



END-USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END-USER SOFTWARE LICENSE AGREEMENT (“**AGREEMENT**”) CAREFULLY BEFORE DOWNLOADING, INSTALLING, COPYING, ACCESSING OR OTHERWISE USING THE PRODUCT (DEFINED BELOW) AND DOCUMENTATION TO WHICH THIS AGREEMENT RELATES. BY ACCEPTING THIS AGREEMENT, WHICH YOU CAN DO SO BY CLICKING THE ACCEPT BUTTON, DOWNLOADING, INSTALLING, COPYING, ACCESSING OR OTHERWISE USING THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET OUT BELOW.

THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND YELLOWFIN INTERNATIONAL PTY LTD A.C.N. 107 122 234 (“**YELLOWFIN**”) AND EACH REFERRED TO AS A “**PARTY**”. IN THIS AGREEMENT “**YOU**” REFERS TO THE INDIVIDUAL WHO HAS ACCEPTED THE TERMS OF THIS AGREEMENT. IF THE PRODUCT IS BEING USED ON BEHALF OF AN ENTITY, THEN “**YOU**” ALSO REFERS TO THAT ENTITY. IF YOU ARE ACCESSING THE PRODUCT ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ALSO AGREE TO THESE TERMS ON ITS BEHALF. THE AGREEMENT WILL ALSO BE APPLICABLE TO THE USE OF THE PRODUCT ON A TRIAL BASIS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS: DO NOT INSTALL OR USE THE PRODUCT; OR IF YOU ACCESSED THE PRODUCT ELECTRONICALLY, CLICK “DISAGREE/DECLINE” OR SIMILAR TERM; AND YOU MUST PROMPTLY RETURN ALL COPIES OF THE PRODUCT AND DOCUMENTATION TO YOUR SUPPLIER TO BE ELIGIBLE FOR A FULL REFUND. IF YELLOWFIN SOFTWARE IS INCLUDED WITH YOUR PURCHASE OF THIRD-PARTY SOFTWARE OR HARDWARE, YOU MUST RETURN THE ENTIRE HARDWARE/SOFTWARE PACKAGE IN ORDER TO OBTAIN A REFUND.

1. GRANT OF LICENSE

- 1.1. Subject to the terms of this Agreement, and up-to-date payment of all applicable license fees to Yellowfin or its distributor, reseller, independent software vendor (“**Channel Vendor**”) (as the context requires), set out in the document pursuant to which You subscribe for a license to the Product (and related services) and which is approved by Yellowfin or Channel Vendor (as the context requires) (“**Order**”), Yellowfin grants You a non-exclusive, non-transferable, non-sublicensable, personal, limited license for Your internal business purposes to use the “**Product**”.
- 1.2. “**Product**” under this Agreement means a business intelligence and analytics platform comprised of copies of computer software programs developed and owned by Yellowfin and branded ‘Yellowfin’, or any other name or trademark belonging to Yellowfin, comprising various machine-readable computer files with the following components: metadata layer for connecting to and describing data sources, reporting and data analysis creation, dashboard builder, storyboard, collaboration, mobile apps for iOS and Android, and DashXML; however, excludes without limitation: all application program interfaces, plug-ins and third-party components, applications and services as well as any components not shipped to You by Yellowfin.
- 1.3. Any amendments, enhancements, modifications, revisions, updates, patches, or new releases of the Product distributed by Yellowfin (“**Update**”) are subject to the terms and conditions of this Agreement; however, they may also be subject to additional terms accompanying the Update.
- 1.4. Yellowfin grants You and Your Affiliates a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use Yellowfin’s written materials that describe the features, functions and operation of the Product located at www.yellowfinbi.com/YFSupportCentre.i4 as of the delivery date of the Product (the “**Documentation**”).
- 1.5. Except for the license rights granted herein, Yellowfin and/or its licensors at all times retain all rights, title, and interest in the Product and the Documentation. The Product is licensed, not sold, for use only under the terms of this Agreement, and Yellowfin reserves all rights not expressly granted to You.



- 1.6. The term of this license is set out in the Order. If no term is set out in the Order then the term is one (1) year from the Commencement Date (“**Initial Term**”), unless otherwise terminated in accordance with this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one (1) year, on a rolling basis (each renewal a “**Renewal Term**”), unless a Party provides written notice to the other Party not less than thirty (30) days prior to the expiration of the Initial Term or any Renewal Term (as the context requires), that it does not intend to renew this Agreement, in which event the Agreement will expire at the end of the then-current Initial or Renewal Term. The Initial Term, together with all Renewal Terms, will be considered the “**Term**” of this Agreement.
- 1.7. You agree to pay the Annual License Fee as set out in the Order. The Annual License Fee is inclusive of all technical support and maintenance unless otherwise provided in the Order. You also agree to pay any applicable value-added taxes or other applicable taxes, tariffs or withholding taxes that the relevant authorities require You to pay in connection with the Order. All fees are exclusive of any such taxes or tariffs unless expressly stated.
- 1.8. Following acceptance of your Order, Yellowfin will first issue You a temporary software license key”, which will time-out and stop the Product from functioning after sixty (60) days or other time period set out in the Order. Provided all fees and charges payable by You to Yellowfin or its Channel Vendor (as applicable) are paid in full in connection with the Product, and You are not in material default under this Agreement, Yellowfin will send You a permanent software license key before the temporary key expires.
- 1.9. The Product is delivered electronically. Yellowfin will make the Product available for download at the electronic software download (“**ESD**”) site specified by Yellowfin and provide You with instructions on how to access and download the Product. Delivery is complete when You have fully downloaded the Product. Delivery will be deemed complete after seven (7) days of notice that the Product is available for ESD and where Yellowfin has not, in the seven (7) days prior, been informed by You in writing that You are unable to download the Product. You must promptly notify Yellowfin if You are unable to download the Product. You may only use the Product through to the date for which You have paid all applicable fees. Any rights You may have to use the Product cease immediately when payments are no longer current.

2. LICENSE RESTRICTIONS

- 2.1. You acknowledge and agree that the license restrictions contained in this clause 2 apply to You and any person who, under the license granted to You, has access to the Product. References to “You” and “Your” in this clause will also include foregoing persons.
- 2.2. The license model for the Product is the model set forth in the Order.
- 2.3. Your use of the Product and Documentation is limited to internal use within Your organization in the configuration and for the number of users in accordance with Your Order.
- 2.4. Yellowfin reserves all rights, title and interest in and to the Product, including all related intellectual property rights not expressly granted to You in this Agreement. Without limiting the generality of the foregoing, You acknowledge that the Product contains trade secrets and is subject to applicable laws. You agree that You will not, and will not enable or permit others to:
 - 2.4.1. Copy, disassemble, reverse-engineer, decompile, modify or create derivative works of the Product or the Documentation (to the extent that such restrictions are not prohibited by applicable law) except with regard to components of the Product identified as “open-source components” and in strict compliance with the applicable open-source license governing use of that open-source component;
 - 2.4.2. Without the prior written consent of Yellowfin, use the Product to: (i) develop any works that are functionally compatible with, or competitive to, the Product that can function independently of the Product; or (ii) create any works that are derived from the Product (using the Product to produce reports or other tasks permitted by the Product are not deemed to be works derived from the Product);
 - 2.4.3. Utilize any equipment, device, software, or other means designed to circumvent, tamper,



- disable or remove any security mechanisms or form of copy or usage protection used by Yellowfin in connection with the Product;
- 2.4.4. Alter, remove or obscure any patent, trademark or copyright notice in the Product or Documentation;
 - 2.4.5. Combine the Product with any other software (including open-source software), where the combined software is subject to the GNU General Public License or any other license that requires the combined program or the Product and its source-code to be made freely available;
 - 2.4.6. Sublicense, sell, encumber, outsource, or grant any other rights in the Product and/or the Documentation, or allow the Product or Documentation to be possessed by another party.
- 2.5. You must not upload, post or otherwise transmit any content that You do not have a right to transmit.
 - 2.6. You agree You will not upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 2.7. You agree that You will not import, export or re-export the Product, including technical data, to any country, person, entity or end user in violation of export control laws, regulations or restrictions of any of the locations in which You have a business connection. For example, if you have a business connection in the United States, You agree not to export, re-export, or provide the Product to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.
 - 2.8. If You are acquiring the Product by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government's rights in the Product will be only as set forth herein. The Product and related Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software Documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Product and such Documentation with only those rights set forth herein. Contract/Manufacturer is: Yellowfin International Party Ltd, Level 46, 360 Elizabeth Street, Melbourne, Victoria 3000, Australia.
 - 2.9. You may not assign this Agreement without the prior written consent of Yellowfin. However, You may assign this Agreement, in whole, to any successor in interest by operation of law, or pursuant to a merger, corporate reorganization, or sale of all or substantially all of Your business provided: (i) foregoing change does not involve a competitor of Yellowfin; (ii) the corporate successor by merger or the purchaser of the assets (as the context requires) agrees to be bound by this Agreement; and (iii) You provide Yellowfin with thirty (30) days prior notice of proposed assignment.
 - 2.10. You agree to immediately notify Yellowfin of any unauthorized use of the Product or any other breach of security. Yellowfin will not be liable for any loss or damage arising from Your failure to comply with this clause.
 - 2.11. You may not disclose benchmark test results for the Product without the written consent of Yellowfin.
 - 2.12. If, as part of the Product, You have access to Google Maps/Google Earth APIs: (i) You agree that all such use will be pursuant to the terms and conditions of this Agreement, together with Google's Terms of Service, which may be found at: www.google.com/intl/en/policies/terms (or such successor URLs that Google may designate from time to time), together with any changes to such terms as Google may make from time to time.
 - 2.13. Insofar as the Product contains third-party components, they are set forth in the Documentation, the "[readme].txt" file, the [notices.txt] file, or another electronic file accompanying the Product ("**Special Notices**"). Subject to clause 2.14 below, Yellowfin warrants that it complies with the terms of the license applying to third-party components incorporated into the Product and that it is permitted to license the Product to You, and Your Affiliates, to use. Where the Product or Documentation contains, or otherwise



incorporates, Special Notices, You agree that You must not delete, modify or alter the Special Notices. In the event of any inconsistency between this Agreement and a license associated with an open-source component, the relevant open-source component license will take precedence (but solely with respect to the open-source component(s)). For example, where an open-source component license permits use of that open-source component in a manner otherwise restricted under this Agreement, You are entitled to use the open-source component as permitted under its associated license.

- 2.14. Where You alter the script (code) shipped with the Product, any third-party component shipped with the Product or any other electronic file accompanying the Product (“**Altered Component**”), You do so at your own risk and liability, and You acknowledge that You are wholly responsible for, and warrant You will comply with, the terms of any license(s) applicable to that Altered Component, including, but not limited to, payment of any applicable license fees triggered by enabling features subject to a commercial license, arising from any such foregoing action by You; and You agree to indemnify and compensate Yellowfin for any loss or damage suffered by Yellowfin for any breach of said warranty.

3. INSTALLATION AND USE

- 3.1. You may install and/or access and use the Product only in the configuration and for the number of licenses You acquire under the Order. Individual licenses may not be shared for use on different computers or servers unless permitted under the terms of the Order. Yellowfin may control the number and type of licenses and the use of the Product by key codes. If a license key or other security device is provided with the Product, You must not share or transfer the security device to any other third party.
- 3.2. Certain third-party applications, components or services (“**Third-Party Applications**”) may be available for use with the Product. You acknowledge and agree that Yellowfin is not responsible for the availability of Third-Party Applications notwithstanding that they may be made available by Yellowfin. Yellowfin will not be liable whatsoever for any Third-Party Applications. You expressly acknowledge and agree that use of Third-Party Applications is at Your own discretion and risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with You. You acknowledge and agree that the use of any Third-Party Applications is governed by such Third-Party Applications’ terms of use, license agreement, privacy policy, or other such terms and conditions it specifies and that any information or personal data you provide, whether knowingly or unknowingly, to such Third-Party Applications, will be subject to such Third-Party Applications’ privacy policy, if such a policy exists. You are solely responsible for any fees, charges, loss or damage that results from using Third-Party Applications without any apportionment or attribution to Yellowfin. Insofar as You use the Product with any Third-Party Applications, You warrant that You have obtained and complied with the necessary license, and have obtained a consent or right to do so from the relevant third parties.

4. CONSENT TO USE OF DATA

- 4.1. You agree that Yellowfin and its authorized representatives may collect and use technical information You provide as a part of support services related to the Product.
- 4.2. In order for Yellowfin to assist You in isolating the cause of a problem with the Product, Yellowfin may request that You (i) allow Yellowfin to remotely access Your system; or (ii) send Your information or system data to Yellowfin, and for these purposes You authorize Yellowfin (and its subcontractors) to do so.
- 4.3. You remain responsible for (i) any data and the content of any database You make available to Yellowfin; (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data); and (iii) backup and recovery of any database and any stored data.

5. LIMITED WARRANTY AND DISCLAIMER

- 5.1. Yellowfin warrants, for a period of ninety (90) days from the date of delivery of the Product (the “**Warranty Period**”), that the Product will conform in all material respects to the Documentation provided that you administer, access and use the Product in accordance with the Documentation and that it is



properly set up and configured. As the sole and exclusive remedy for any breach of this warranty, Yellowfin will, within a reasonable time, repair or replace the Product if the failure is reported during the Warranty Period. If Yellowfin reasonably determines that repair or replacement is not economically or technically feasible, Yellowfin may terminate this Agreement and provide You with a full refund of the license fee and any support fees paid with respect to the Product.

- 5.2. Yellowfin must provide You with support in accordance with Yellowfin's current and applicable support policies listed at www.yellowfinbi.com.
- 5.3. YOU ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO SELECT THE CORRECT LICENSE MODEL TO ACHIEVE YOUR INTENDED RESULTS WITH THE PRODUCT.
- 5.4. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, YELLOWFIN, ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, OR ANY SERVICES OR UPDATES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY UPDATES OR SERVICES ARE DELIVERED "AS IS" AND ARE NOT WARRANTED TO BE ERROR-FREE, AND YOU ACCEPT THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE, RELIABILITY, ACCURACY AND RESULTS OF USE OF THE PRODUCT WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YELLOWFIN DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE WITH RESPECT TO THE PRODUCT, OR ANY SERVICES OR UPDATES. YELLOWFIN DOES NOT WARRANT THAT THE PRODUCT WILL: (I) BE ERROR-FREE; (II) OPERATE WITHOUT INTERRUPTION; (III) CORRECT ALL PROGRAM ERRORS; (IV) BE COMPATIBLE WITH ANY PRODUCTS NOT SUPPLIED BY YELLOWFIN; OR (V) MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE THAT YELLOWFIN DISCLAIMS ALL WARRANTIES IF THE PRODUCT IS NOT PROPERLY SET UP AND CONFIGURED.
- 5.5. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY YELLOWFIN, ITS CHANNEL VENDORS, OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, DISTRIBUTORS OR AGENTS, WILL INCREASE THE SCOPE OF THE EXPRESS WARRANTIES OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.
- 5.6. YELLOWFIN WILL NOT BE LIABLE FOR DAMAGES ARISING FROM THIRD-PARTY SOFTWARE THAT OPERATES SEPARATELY, BUT IN CONJUNCTION WITH THE SOFTWARE, AS THIRD-PARTY SOFTWARE IS LICENSED TO YOU UNDER SEPARATE AGREEMENTS.
- 5.7. THE PRODUCT IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE (INCLUDING, WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY NUCLEAR FACILITY; DIRECT LIFE SUPPORT MACHINES; WEAPON SYSTEMS; OR CONTROL OF AIRCRAFT, AIR TRAFFIC, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATIONS), IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY OR INDIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YELLOWFIN FOR ITSELF, AND ON BEHALF OF ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS, DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCT FOR ANY SUCH HIGH RISK USES.
- 5.8. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO THE LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY LAW. NO WARRANTIES APPLY AFTER THAT PERIOD.

6. INTELLECTUAL PROPERTY OWNERSHIP AND INDEMNITY

- 6.1. You agree that Yellowfin owns intellectual property rights in: (a) the Product; and (b) all amendments, enhancements and modifications of the Product, including any created solely by Yellowfin or as a result



of collaboration with You. You further agree that Yellowfin is not bound by any duty of confidentiality with respect to any such amendments, enhancements or modifications.

- 6.2. While You are not required to do so, You may from time to time provide feedback to Yellowfin with regard to the functionality and performance of the Product and/or Documentation including, without limitation, identifying potential errors and improvements (“**Feedback**”). Feedback provided by You may be used by Yellowfin to improve or enhance the Product and/or Documentation, and You hereby grant Yellowfin a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such Feedback without restriction.
- 6.3. Yellowfin will defend, indemnify and hold You harmless from all costs and reasonable expenses awarded by a court or agreed to in settlement which directly results from any third-party claim that the Product infringes either a valid: (i) Australia or United States patent; or (ii) copyrighted material, but only if You: (a) notify Yellowfin promptly in writing of such claim; (b) give Yellowfin sole control of the defense of any such claim and all negotiations for its settlement or compromise; and (c) You reasonably assist and cooperate with Yellowfin in the defense, settlement or compromise of any claim including providing Yellowfin with information, authority and assistance; however, Yellowfin must not make any admission of liability on behalf of You in relation to criminal charges unless it first obtains Your prior written consent to do so, which must not be unreasonably withheld.
- 6.4. In the event that a final injunction is obtained against Your use of the Product, if Yellowfin reasonably believes that Your use of the Product could be enjoined, or if in Yellowfin’s opinion the Product is likely to become the subject of a successful claim of infringement, Yellowfin will: (i) obtain the right for You to continue using the Product; (ii) modify or replace the Product so that it becomes non-infringing or, in the event neither of the previous two options are commercially reasonable for Yellowfin; (iii) terminate this Agreement and refund: (a) if You are licensed to use the Product on a subscription basis, any prepaid but unused fees as of the date of termination; or (b) for any other license type, the amount You paid for the Product less an amount for depreciation to reflect the unused period determined on a straight-line five-year depreciation basis with a commencement date as of the Commencement Date. Yellowfin will have no liability for a claim if the claim is based on: (A) Your use of the Product more than thirty (30) days after Yellowfin has notified You of (i), (ii) or (iii) above; or (B) the version of the Product that You are using is not the current release version of the Product.
- 6.5. Yellowfin will have no liability under this Section for any infringement or claim based upon: (i) the combination, operation or use of the Product with equipment or software not supplied exclusively or solely by Yellowfin to the extent that the alleged infringement would have been avoided without foregoing combination, operation or use; (ii) Your failure to comply with designs, specifications or instructions provided by Yellowfin; (iii) Your use of the Product in an application or environment for which it was not designed or not contemplated; (iv) modifications to the Product made by anyone other than Yellowfin; or (v) use of the Product not permitted by this Agreement or Order.
- 6.6. THE FOREGOING INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY OF YELLOWFIN AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

7. MUTUAL LIMITATION OF LIABILITY

- 7.1. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 7 (MUTUAL LIMITATION OF LIABILITY) APPLY TO THE FULL EXTENT THAT THEY ARE NOT PROHIBITED BY APPLICABLE LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER.
- 7.2. EXCEPT FOR LIABILITY ARISING UNDER CLAUSE 3 OR BREACH OF YELLOWFIN’S INTELLECTUAL PROPERTY RIGHTS OR FEES OWED ON TERMINATION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) THE LIABILITY OF EACH OF THE PARTIES, IF ANY, FOR DAMAGES RELATING TO ANY PRODUCT, UPDATE AND/OR SERVICES IS LIMITED TO THE ACTUAL AMOUNTS YOU PAID FOR THE PRODUCT, UPDATE AND/OR SERVICES; (II) A PARTY’S LICENSORS AND ITS SUPPLIERS HAVE NO LIABILITY TO THE OTHER PARTY FOR ANY



DAMAGES; (III) IN NO EVENT WILL ANY PARTY TO THIS AGREEMENT, ITS LICENSORS, AND/OR ANY OF ITS RESPECTIVE SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, GOODWILL, ANTICIPATED SAVINGS OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, ANY UPDATE, AND/OR ANY SERVICES, EVEN IF A PARTY, ITS LICENSORS AND/OR ANY OF ITS RESPECTIVE SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EACH FOREGOING EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND SEVERABLE EXCLUSION.

8. AUDIT RIGHTS

- 8.1. Yellowfin may install and use automated license tracking, management and/or enforcement solutions with the Products, which You must not disrupt or alter. You agree to maintain books and records in connection with this Agreement and Your use of the Product and any Updates and/or services provided by Yellowfin. Such books and records must include at a minimum the number of licenses that You purchased and the number that You are using. At its expense and with reasonable written notice, Yellowfin or a third party appointed by Yellowfin may audit the books, records, and if necessary, the systems on which the Product or any Update is installed for the sole purpose of ensuring compliance with the terms of this Agreement. Yellowfin must only conduct one (1) audit per year unless an audit discloses a breach of this Agreement in which case Yellowfin will have the right to conduct follow-up audits as necessary. All audits must be conducted during regular business hours at Your office and will not unreasonably interfere with Your activities. Yellowfin will treat all such records and books as confidential information. If any audit reveals that You have underpaid license or support fees by more than five percent (5%), You agree to pay for the underpaid fees based on Yellowfin list prices in effect at the time the audit is completed and all reasonable audit expenses within thirty (30) days of invoice by Yellowfin for those underpaid fees and auditing expenses.

9. TERMINATION

- 9.1. Your right to access and use the Products will cease upon the earlier of expiration or termination of this Agreement. You acknowledge that you should take all necessary precautions to avoid any loss of data that might result when the Product can no longer be used.
- 9.2. Subject to clause 9.3 and clause 9.4, a Party ("**Party A**") may terminate this Agreement by written notice if the other Party ("**Party B**") materially defaults in the performance of this Agreement and fails to cure the default to the reasonable satisfaction of Party A within a reasonable time after such notice. This remedy will not be exclusive and is in addition to any other remedies that Party A may have under this Agreement or otherwise.
- 9.3. Yellowfin may terminate this Agreement after ten (10) days written notice of Your failure to pay outstanding fees to Yellowfin or its Channel Vendor (as the context requires), and immediately terminate this Agreement if You breach the license restrictions in clause 2 and/or breach Yellowfin's intellectual property rights set out in clause 6 of this Agreement. If Yellowfin is terminating this Agreement for cause, you remain liable for all unpaid fees that are payable for the entire Term.
- 9.4. Where You have entered into a separate agreement with a Channel Vendor for the supply of the Product to which this Agreement relates, whether the Product is licensed as a stand-alone or as part of a packaged solution or service, and any such foregoing agreement is terminated or expires, then this Agreement will also automatically concurrently terminate or expire (as the context requires) at the same time as the foregoing agreement unless otherwise agreed in writing between the Parties.
- 9.5. Where Yellowfin has a right to terminate this Agreement, Yellowfin may at its absolute discretion elect to suspend the Agreement. The Parties agree that an election by Yellowfin to suspend this Agreement in no way alters, derogates, extinguishes or waives Yellowfin's right to terminate this Agreement for breach under this Agreement or at law.
- 9.6. Any bankruptcy, insolvency, or liquidation or assignment of Your assets for the benefit of creditors will be



void and this Agreement and the licenses granted under this Agreement will automatically terminate without further notice.

- 9.7. Within ten (10) days of the date of expiration or termination of this Agreement, You agree to destroy all copies of the Product, Updates and Documentation and, if requested by Yellowfin, certify in writing that You have done so.

10. MISCELLANEOUS

- 10.1. This Agreement and Order constitutes the complete agreement between You and Yellowfin with respect to the Product and supersedes all other agreements, proposals, communication or advertising, oral or written, signed or unsigned unless the Parties have mutually agreed in another signed document, expressed in clear and unambiguous language, that a term or the terms of that other document prevails, supersedes and/or replaces this Agreement (or parts hereof).
- 10.2. You agree that your Order of the Product is neither contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Yellowfin or its employees, agents, representatives or Channel Vendors regarding future functionality or features.
- 10.3. You acknowledge and agree that to the maximum extent permitted by law, Yellowfin may independently update the terms of this Agreement from time to time. Yellowfin will inform You when it updates this Agreement. The terms of the updated Agreement will apply to You and supersede any former end user license agreement between the Parties unless Yellowfin's ability to independently update this Agreement is restricted by applicable law, in which case, the terms of this Agreement, without the update(s), will continue to apply to the Parties.
- 10.4. If any provision of this Agreement is held unenforceable or in conflict with the laws of a relevant jurisdiction or be invalid then it shall be read down to the minimum extent necessary to render it enforceable and valid and, if incapable of being read down, it will be severed from the remainder of this agreement which shall then be interpreted so to give full effect to the purpose or intent of the parties in entering into the same, and the remaining provisions of this Agreement will remain in full force and effect.
- 10.5. If you are not located in the United States of America, Europe or the United Kingdom, this Agreement is governed by the laws of Victoria, Australia, and Victoria will have exclusive jurisdiction regarding any disputes. If You are located in the United States of America, this Agreement is governed by and construed in accordance with the laws in effect in the State of California (except that body of laws controlling conflict of laws) and any suit hereunder must be brought in courts of competent jurisdiction in the Fifth Judicial District in the State of Idaho, Blaine County, and You hereby submit to the exclusive personal jurisdiction thereof. If You are located in Europe or the United Kingdom, this Agreement is governed by the laws of England and Wales.
- 10.6. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder will not constitute a waiver thereof. A waiver of default will not operate as a waiver of any other default or of the same type of default on future occasions.
- 10.7. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 10.8. No failure to exercise and no delay in exercising, any right, power or remedy by a Party will operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on any Party unless made in writing.
- 10.9. You agree that Yellowfin may include your name in its published customer list, which may be provided to other potential customers of Yellowfin and/or its affiliates or distributors. Yellowfin will remove You from this list if You notify Yellowfin in writing that You wish to be removed.
- 10.10. If You are entering into this Agreement on behalf of an entity (for example, business, partnership, company) You represent then You warrant that You have been duly authorized to enter into this Agreement on behalf of that entity.



[Exhibit-A Follows]



EXHIBIT A

LICENSE MODELS AND DEFINITIONS:

The license model (including associated rights and obligations) for the Product applicable to You is set forth in the Order. The description of each Yellowfin license model is set forth below, along with any applicable definitions.

Definition: “Deployment” means one installation within a single or clustered environment.

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