

Directed Analytics

EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached Directed Analytics, ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

Directed Analytics SaaS Subscription Agreement

Effective: July 5, 2023

This SaaS Agreement (“**Agreement**”) is entered into by and between Directed Analytics set forth below (“**Company**”) and the Ordering Activity under GSA Schedule contracts placing an order for or accessing any Services (“**Customer**” or “you”). If you are an individual and reside in or are a company and are incorporated in the United States, you are entering into this contract with Directed Analytics Inc. If you are accessing or using the Services on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to “you” or “Customer” reference your company.

This Agreement permits Customer to purchase subscriptions to online software-as-a-service products and other services from Company pursuant to any Company ordering documents, online registration, order descriptions or order confirmations referencing this Agreement (“**Order Form(s)**”) and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement will govern Customer’s initial purchase on the date set forth in the applicable Order Form (the “**Effective Date**”) as well as any future purchases made by Customer that reference this Agreement. Each Service is provided on a subscription basis for a set term designated on the Order Form (each, a “**Subscription Term**”).

Modifications to this Agreement: From time to time, Company may non-materially modify this Agreement by providing notice to Customer (including by posting such updates on the Service website). Unless otherwise specified by Company, non-material changes become effective for Customer upon renewal of Customer’s current Subscription Term or entry into a new Order Form. Company will use reasonable efforts to notify Customer of the changes through communications via Customer’s account, email, or other means. Continued use of the Services after the updated version of this Agreement goes into effect will constitute Customer’s acceptance of such non-materially updated version. If the Customer objects to such changes, prior to the start of the next Subscription Term, Customer may notify Company of its desire to not renew the Agreement and receive as its sole remedy a refund of any fees Customer has pre-paid for use of the applicable Services for the not yet started portion of the Subscription Term. Any material updates to this agreement shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating these terms.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT BY EXECUTING A WRITTEN ORDER, YOU ARE AGREEING TO BE BOUND BY ALL TERMS,

CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE ANY SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

1. SAAS SERVICES

1. Subject to the terms of this Agreement and during the Subscription Term specified in an applicable Order Form, Company will use commercially reasonable efforts to provide Customer the Services in accordance with this Agreement. As part of the registration process, Customer will identify an administrative username and password for Customer's Company account.
2. If Customer receives free access or a trial or evaluation subscription to the Service (a "**Trial Subscription**"), then Customer may use the Services in accordance with the terms and conditions of this Agreement for a period of seven (7) days or such other period granted by Company (the "**Trial Period**"). Trial Subscriptions are permitted solely for Customer's use to determine whether to purchase a paid subscription to the Services. Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription Term. If Customer does not enter into a paid Subscription Term, this Agreement and Customer's right to access and use the Services will terminate at the end of the Trial Period. Company has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, COMPANY WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.

2. RESTRICTIONS AND RESPONSIBILITIES

1. Customer will not (a) use the Services in excess of the scope of use specified in an applicable Order Form, or (b) directly or indirectly: reverse engineer the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software; (c) use the Services or any Software for timesharing or service bureau purposes; or

- (d) remove any proprietary notices or labels.
2. Customer represents, covenants, and warrants that Customer will use the Services only in compliance with this Agreement and all applicable laws and regulations. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be in violation of the foregoing.
 3. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment") Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.
 4. The Service is subject to the scope of use specified in the applicable Order Form. Customer agrees that it is solely responsible for the nature and content of all materials, works, data, statements, and other visual, graphical, video, written or audible communications of any nature submitted by Customer or otherwise used through its Account. Customer agrees not to use or permit the use of the Service:
(a) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (b) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability; (c) in any manner that is likely to damage, disable, overburden, or impair the Service or interfere in any way with the use or enjoyment of the Service by others; (d) to introduce any Malware or other malicious activity in Customer's use of the Service; (e) in violation of any export law or regulation; or (f) in any way that constitutes or encourages conduct that could constitute a criminal offense.
 5. Each party acknowledges it is responsible to comply with all applicable requirements of the California Consumer Protect Act (CCPA) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time. The parties acknowledge that:

1. If the Company processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the data controller and the Company is the data processor for the purposes of the CCPA.
6. Company may at any time temporarily suspend any use of the Service and/or remove or disable any content as to which Company reasonably and in good faith believes is necessary to comply with legal process, regulation, order or prevent imminent harm to the Service or any third party. Company agrees to provide Customer with notice of any such suspension or disablement before its implementation unless such suspension or disablement is necessary to comply with legal process, regulation, order or prevent imminent harm to the Service or any third party, in which case Company will notify Customer to the extent allowed by applicable law of such suspension or disablement as soon as reasonably practicable thereafter.

3. CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS.

1. Either party has disclosed, or may disclose, business, technical or financial information relating to its business ("Confidential Information"). Confidential Information of Company includes non-public information regarding features, functionality and performance of the Service. Confidential Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). A party receiving confidential information ("Receiving Party") from the party disclosing Confidential Information ("Disclosing Party") agrees: (a) to take reasonable precautions to protect such Confidential Information, and (b) not to use (except in performance of the Services or as otherwise permitted in this Agreement) or divulge to any third person any such Confidential Information. The obligations of confidentiality stated in this section shall survive for five (5) years from the last date Customer uses the Service.
2. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that: (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was

independently developed without use of any Confidential Information of the Disclosing Party; or (e) is required to be disclosed by law. Company recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

3. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and have made a reasonable effort to obtain a protective order; or (b) to establish a party’s rights under this Agreement, including to make required court filings; or (c) in confidence, to legal counsel, consultants, accountants, banks, and financing sources, and their advisors; (d) to respond to due diligence requests in connection with an actual or proposed merger, acquisition, or similar transaction (but only with respect to the terms and conditions of this Agreement); or (e) to respond to an emergency which Company believes in the good faith should be disclosed to assist in preventing the death or serious bodily injury of any person or material damage to property.
4. Company shall own and retain all right, title, and interest in and to (a) the Services and Software, including all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services, and (c) all intellectual property rights related to any of the foregoing.
5. Notwithstanding anything else in this Agreement, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and development of related systems and technologies.

4. PAYMENT OF FEES

1. Customer will pay Company the fees specified in the applicable Order Form in accordance with the GSA Schedule Pricelist (the “Fees”). If Customer believes that Company has billed Customer incorrectly, Customer should contact Company no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

2. Fees are due and payable thirty (30) days after the receipt date of the invoice, unless (a) Customer is paying via Credit Card or (b) otherwise specified in the applicable Order Form. Unpaid amounts are subject to an interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Company shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

5. RENEWALS, TERM AND TERMINATION

1. Subject to earlier termination as provided below, this Agreement is effective as of the Effective Date. It shall remain in effect unless terminated; provided that this Agreement shall automatically terminate upon the earlier of (a) the termination or expiration of all Subscription Terms or (b) termination as provided in Section 5.2 below. Unless otherwise specified on the applicable Order Form, each Subscription Term may be renewed for the period of the initial Subscription Term specified on the order form by executing a written order.
2. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Company shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company warrants that the Services will be delivered in a professional manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall make reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. IP INDEMNIFICATION

1. Company will have the right to intervene to defend Customer against any third party claim that the Service infringes a patent, registered trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of Customer's actions) ("**Claim Against Customer**"), and will indemnify Customer for the resulting costs and damages finally awarded against Customer to such third party by a court of competent jurisdiction or agreed to in settlement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. To the extent permitted by law, Company will have no liability to Customer under this Section 7.1 for any Claim Against Customer that arises out of: (a) any unauthorized use, reproduction, or distribution of the Service by Customer; (b) use of the Service in combination with any other software or equipment not supported by Company; or (c) any modification or alteration of the Service by anyone other than Company without the written approval of Company. In the event of a Claim Against Customer pursuant to this Section 7.1, Company may (at Company's option and expense): (i) obtain for Customer the right to continue using the Service; (ii) modify the Service to make it non-infringing; or (iii) if subsections (i) and (ii) are not commercially viable (as determined by Company in its sole discretion), terminate this Agreement and refund

Customer on a pro-rated basis any Fees pre-paid to Company for the corresponding unused period of the Service.

2. As a condition of receiving an indemnification under this Agreement, Customer will provide Company with (i) prompt written notice of the claim; (ii) control over the defense and settlement of the claim (provided, that the Company will not settle any claim without the Customer's prior written permission, which will not be unreasonably withheld, delayed or conditioned, in the event the settlement fails to unconditionally release the Customer from all liability pertaining to such claim); and (iii) such assistance in connection with the defense and settlement of the claim, at the Customer's expense, as the Company may reasonably request.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. PUBLICITY

1. Press Releases. Neither party will issue any press release or similar publicity regarding the parties' relationship under this Agreement without the other's written approval.
2. Identification of Customer. Company may identify Customer, by name, as a customer of the Services on Company's website and other marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

10. MISCELLANEOUS

1. If any provision of this Agreement is found to be unenforceable or invalid, that

provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain effect and enforceable. In accordance with GSAR 552.212-4(f), Neither party shall be liable to the other for any delay or failure to perform any of the obligations set forth under this Agreement due to any act of God and/or force majeure causes beyond its reasonable control, including but not limited to hurricane, fire, flood, earthquake, terrorism or similar acts. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

2. This Agreement shall be governed by the Federal laws of the United States.

For additional information, please contact us at info@directedanalytics.com

Directed Analytics SaaS Maintenance and Support Agreement

Effective: July 5, 2023

The following are the maintenance and support terms and conditions pertaining to the Software being provided by Company to the Customer.

Article 1 Definitions

For purposes of this Maintenance Agreement, the following terms shall have the meanings set forth below.

“Additional Services” means additional services (including training) that are not part of the Maintenance and Support Services, and that are agreed to in writing by Company and Customer. “Covered Software” means the Software as defined in the SaaS Subscription Agreement as well as data centers where Company hosts the Software for the Customer.

Article 2 Coverage

During the term of this Agreement as set forth in Article 8 below, Company agrees to provide the Maintenance and Support Services for the Covered Software. The Covered Software does not include Customer-developed software or third-party software. All Maintenance and Support Services shall be subject to the Level of Use purchased by the Customer.

Article 3 Description of Maintenance Services

3.1. Support Services

During the term of this Maintenance Agreement as set forth in Article 8 below, Company will provide the services described herein so as to maintain the Covered Software in good working order, keeping it free from material defects and Errors so that the Covered Software shall function in accordance with its specifications, be operable, and have an uptime of 99.5%.

3.1.1. Basic Support Response

Company will make available to Customer an email address (the “Support Email”) for Customer to initiate trouble reports requesting service of the Covered Software. The Support Email is accessible at all times, but requests other than those defined in SECTION 3.2 will be handled between 8:00am and 8:00pm Eastern Standard Time (GMT-5:00), Monday through Friday, excluding legal holidays in Louisiana and/or the United States. The Support Email can also be used to notify Company of problems associated with the Covered Software and related documentation.

3.1.2. Call-In Support Response

Company will make available a telephone number (the “Support Center Hotline”) that may be used by any Customer to report Severity 1 incidents (as defined in SECTION 3.2.1). The Support Center Hotline operates from 8:00 am to 5:00 pm Eastern Standard Time (GMT-5:00), Monday through Friday, excluding legal holidays in Louisiana and/or the United States. At all other times, the Support Center Hotline is forwarded to a voicemail system that is monitored by an on-call support engineer.

The Support Center Hotline may not be used for Severity 2 or 3 incidents unless the Customer purchases the Call-In Support Additional Service. Call-In Support contracts run concurrent with the Maintenance Agreement period and entitle the Customer to designate one or more individuals as Customers’ Designated Support Liaison(s). The Designated Support Liaison(s) will be allowed to call the Support Center Hotline for incidents of any Severity and to notify Company of problems associated with the Covered Software and related documentation.

3.2. Remedial Support

Upon receipt by Company of notice from Customer through the Support Center Hotline or Support Email of an Error, defect, malfunction or nonconformity in the Covered Software, Company shall respond as provided below:

3.2.1. Severity 1

A Severity 1 incident is defined as one that produces an emergency situation in which the Covered Software is substantially or completely non-functional or inoperable. Customer must report Severity 1 incidents to the Company by telephone, not by email.

3.2.1.1. Severity 1 Response

In the case of a Severity 1 incident, a qualified member of Customer’s staff will respond via telephone to begin to diagnose the problem within one (1) hour. Customer will devote all reasonable resources and use its best efforts to resolve Severity 1 problems as quickly as possible. The resolution will be delivered to Customer as a work-around or as an emergency software fix. If Company delivers an acceptable work-around, the severity classification will drop to a Severity 2.

3.2.2 Severity 2

A Severity 2 incident is defined as one that produces a detrimental situation in which the Covered Software is usable, but materially incomplete; performance (throughput or response) of the Covered Software degrades substantially such that there is a severe impact on use under reasonable loads; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

3.2.2.1 Severity 2 Response

In the case of a Severity 2 incident, a qualified member of Company's staff will respond by telephone or email as soon as reasonably possible, but in any event a response will be provided within eight (8) business hours. Company will devote all reasonable resources and will use its best efforts to resolve Severity 2 problems within five (5) business days. The resolution will be delivered to Customer in the same format as Severity 1 problems. If Company delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

3.2.3 Severity 3

A Severity 3 incident is defined as one that produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner, but the user suffers little or no significant impact.

3.2.3.1 Severity 3 RESPONSE

Company will exercise commercially reasonable efforts to resolve Severity 3 problems in future maintenance releases.

3.3 Maintenance Services

During the term of this Maintenance Agreement, Company will maintain the Covered Software by providing to Customer any and all software updates and enhancements to the Covered Software ("Updates") offered by Company under its general maintenance policies. Updates will be provided when available and include bug fixes, security updates, new features, enhancements to existing features, and/or performance enhancements to existing features.

Updates do not include product extensions to different hardware platforms, different operating system platforms, or different database platforms. Updates also do not include new applications, new third party tools, new functionality being sold to new Customers as separate modules, or add-on modules or custom software (whether created by Company, Customer, or a third party).

Updates will be installed by Company's staff or automated processes. Updates will be scheduled to minimize disruption to Customer's end users. All updates will be implemented within 30 days of public release. Neither Company nor Customer shall unreasonably delay implementation. Updates to related documentation will be provided in electronic form.

Company will provide Support and Maintenance services for previous releases for a period of one year. Company shall have no further responsibility for supporting and maintaining prior releases.

Company assumes no responsibility for the operation or performance of any add-on modules, custom software, or integrated applications, whether created by Company, Customer, or a third party.

3.4 Services Not Included

Maintenance and Support Services do not include any of the following: custom programming services; on-site support, including installation of hardware or software; support of any software not Covered Software; training; out-of-pocket and reasonable expenses, including hardware and related supplies; or any other activity set forth in this Maintenance Agreement that is deemed an Additional Service.

Article 4 Time and Material Services for Non-Customer Problems

In the event that Customer notifies Company of a problem experienced by Customer in connection with the operation of the Covered Software, Company shall respond as provided in Section 3.2 above. If the cause of such problem is not an Error, defect or nonconformity in the Covered Software, Customer shall compensate Company for all work performed by Company in connection therewith, on a time and materials basis at the Company's rates as set forth in the Directed Analytics Pricing List (or such lower rate as mutually agreed upon).

Article 5 Access

Maintenance and Support Services are conditioned upon provision by Customer to Company of reasonable necessary access to the people and systems running the Covered Software, including, but not limited to, passwords, system data, file transfer capabilities, and screen sharing and phone calls with administrators, technicians, and end users. Company will maintain security of the system and use such access only for the purposes of providing the services and will comply with Customer's standard security procedures. Information accessed by Company agents or employees as a result of accessing Customer system shall be deemed "Confidential Information".

Article 6 Annual Maintenance and Support Fees

6.1 Maintenance and Support Fees

Maintenance and Support is included in Customer's SaaS Subscription Fees and shall be provided as long as this Agreement is in force.

6.2 Travel and Related Expenses

Customer agrees to reimburse Company for reasonable travel and related expenses incurred by Company related to providing the Maintenance and Support Services in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR). Customer shall only be liable for such travel expenses as approved by Customer and funded under the applicable ordering document .

Article 7 Term and Termination

The term of this Maintenance Agreement shall commence upon signature of this agreement, and shall expire when Customer provides written notice to Company of its intent not to renew or does not pay Fees when due pursuant to Article 6 of this Agreement. This Maintenance Agreement shall be terminable if the SaaS Subscription Agreement shall be terminated for any reason.

For additional information, please contact us at info@directedanalytics.com