use Limitations**

The following restrictions apply to Subscriber's use of the Products:

1. Subscriber shall not provide the Product data to any third party other than a Data Service Provider. If Subscriber utilizes a Data Service Provider, Subscriber shall include terms substantially similar to those in the Data Service Provider Flowdown Terms section in their agreement with the Data Service Provider.
2. Subscriber shall not attempt to reverse engineer or otherwise replicate the functionality of any software, tools, or analysis methods which are provided to Subscriber by Infutor or used in the provision of Services or Products by Infutor, except as permitted by law.
3. Upon written request, Subscriber shall disclose to Infutor locations where it keeps Infutor Data. Subscriber shall obtain written permission from Infutor prior to any relocation of Infutor Data to a location outside of the United States.
4. Subscriber shall not take any action with respect to anonymized Infutor Data that could lead to the identification of the data subject, such as attempting to reverse hashed identifiers. Licensee shall not reverse engineer anonymized Infutor Data or combine it with other data in order to discover or extrapolate PII.

## **4. TERM AND TERMINATION**

### **A) Term**

This agreement will terminate upon conclusion of the subscription as set forth in the Offer, unless terminated earlier by either Party as provided under this agreement. Obligations intended to survive termination of this agreement will remain in effect.

### **B) Termination for Governmental Regulation**

In the event that any law or governmental regulation restricts Infutor's ability to provide the Products, Infutor may terminate the affected subscription upon no less than 30 days' prior written notice to Subscriber. Upon such termination, if required by law or governmental regulation, Subscriber shall destroy the affected Infutor Data.

### **C) Upon Termination**

Upon termination of this schedule, Subscriber shall immediately discontinue use of the Products and destroy all On-Premise Products in its possession, and, upon request, provide written certification of such destruction no more than 21 days after termination.

## **5. COMPLIANCE**

### **A) Consumer Inquiries**

Subscriber shall respond to all consumer inquiries about Subscriber's use of Infutor Data. Subscriber shall not make marketing solicitations using Infutor Data to individuals who have

requested not to receive such solicitations from Subscriber. Subscriber may communicate consumer inquiries that involve the accuracy of the Infutor Data to Infutor. Infutor shall cooperate with Subscriber to address any consumer issues that Subscriber has made reasonable efforts to resolve.

#### **B) Consumer Reports**

Subscriber shall not use Infutor Data as the source for determination of consumer credit worthiness, consumer credit approval, or a consumer's eligibility for employment or insurance. Subscriber shall not use Infutor Data as the sole source in generating a consumer report as defined in 15 USC §1681a.

#### **C) Data Protection**

Subscriber shall maintain administrative, physical, and technical safeguards that are no less rigorous than accepted data industry practices in order to prevent the release of any PII to unauthorized parties.

#### **D) Suspension of Delivery**

If Infutor believes that Subscriber's use of or handling of Infutor Data is not in compliance with this Agreement, Infutor may restrict delivery of Infutor Data until Infutor is reasonably satisfied that Licensee is in compliance.

### **6. PAYMENT**

#### **A) API Overages**

For API products offered by Infutor that include overages per the "Terms" section of the Offer and for which metered invoicing is not available on AWS Marketplace, Infutor will invoice Subscriber for overages in the subsequent month via a private offer on AWS Marketplace. The private offer will include the number of overage inputs, the overage per-unit rate per the original Offer, and the total amount due. Subscriber shall accept the private offer and make payment for the overage amount.

#### **B) Timing**

Subscriber shall pay invoiced amounts no more than 30 days after the date of the invoice (the "Due Date"). To dispute an invoice, Subscriber must provide written notice to Infutor before the Due Date. If Subscriber fails to pay undisputed invoiced amounts on or before the Due Date, Subscriber shall owe 1.0% interest per month, beginning on the Due Date, on all unpaid amounts, and Infutor may, upon 10 days' written notice to Subscriber that payment is overdue, suspend access to the Products.

#### **C) Tax**

Subscriber is responsible for all sales, use, and other applicable taxes or duties related to the purchase of the Products.

## **7. VERSIONING**

This agreement may be updated by Infutor from time to time. The version governing the purchase will be the version displayed on AWS Marketplace at the time the Offer was accepted. For

## **8. WARRANTIES**

INFUTOR WARRANTS THAT THE PRODUCTS DO NOT VIOLATE ANY APPLICABLE LAWS OR GOVERNMENTAL REGULATIONS. THE INFUTOR DATA IS PROVIDED AS-IS.

INFUTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE.

## **9. LIMITATION OF LIABILITY**

INFUTOR WILL NOT BE LIABLE FOR INCIDENTAL DAMAGES, LOSS OF PROFITS, OR ANY BREACH-OF-CONTRACT DAMAGES THAT A PERSON COULD NOT HAVE REASONABLY FORESEEN AT THE TIME OF BREACH, EVEN IF INFUTOR IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. INFUTOR WILL NOT BE LIABLE FOR DAMAGES IN EXCESS OF THE FEES PAID TO INFUTOR BY SUBSCRIBER IN THE 12 MONTHS PRECEDING THE CLAIM GIVING RISE TO THE LIABILITY.

## **10. INDEMNIFICATION**

Subscriber will be liable to Infutor for damages incurred due to any third-party claim against Infutor resulting from Subscriber's use of Infutor Data or Subscriber's failure to comply with any law or regulation, provided that Subscriber is given prompt notice of the claim and full control over the defense of the claim. Subscriber shall not include an admission of wrongdoing by Infutor without Infutor's approval, which Infutor shall not unreasonably withhold. Infutor may be represented by counsel of its choice and may be present at all associated proceedings.

## **11. FORCE MAJEURE**

Neither party will be liable to the other for any failure of performance of its obligations under this agreement if the failure is due to an event beyond the party's control, including without limitation government action, fire, flooding, acts of war or terrorism, and internet or power outages. The affected party shall make reasonable efforts to mitigate the effects of the event, and shall promptly notify the other party of the nature and extent of the event.

## **12. CONFIDENTIALITY**

### **A) Confidential Information**

In this agreement, "Confidential Information" means any information given by one party (the "Discloser") to the other party (the "Recipient") that: a) is marked as confidential or with any equivalent marking; b) the Discloser states is confidential at the time the information is disclosed; or c) a reasonable person would recognize to be confidential given the circumstances surrounding the disclosure. Confidential Information includes, but is not limited to: data,

software, algorithms, credentials, pricing, financial information, customer information, and information about business conducted between the parties. Confidential Information does not include any information: a) received from a third party that was not, at the time of disclosure, subject to obligations of confidentiality with respect to the information; b) known to the general public, other than as a result of a breach of this agreement; c) which was previously known by the Recipient; d) independently developed by the Recipient without the use of the Discloser's Confidential Information; or e) disclosed pursuant to a requirement of law or a court order, provided that the Recipient has provided the Discloser with reasonable opportunity and assistance to prevent or limit such disclosure.

#### **B) Permitted Uses and Disclosures**

During the term of this agreement, the parties may share Confidential Information with each other. The Recipient shall disclose Confidential Information only to those individuals who need access to the Confidential Information ("Representatives"). If any one or more Representatives of the Recipient disclose or use Confidential Information other than as authorized in this agreement, the Recipient will be liable to the Discloser for that disclosure or use to the same extent that it would have been had the Recipient disclosed or used that Confidential Information.

#### **C) Handling of Confidential Information**

The Recipient shall protect Confidential Information with at least the same degree of care that it uses to protect its own confidential information, which must be at least a reasonable degree of care. Upon the Discloser's request, the Recipient shall promptly return or destroy any Confidential Information in its possession. The Recipient shall promptly notify the Discloser, in writing, of any unauthorized disclosure of the Confidential Information, and shall assist the Discloser in obtaining the return or destruction of such Confidential Information.

#### **D) Source of Data**

Subscriber shall treat as Confidential Information the fact that it receives Data from Infutor, except in response to an inquiry from a consumer who is the subject of a particular record which includes Infutor Data. Subscriber will not issue any publicity materials or press releases that refer to Infutor, or use Infutor's trade name, trademark, service mark, or logo in any advertising, promotions, or otherwise, without Infutor's prior written consent.

### **13. NOTICES**

For a notice under this agreement to be valid, it must be in writing and delivered, all fees prepaid, to the address below a) by hand, b) by a national transportation company, or c) by registered or certified mail. A notice will be deemed to have been received by the party to which it is addressed if such party rejects delivery, or if the notice cannot be delivered because of a change of address for which no notice was given. A notice will become effective when it is received or deemed to have been received.



For Infutor Data Solutions, LLC:  
c/o Infutor Legal Department  
One Lincoln Centre, 18W140 Butterfield Rd Suite 1020, Oakbrook Terrace, IL 60181

For Subscriber:  
Notices will be delivered to the address provided to the AWS Marketplace.

#### **14. ENTIRE AGREEMENT/AMENDMENT**

The Subscription is subject to and governed by the terms of this Agreement, the Offer. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement is solely between Subscriber and Infutor. Neither Amazon Web Services, Inc. nor any of its affiliates are a Party to this Agreement. Nothing in this agreement confers any rights or obligations to anyone who is not a party to this agreement.

#### **15. ASSIGNMENT**

Infutor may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products, or assign the right to receive payments, without Subscriber's consent. Subscriber may not assign any of its rights or obligations under this agreement without the prior written consent of Infutor.

#### **16. GOVERNING LAW**

This agreement is governed by the laws of the State of Illinois.

#### **17. SEVERABILITY**

The parties intend that if any term of this agreement is found by any court to be void or otherwise unenforceable, the remainder of this agreement will remain enforceable.

#### **18. WAIVER**

A failure by a party to enforce any provision of this agreement against the other party does not constitute a waiver of that provision. No waiver of any provision of this agreement is binding unless set forth in a writing that expressly states the waived provision and that is signed by the waiving party. No such waiver shall constitute a waiver of any other provision.

#### **19. DATA SERVICE PROVIDER FLOWDOWN TERMS**

Subscriber shall include these or substantially similar terms in its agreements with its Data Service Providers:

- a) The Data Service Provider shall not use Infutor Data for any purpose other than to provide data services to Subscriber.
- b) The Data Service Provider shall not make copies of Infutor Data except to the extent necessary to perform data services for Subscriber.



- c) The Data Service Provider shall not provide Infutor Data to any entity other than Subscriber.
- d) The Data Service Provider shall delete all Infutor Data and any copies of Infutor Data immediately upon the completion of performing data services for Subscriber.
- e) The Data Service Provider shall treat Infutor Data as Confidential Information, which Subscriber and Data Service Provider shall define substantially similarly to the confidentiality provisions of this agreement

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