

YELLOWFIN INDEPENDENT SOFTWARE VENDOR STANDARD TERMS

Version 1.0

Effective September __, 2023

The following terms and conditions ("Agreement") between Yellowfin, Inc. ("Yellowfin") and you ("ISV") apply to the Products offered by Yellowfin and licensed by ISV and shall be effective until or unless there is a signed agreement between the parties otherwise governing the Services. IDX and Client may be referred to collectively as the "parties".

1. DEFINITIONS

- 1.1. **Affiliate** means any corporation, firm, partnership or other entity that directly or indirectly controls, is controlled by, or is under common control with a Party.
 - 1.2. **Agreement** means this agreement and where applicable, includes any amendments and schedules attached hereto and any addenda entered into by the Parties from time to time.
 - 1.3. **Analytics** means the following products: Yellowfin Data Prep, Yellowfin Data Discovery, Yellowfin Dashboards, Yellowfin Stories and Yellowfin Mobile App with the parameters set out in the Order Form.
 - 1.4. **Analytics Plus** means following products: Yellowfin Data Prep, Yellowfin Data Discovery, Yellowfin Dashboards, Yellowfin Stories, Yellowfin Mobile App and Yellowfin Signals with the parameters set out in the Order Form.
 - 1.5. **Annual Subscription Period** for each Client means, the period, within the Term, that commences on the date of the Initial Order and ends twelve (12) months thereafter.
 - 1.6. **Channel Partner** means a third party that, pursuant to distribution rights granted by ISV in accordance with this Agreement, distributes Combined Product to End Users.
 - 1.7. **Claim** means any allegation, claim, demand, debt, damage, fee, expense, cause of action, liability, loss, proceeding or action of any nature whether present, future, fixed or unascertainable, actual, or contingent, whether at law, in equity, under statute, or otherwise.
 - 1.8. **Client** means a third-party entity which is a customer of the ISV and an End User;
 - 1.9. **Combined Product** means the bundled combination of Licensor's Product with ISV Software as described in the Order Form.
 - 1.10. **Data Sources** has the meaning given to the term in the Order Form.
 - 1.11. **Documentation** means Licensor's written materials that sets out the installation and configuration requirements with respect to the latest version of the Product available at the Effective Date located at <https://wiki.yellowfinbi.com/display/YEL/Guides> and for the avoidance of doubt, all other information contained in the linked pages that does not relate to the installation and configuration requirements for the relevant version of the Product or fall outside the parameters set out in the Order Form do not form part of the Documentation.
 - 1.12. **Effective Date** means the effective date set out in the Order Form and if no date is provided then the date this Agreement is signed by both Parties.
 - 1.13. **End User** means a third party who obtains Licensor's Product as part of a Combined Product from ISV or a Channel Partner and is licensed to use the Product for its own internal use, subject to the Product EULA or ISV's own end user license as set forth in this Agreement.
 - 1.14. **Fees** means any and all fees payable by ISV to Licensor under this Agreement.
 - 1.15. **ISV Software** means software, other than Licensor's Product, owned or licensed for distribution by ISV as set forth in the Order Form.
 - 1.16. **Initial Order** means the first approved Order Form with respect to a Client.
 - 1.17. **Intellectual Property** means all copyrights, trademarks, service marks, rights in or to processes, know-how, show-how, methods, trade secrets, designs, patents, moral rights (where applicable) and other rights in the nature of intellectual property rights (whether registered or not).
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- 1.18. **Launchpad Services** means the services provided by the Licensor under Schedule 1 where checked in the table in the Order Form.
- 1.19. **Launchpad Term** means three (3) months from the Effective Date or other period specified in the Commercial Terms Sheet, unless otherwise extended by agreement in writing between the Parties.
- 1.20. **Licensor's Product** means the Product excluding any Resale Partner Software.
- 1.21. **Marketing Materials** means collateral, presentations, whitepapers and other similar materials that Licensor provides with regard to promoting the Product.
- 1.22. **Non-Production License** means that a license with respect to the Product for non-production use which mirrors the functionality provided by the Production License.
- 1.23. **Order Form** means a written order containing details of the Product(s) subject to this Agreement.
- 1.24. **Product** means the software product, including any amendments, enhancements, modifications, revisions, updates, or new releases of the software product, distributed by Licensor and set forth in the Order Form and includes any products not checked in the table in the Order Form but subsequently agreed between the parties in a written document signed by the parties as falling within the definition of "Product". For the avoidance of doubt, the Product excludes: any new products developed by Licensor; all application program interfaces, plug-ins, custom login pages, custom JSPs, ETL scripts; code widgets, third-party components, applications and services; any components not shipped to ISV by Licensor; Trial Product(s); features and/or functionality that is installed or configured in a manner other than as specified in the Documentation; features in earlier versions which have been removed, retired, deprecated or are unsupported.
- 1.25. **Product EULA or EULA** means the clickwrap, click-through, or web-linked end user license agreement (as applicable) accompanying the Product.
- 1.26. **Production License** means a production license issued for the products comprising the Product as specified in the Order Form.
- 1.27. **Resale Partner** means the partner who has authorized Licensor to sublicense the Partner Resale Software to ISV.
- 1.28. **Resale Partner Software** means the software labelled "Resale Partner Software" in the Order Form.
- 1.29. **Subscription Period** means the subscription period of the sublicense to the Combined Product applicable to a Client.
- 1.30. **Trial Product** means any function, feature, component, module, application and/or other product provided to ISV free-of-charge, for evaluation purposes and/or on a trial basis.
- 1.31. **Update** means any amendments, non-chargeable enhancements, modifications, revisions, updates, patches, or new releases of the Product distributed by Licensor.

2. APPOINTMENT OF ISV

- 2.1. Subject to the terms and conditions of this Agreement, Licensor grants ISV, for the Term, a non-exclusive license in the territory set out in the Order Form to: (i) bundle the Product with the ISV Software to create the Combined Product (and for this purpose may modify the Product only to the extent required to create the Combined Product); and (ii) market, distribute and (where applicable) sublicense the Product, directly through its own personnel or indirectly through its Channel Partners in accordance with clause 11, solely as part of the Combined Product.
- 2.2. In carrying out its obligations under this Agreement, ISV must at all times exercise the functions and duties under this Agreement and exercise all powers conferred under this Agreement in good faith and with the degree of care, diligence and skill that a reasonable person would exercise if they were in the ISV's position, including ensuring that it regularly and adequately trains its relevant officers, directors, employees, representatives, agents and Channel Partners so that they have the necessary competencies to allow ISV to comply with its obligations under this Agreement.
- 2.3. ISV shall ensure that any End User's use of the Product is governed either by the Product EULA or by ISV's own written end user license agreement. If ISV uses its own end user license agreement, ISV represents and warrants that it will grant rights only in accordance with the terms and conditions of this Agreement.
- 2.4. The Product must be bundled with the ISV Software to create a Combined Product. Use of the Product is restricted to use within the Combined Product, and the Data Sources. The ISV must limit its use of the Product only as necessary to support the Combined Product to only the number of Data Sources where specified as such in the Commercial Terms Sheet. The Product may not be used on a stand-alone basis or in connection with other software applications or services which have not been approved by Licensor.
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- 2.5. ISV may modify the Licensor's Product branding so that the identity of Licensor as the owner and supplier of the Product and Documentation is not apparent to the End User. Such modification, however, shall in no way alter Licensor's full ownership of all Intellectual Property rights in the Licensor's Product and Documentation.
- 2.6. ISV and its Channel Partners may make and distribute copies of the Marketing Materials with regard to marketing the Product and the Combined Product. ISV acknowledges, however, that certain materials made available by Licensor may be marked as "Not For Distribution" or "Restricted" or similarly stated (for example, books, instructional material) will not be copied without Licensor's prior written consent, but ISV may order copies as needed from Licensor.
- 2.7. This is a non-exclusive Agreement. While Licensor will not attempt to directly market to End Users in an effort to supplant the Product licensed by ISV or a Channel Partner as part of the Combined Product, Licensor may directly or indirectly, through distributors, resellers or other channel partners, market the Product to End Users on a stand-alone basis or as part of a combination with applications of other vendors or channel partners.

3. ISV (AND CHANNEL PARTNER) PRODUCT USE AND RESTRICTIONS

- 3.1. Licensor grants to ISV the right to make and to sublicense its Channel Partners to make, a reasonable number of copies of the Product for internal development, support, training, testing and quality assurance purposes during the Term. Where ISV is issued with one or more Non-Production Licenses, these must only be used in a non-production environment for product development, quality assurance, user acceptance testing, staging, disaster recovery, or as a test environment, an alternate environment, or for redundancy purposes.
- 3.2. ISV and each Channel Partner shall be considered the "User" for purposes of the Product EULA that accompanies the Product. Notwithstanding any license term stated in the Product EULA, the Parties agree that the term of the license for the Product licensed to ISV or a Channel Partner shall not exceed the Term of this Agreement. Furthermore, ISV must not grant a license in the Combined Product for a period that exceeds the Term.
- 3.3. Any third-party software embedded in the Product by Licensor may be used only in conjunction with the Product and may not be used separately. A list of third-party software and/or third-party software license terms is set forth in a notices file accompanying the Product, which may be updated by Licensor from time to time.
- 3.4. Certain third-party applications, components or services not shipped with the Product may be available for use with the Product by Licensor on its platform or by third parties ("**Third-Party Applications**"). ISV acknowledges and agrees that Licensor is not responsible nor liable whatsoever for any Third-Party Applications. Licensor expressly acknowledges and agrees that use of Third-Party Applications is at ISV's own discretion and risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with ISV. Licensor acknowledges and agrees 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 ISV provides, whether knowingly or unknowingly, to such Third-Party Applications, will be subject to such Third-Party Applications' privacy policy, if such a policy exists. ISV is solely responsible for any fees, charges, loss or damage that results from using Third-Party Applications without any apportionment or attribution to Licensor. Insofar as ISV uses the Product with any Third-Party Applications, ISV warrants it has obtained and complied with the necessary license and has obtained a consent or right to do so from the relevant third parties.
- 3.5. Where ISV alters the Product's script or code, or any third-party component shipped with the Product, or any other electronic file accompanying the Product, ISV does so at its own risk and liability and agrees to compensate Licensor for any loss or damage suffered by Licensor arising from ISV's alteration of the script or code.

4. OWNERSHIP

- 4.1. With respect of the Combined Product:
 - 4.1.1. Licensor acknowledges that ISV and its licensors, if any, own and retain all right, title and interest, including all Intellectual Property rights in and to the ISV Software. Licensor acknowledges that it is not granted any interest any Intellectual Property Rights in the ISV Software;
 - 4.1.2. Licensor agrees that ISV is the owner of all Intellectual Property rights in any front-end report content, or integration code that is not included in the Product as received by ISV from Licensor and is developed by or on behalf of ISV; and
 - 4.1.3. ISV acknowledges that Licensor or its Affiliates and their respective licensors, if any, own and retain all right, title and interest, including all Intellectual Property rights in and to the Product, any Documentation, Marketing Materials, or other materials related to the Product. Subject to the licenses granted herein, ISV acknowledges that nothing contained in this Agreement grants ISV or any Channel Partner any interest in any Intellectual Property rights in the Product, Documentation or Marketing Materials.
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- 4.2. Except as otherwise specifically set forth herein, or as allowed by applicable law, ISV, Channel Partners and End Users are not allowed to copy, modify, translate, decompile, disassemble, reverse-engineer, or create derivative works of the Product.
- 4.3. Licensor's rights in the Product include all amendments, enhancements, updates, and modifications to the Product, including any created by ISV or created on behalf of ISV by Licensor or created as a result of a collaboration between the Parties, whether or not any such amendments, enhancements, updates or modifications were charged for and/or paid for by ISV. ISV acknowledges and agrees that Licensor is not bound by any duty of confidentiality with respect to any such amendments, enhancements, updates and modifications.
- 4.4. While ISV or its Channel Partners are not required to do so, ISV (or a Channel Partner) may from time to time provide feedback to Licensor with regard to the functionality and performance of the Product, Documentation or Marketing Materials including, without limitation, identifying potential errors and improvements ("**Feedback**"). Feedback provided by ISV (or a Channel Partner) may be used by Licensor to improve or enhance the Product, Documentation or Marketing Materials, and ISV (and its Channel Partner, if applicable) hereby grants Licensor 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.
- 4.5. ISV is authorized to use the trademarks and logos owned by Licensor (the "**Marks**") solely in connection with ISV's advertisement, promotion and distribution of the Product subject to the following conditions:
 - 4.5.1. The word "Yellowfin" which should never be translated;
 - 4.5.2. ISV and/or its Channel Partners must not add or delete graphic elements, translate them or connect them with any other mark, logo, graphic element or symbol;
 - 4.5.3. ISV and/or its Channel Partners do not combine logotypes with any other logo or artwork;
 - 4.5.4. When using the Marks, ISV and/or its Channel Partners must also display its company logo in a more prominent manner than the Mark; and
 - 4.5.5. ISV agrees to be bound by the Trademark Usage Guidelines from time to time (if any), which contain guidelines on proper use of Licensor Marks and updated information on Licensor Mark registration and legends. To the extent that a Mark does not appear on the list or in the Trademark Usage Guidelines, ISV agrees that neither Licensor nor its Affiliates waive any intellectual property rights in that Licensor Mark.

5. ADDITIONAL OBLIGATIONS

- 1.1. During the Term and any period thereafter in which Clients are entitled to use the Combined Product, ISV will directly and/or indirectly through its Channel Partner(s) provide phone and First Level Support (as those terms are defined in clause 4.2 below) to End Users and will maintain at all times an appropriately trained and staffed team of employees to meet the support obligations described in clauses 4.2, 5.2, 5.3, 5.4 and 5.5 below.
 - 1.2. Licensor will provide Second Level Support (as defined in clauses 5.3, 5.4.4 and 5.4.5 below) directly to ISV and will maintain at all times an appropriately trained and staffed team of employees to meet the support obligations described in clauses 5.3, 5.4.4 and 5.4.5 below. Licensor is under no obligation to provide support if there are unpaid invoices that are outstanding for greater than sixty (60) days.
 - 1.3. Each Party agrees to:
 - 5.1.1. conduct business in a manner that reflects favorably at all times on the Product, the Combined Product, and the good name, goodwill and reputation of each Party and its Affiliates;
 - 5.1.2. avoid deception, misleading or unethical practices including but not limited to disparagement of the Product, Combined Product or the other Party and its Affiliates;
 - 5.1.3. refrain from making any statement, written or oral, to End Users, or any other individual or entity with respect to the specifications, features, capabilities or other characteristics of the Product or Combined Product that are inconsistent with the technical documentation for the Product or Combined Product as applicable; and
 - 5.1.4. make no representations, warranties or guarantees regarding the Product or Combined Product or their performance or operation, that are inconsistent with or expand the scope of any warranties contained in the license agreement applicable to the Product or Combined Product.
 - 1.4. Each Party will comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Product and Combined Product.
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- 1.5. The Product contains software originating with United States manufacturers and developers requiring compliance with U.S export control laws. Each Party will comply (and ISV must cause its Channel Partners to comply) with all applicable laws and regulations regarding the exporting, importing, re-importing, re-exporting and deemed exporting of the Product including, without limitation, the Australian Export Control Act 1982, U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control. Without limiting the generality of the foregoing, each Party warrants to the other that it shall not download or otherwise export or re-export or be deemed to have exported the Product:
 - 5.1.5. into, or to a national or resident of any country and/or party to which the U.S. or Australia has embargoed goods; or
 - 5.1.6. to anyone on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders as amended from time to time. Each Party acknowledges that Product shipments are subject to the export laws of the United States and that such laws could delay or preclude delivery of the Product in the future; or
 - 5.1.7. to any country set forth on the U.S. Department of Commerce's list of T-5 countries (currently, Cuba, Iran, North Korea, Sudan and Syria), including any future changes to the government's list of T-5 countries.
- 1.6. If any approval or registration of this Agreement is required to make it enforceable in ISV's home country or any country in which ISV does business, or to comply with exchange regulations or other requirements so as to allow remittance abroad of any currency specified hereunder, ISV shall immediately take all required action and pay any charges incurred in connection therewith. ISV shall keep Licensor informed of its efforts in this regard. Licensor shall be under no obligation to ship the Product to ISV until ISV has provided Licensor with satisfactory evidence that such approval or registration is not required or that it has been obtained.
- 1.7. ISV shall not, during the course of this Agreement, engage in any activity likely to compromise the ability of ISV to perform its obligations under this Agreement fairly and independently. ISV shall immediately disclose to the Licensor any activity which constitutes or may constitute a breach of the foregoing obligation.
- 1.8. During the Term of this Agreement and for six (6) months following the expiration or termination (as the context requires) of this Agreement ("**Restraint Period**"), neither Party shall solicit for employment, either directly or indirectly, any person who is employed or contracted by the other Party. A Party shall promptly advise the other Party if a person who is employed or contracted by the other Party seeks to be employed or contracted by the first mentioned Party prior to the expiration of the Restraint Period.

2. ORDERS AND DELIVERY

- 2.1. ISV must promptly provide Licensor with the relevant host name for Licensor to set up the production license.
- 2.2. In addition to the Product(s) selected by ISV, ISV may place subsequent orders with Licensor which will be deemed to incorporate all of the terms and conditions of this Agreement. Any terms and conditions of ISV's order which are in addition to or conflict with the terms and conditions of this Agreement shall be deemed stricken from the order and of no force and effect. If fees with respect to any order is not expressly covered by the Order Form, then the Parties acknowledge and agree that the Licensor's list price (USD) prevailing at the time of the order applies unless otherwise agreed in writing between the parties.
- 2.3. Unless Licensor determines otherwise, the Product will require a license key to operate and Licensor will forward to ISV a "**Temporary Software License Key**" for the Production License which will time out and stop the Product from functioning after a period of forty-five (45) days. It is ISV's obligation to provide the Temporary License Key to the End User and to ensure that all End Users receiving a Temporary License Key are notified of the temporary nature of the license key and the related forty-five (45) day time-out period.
- 2.4. Upon receipt of payment of all invoiced Fees within the timeframe outlined in clause 3.3, Licensor will forward to ISV a "**Software License Key**" for the Production License for the Product for the invoiced license period within the Term;
- 2.5. Licensor has discretion to not accept and/or process orders from ISV if there are unpaid invoices that are outstanding for greater than sixty (60) days and are not the subject of a material, bona fide dispute until payment has been made in full.
- 2.6. The Product will be delivered to ISV by electronic software delivery. Delivery is deemed complete when the Product is made available at the electronic software delivery site specified by Licensor.

3. FEES, PAYMENT AND REPORTS

- 3.1. Fees due to Licensor from ISV and any additional related terms and conditions of payment, are set forth in the Order
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Form.

- 3.2. ISV is free to determine its own license and maintenance prices to End Users and/or Channel Partners. Although Licensor or its Affiliates may publish suggested or list prices, these are suggestions only and ISV shall be free to determine the actual license prices at which the Combined Product(s) will be distributed by ISV to its End Users and/or Channel Partners and any associated fees for maintenance and support services.
- 3.3. ISV must pay all Fees (plus any applicable taxes or other charges including bank fees) within thirty (30) days of the date of Licensor's invoice, by wire transfer to a bank account designated by Licensor, unless otherwise provided in the applicable Order Form.
- 3.4. Unless otherwise specified in the Order Form, the Fees specified in the Commercial Terms Sheet will be automatically increased at the commencement of: (a) the first Renewal Term; and (b) each subsequent Renewal Term, to an amount which is a five percent (5%) increase on the then current Fees. For the avoidance of doubt, if an element of the Fees is specified as a percentage, this does not increase that percentage (for example, fifty percent (50%) will remain at fifty percent (50%)).
- 3.5. Invoices will be raised in the Applicable Currency set forth in the Order Form and payment must be made in the Applicable Currency.
- 3.6. ISV acknowledges and agrees that it is liable for all Fees due under this Agreement notwithstanding non-payment by Client to ISV.
- 3.7. ISV will pay all import duties, transaction fees (such as, but not limited to wire transfer fees), levies or imposts, and all goods and services sales, use, value-added (VAT) or property taxes of any nature (except taxes assessed upon Licensor's income) assessed upon or with respect to the Product or any services provided to ISV (or a Channel Partner) by Licensor.
- 3.8. If ISV disputes the whole or any portion of an amount invoiced by Licensor, ISV shall on or before the due date under clause 7.3: (i) pay the portion of the amount stated in the invoice which is not in dispute; and (ii) notify Licensor in writing of the disputed sum in accordance with Dispute Resolution Clause 12.3 below ("**Disputed Sum**"). If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then ISV shall pay the amount finally resolved together with interest on that amount.
- 3.9. Without limiting or foregoing any other rights or remedies available to Licensor for ISV's delinquency in payment of amounts due, Licensor reserves the right to charge interest on any outstanding amount at 0.5% per month. If ISV fails to pay Fees to Licensor when due any amount owing hereunder ISV agrees to pay, in addition to any amount past due plus any accrued interest, all costs, on an indemnity basis, of collection, including without limitation all attorneys' fees and expenses of any legal proceeding required to collect amounts due.
- 3.10. During the Annual Subscription Period, ISV may submit a purchase order for additional functions and features for that Client. Fees relating to that subsequent order will be the Licensor's prevailing list price (USD) at the time of the order or otherwise agreed between the parties in writing.
- 3.11. All subsequent purchase orders and changes relating to a Client following the Initial Order is subject to the Annual Subscription Period. For example, if the Initial Order is placed on 1 January 2023, all subscriptions for that Client will expire on 31 December 2023 (or anniversary thereof where subscription is renewed) notwithstanding subsequent orders may be placed after the Initial Order.

4. SUPPORT AND MAINTENANCE

- 4.1. All maintenance and support services for term subscriptions will commence on the Effective Date.
 - 4.2. ISV directly, and indirectly through its Channel Partners to the extent such Channel Partners are appropriately trained and staffed, will provide "**First Level Support**" services to all End Users including the following:
 - 5.1.7.1. ISV will maintain a support FAQ for Channel Partners and End Users (the "**Product Installation FAQ**") specifically related to the known best practices, issues related to installation, and set-up of the Product.
 - 5.1.7.2. Provide First Level Support with properly trained personnel, contacting Licensor Support via conference call, as necessary to resolve support issues – ISV, and/or Channel Partner as applicable, will be involved in all End User contact.
 - 5.1.7.3. Validate End User contact information, ensure that End User is entitled to receive maintenance and support services.
 - 5.1.7.4. Together with Channel Partners, ensure that installation and connectivity issues are properly addressed and resolved.
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- 5.1.7.5. Obtain answers to Licensor-supplied standard questions.
- 5.1.7.6. Research support issues in Licensor Knowledgebase.
- 5.1.7.7. Answer Product questions.
- 5.1.7.8. Validate and diagnose problems.
- 5.1.7.9. Work with End User to ensure reported errors are reproducible.
- 5.1.7.10. Recommend workarounds where possible.
- 5.1.7.11. Escalate unresolved issues to Licensor technical support according to procedures provided to ISV, including:
 - 5.1.7.11.1. Providing a comprehensive brief to Licensor consisting of a documented example of the defect or error and;
 - 5.1.7.11.2. If requested by Licensor, providing a listing of output and other information which Licensor requires in order to reproduce operating conditions similar to those present when any defect or error in the Product was discovered.
- 5.2. ISV, and its Channel Partners where applicable, must train all support staff in the Licensor support process, and keep such staff and staff training up-to-date – Licensor to provide access to internal support training materials and will host ISV staff to provide training on-site at a Licensor support facility.
- 5.3. Subject to clause 5.5, and unless otherwise stated in any of the Schedules, Licensor will provide “**Second Level Support**” with respect to Licensor’s Product consistent with the terms of the Yellowfin Maintenance and Support Offering available at <https://www.ideracorp.com/Legal/Yellowfin/SupportPolicy>, to ISV. Licensor will, as part of part of Second Level Support, support the ISV and the Channel Partners regarding technical issues related to the installation or deployment of the Product however excludes general “how-to” regarding the installation and operation of the Product and issues that can be addressed by an applicable FAQ.
- 5.4. In seeking Second Level Support, ISV must:
 - 5.4.1. Accept End User requests for maintenance and support services in ISV’s standard technical support languages.
 - 5.4.2. Enter required information into Licensor’s maintenance and support trouble-ticketing system, or otherwise log-in the appropriate information for Licensor.
 - 5.4.3. Contact Licensor Customer Support and advise that an issue has been reported.
 - 5.4.4. Where ISV has reproduced and demonstrated for Licensor the problems or errors in question and has shown that the problem or errors are specific to the Product and not related to problems or errors with the ISV’s own or another third party’s software, Licensor will, as part of Second Level Support:
 - 5.4.4.1. Diagnose reported issues;
 - 5.4.4.2. Develop and recommend workarounds;
 - 5.4.4.3. Report status of bug fixes and maintenance releases; and
 - 5.4.4.4. Assist in communicating issue resolution to End User.
 - 5.4.5. All Second Level Support will be in English only.
- 5.5. Licensor will only accept queries and clear defects/errors from ISV that have been screened first by the ISV, or by a Channel Partner where applicable, prior to contacting Licensor. ISV is responsible to establish, communicate, and enforce appropriate guidelines for Channel Partners’ direct contact with Licensor on Second Level Support. Licensor is not responsible for any integration related issues, or any hardware, cabling or operating system components of the network configuration. The ISV, and the Channel Partners where applicable, is responsible for all systems and networks to be set up to meet Licensor specifications.

6. RECORDS AND AUDITS

- 6.1. ISV will maintain records relating to distribution of the Product and, where applicable, maintenance and support services related to the Product, together with all related financial and accounting records in accordance with generally accepted accounting practices, for a period of two (2) years after the expiration or earlier termination of this Agreement.
 - 6.2. Licensor may, from time to time, request information from ISV in connection with, and relation to, its compliance (or
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non-compliance) with the terms of this Agreement. ISV must respond within ten (10) Business Days of any such foregoing information request. Licensor's rights under this clause 6.2 is independent of its auditing rights under clause 6.3.

- 6.3. At its expense and with reasonable written notice to ISV, Licensor or a third party appointed by Licensor may audit the books, records, and if necessary, the systems of ISV for the sole purpose of ensuring compliance with this Agreement. All audits shall:
- 6.3.1. be conducted during regular business hours at ISV's offices and shall not interfere unreasonably with ISV's activities;
 - 6.3.2. be conducted in a manner so as to treat all records and books as confidential information and so as to comply with ISV's reasonable site and network security requirements; and
 - 6.3.3. be conducted not more frequently than once in any 12-month period unless such audit reveals a violation of this Agreement in which case Licensor may conduct additional audits in its discretion.
- 6.4. If any audit reveals that ISV has underpaid license or support Fees, ISV shall be invoiced for such underpaid Fees at the rates set forth in this Agreement and in effect at the time the audit is completed. If the underpaid fees are in excess of five percent (5%) of the Fees paid by ISV for the year or other period under audit, then ISV shall also pay Licensor's reasonable costs of conducting the audit and Licensor may, at its discretion, terminate this Agreement.

7. TERM, TERMINATION, ASSIGNMENT

- 7.1. This Agreement shall commence on the Effective Date and will expire on the later of the last day of the Initial Term or any Renewal Term set forth in the Order Form (as applicable) unless otherwise terminated earlier in accordance with the terms of this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one (1) year, and continue to be renewed annually (each such renewal a "**Renewal Term**"), unless a Party provides written notice to the other Party not less than ninety (90) days' prior to the expiration of the Initial Term or any Renewal Term, that it does not intend to renew this Agreement in which event the Agreement will expire at the end of the then-current Term. The Initial Term, together with all Renewal Terms, will be considered the "**Term**" of this Agreement.
- 7.2. Licensor may terminate this Agreement at any time prior to expiration in the event that ISV defaults in any payment due to Licensor and such default continues un-remedied for a period of ten (10) days following ISV's receipt of notice of default from Licensor.
- 7.3. Either Party may terminate this Agreement at any time *prior to* expiration in the event that the other Party fails to perform any material term or obligation herein (other than as described in 7.1 above) and such failure continues un-remedied for a period of thirty (30) days from receipt of written notice of such failure.
- 7.4. In the event any notice of termination of this Agreement is given, Licensor may require that any Product ordered be paid for by wire transfer prior to delivery.
- 7.5. This Agreement will automatically terminate with no further act or action required by either Party, if a receiver is appointed for the other Party or its property, the other Party makes an assignment for the benefit of its creditors, any proceedings are commenced by, for or against such Party under any applicable bankruptcy, insolvency or debtor's relief law, or such Party is liquidated, wound-up, deregulated or dissolved.
- 7.6. Upon expiration or earlier termination of this Agreement, ISV shall immediately cease:
- 7.6.1. all distribution of the Product and shall have no further right to distribute the Product as part of the Combined Product;
 - 7.6.2. all (sub)licensing of the Product and shall have no further right to (sub)license the Product as part of the Combined Product;
 - 7.6.3. all use of Licensor's trademarks, logos, and trade names, and will not use any mark or name that is confusingly similar to any trade name or trademark of Licensor;
 - 7.6.4. issuing licenses and, if applicable, sub-licenses to the Product; and
 - 7.6.5. identifying itself or holding itself as entitled to sell or license the Product as part of the Combined Product.
- 7.7. All Fees due or payable hereunder, as well as the rights and obligations of the Parties under clauses 4.1 to **Error! Reference source not found.**, 1.6, 1.8, 3, 6, 7.6, 7.7, 7.8 and 8- 11, shall survive the expiration or termination of this Agreement. For the avoidance of doubt, if at the time of expiration or termination of this Agreement (as the context requires), ISV has not fully paid any fees applicable, whether invoiced or not, such fees will continue to be a debt owed
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by ISV to Licensor post expiration or termination (as the context requires) until such debt has been fully paid.

- 7.8. Neither Party may assign this Agreement nor any of its respective rights or obligations hereunder, in whole or in part (including by operation of law), without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed, however a Party may assign this Agreement without the consent of, but upon written notice to the other Party, to any successor in interest by operation of law or pursuant to a merger, corporate reorganization, or sale of all or substantially all of such Party's assets or controlling interest. Any prohibited assignment shall be null and void. Notwithstanding the foregoing, this Agreement shall inure to the benefit of successors and permitted assigns.

8. CONFIDENTIALITY OBLIGATIONS

- 8.1. For purposes of this Agreement, "**Confidential Information**" means: (i) any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, inventions, processes, engineering, marketing, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities) which, if disclosed in written format, is marked as "Confidential" or "Proprietary" and, if disclosed orally, summarized in written format within ten (10) days of disclosure, marked as "Confidential" and provided to the receiving Party; or (ii) that a reasonable person, based on the type of information disclosed or the circumstances surrounding its disclosure, would recognize as confidential, trade secret or proprietary information of the disclosing Party; or (iii) is a software program or related documentation, including all source and/or object code, and all parts and aspects thereof, that is the property of the disclosing Party, in whatever form and whether or not marked as "Confidential".
- 8.2. Notwithstanding Clause 8.1 above, the term "**Confidential Information**" shall not include information that the receiving Party can establish:
- 8.2.1. was, or has subsequently becomes, part of the public domain through no fault of the receiving Party,
 - 8.2.2. was known by the receiving Party prior to disclosure hereunder and for which the receiving Party was under no prior confidentiality obligation,
 - 8.2.3. was received by the receiving Party from a third party who is under no obligation of confidentiality with respect to such information, or
 - 8.2.4. was developed by the receiving Party independently without benefit of, or based on, the disclosures made hereunder.
- 8.3. The Parties agrees that all Confidential Information:
- 8.3.1. shall, unless required to be disclosed by the receiving Party by law, regulation or order of a court of competent jurisdiction or otherwise expressly permitted under this Agreement, not be copied or distributed, disclosed or disseminated in any way or form by the receiving Party to anyone except its own employees, consultants and professional advisors (and in the case of Licensor, its subcontractors and suppliers) who have a reasonable need to know the Confidential Information and who agree to keep the material confidential;
 - 8.3.2. shall be treated by the receiving Party with the same degree of care to avoid unauthorized disclosure to any third party as is used with respect to the receiving Party's own information of like importance which is to be kept secret, but with no less than reasonable care;
 - 8.3.3. shall not be used by the receiving Party for its own purposes or for any other purpose except in performance of this Agreement; and
 - 8.3.4. shall remain the sole property of the disclosing Party (or, if applicable, of such Party's Affiliates) or their respective licensors (if any) and be returned to the disclosing Party (along with all copies thereof) within thirty (30) days of the receiving Party's receipt of a written request from the disclosing Party setting forth the Confidential and Proprietary Information to be returned or immediately upon expiration or earlier termination of this Agreement.
- 8.4. Each Party acknowledges that in the event of a breach or threat of breach by a receiving Party of this Clause 8, money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, the disclosing Party shall be entitled to seek injunctions or similar equitable relief against such breach or threat of breach.

9. INDEMNIFICATION OBLIGATIONS

- 9.1. Licensor agrees that, if notified promptly in writing and given sole control of the defense and all related settlement negotiations, it will defend ISV against any claim asserted by a third party based on an allegation that Licensor's
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Product infringes an intellectual property right held by such third party. Licensor will pay any resulting costs, damages, and attorney's fees finally awarded by a court of competent jurisdiction with respect to any such claims.

- 9.2. ISV agrees that if Product, or the operation thereof, becomes, or in Licensor's opinion is likely to become, the subject of a claim described in Subclause 9.1 above, ISV will permit Licensor, at Licensor's option and expense, either to procure the right for ISV to continue marketing and distributing the Product, or to replace or modify it so that it becomes non-infringing. If neither of the foregoing alternatives is available on terms and conditions that Licensor in its sole discretion deems reasonable, Licensor may remove the Product from the Order Form immediately upon written notice to ISV and ISV shall have no further right to distribute the Product.
- 9.3. Notwithstanding Subclauses 9.1 and 9.2 above, Licensor shall not be liable to ISV for any Claim arising from or based upon the combination, operation or use of the Product with equipment, data or software not supplied by Licensor, or arising from any alteration or modification of a Product by anyone other than Licensor except where the cause giving rise to the Claim can be directly and solely attributable to the Product.
- 9.4. Licensor shall have no obligation with respect to a claim of intellectual property infringement beyond that expressly stated in this Clause 9.
- 9.5. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY OF LICENSOR AND THE SOLE AND EXCLUSIVE REMEDY OF ISV WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS WITH RESPECT TO THE PRODUCT OR USE THEREOF.
- 9.6. To the maximum extent permitted by applicable law, ISV agrees to indemnify and hold harmless Licensor, its Affiliates, and their officers, directors, employees, licensors and agents, from and against any and all Claims (including all reasonable attorney's fees) of any kind whatsoever, arising directly or indirectly:
 - 9.6.1. from ISV's products forming any part of the Combined Product;
 - 9.6.2. out of any misrepresentation and/or misuse of the Product by ISV or any Channel Partner, or any representation or warranty offered to any End User by ISV or any Channel Partner that exceeds and/or inconsistent with the Product representations or warranties made by Licensor in Clause 10.1 herein; and/or
 - 9.6.3. out of any failure by ISV or any Channel Partner to comply with the requirements of Clause 2.3 herein.
- 9.7. ISV must not combine and/or modify the Product with any other product or software in a manner that would require disclosure of the Product's source code.

10. WARRANTY AND DISCLAIMER; LIMITATION OF LIABILITY

- 10.1. Subject to the limitations below, Licensor warrants, for a period of ninety (90) days from the date of initial download from the relevant location (the "**Warranty Period**"), that the Product will conform in all material respects to the Documentation. For the avoidance of doubt, during and after the Warranty Period, any issues with the Product are covered by Licensor's support and maintenance services.
 - 10.2. As the sole and exclusive remedy for any failure of the Product to materially conform to the Documentation, Licensor shall repair or replace the Product if such failure is reported during the Warranty Period or, if Licensor, at its discretion, reasonably determines that such remedy is not economically or technically feasible, the license granted with respect to such Product will terminate and Licensor shall provide a full refund of the license fee and any support and maintenance fee paid with respect to the Product.
 - 10.3. The above warranty does not cover: Updates (however for the avoidance of doubt any issues with Updates are covered by Licensor's support and maintenance services); any Trial Product; Product provided on an evaluation basis; Product defects due to abuse, alteration, modification (including use of the Product in code mode where ISV and/or end users enter code into the Product); defects or errors arising from deprecation of previous features or functionality; or improper installation or configuration by ISV, a Channel Partner, an End User, or any third party.
 - 10.4. Licensor does not warrant that the functions of the Product will meet the requirements of ISV, a Channel Partner or any End User or that operation of the Product will be uninterrupted or error free. ISV acknowledges that the Product may permit access to functionality which the ISV is not licensed to use. ISV assumes responsibility for selecting the correct Product, license and associated functionality to achieve its intended results, for the use of the Product in accordance with that license and licensed functionality, and for the use and results obtained from the Product.
 - 10.5. Except as disclosed in the "[readme].txt" file, [notices.txt] file, or other file or subdirectory accompanying the Product ("**Special Notices**"), the Product(s) do not incorporate any open-source technology licensed under the GNU General Public License, the GNU Lesser General Public License or similar type licensing agreement (the "**Public Licenses**").
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For purposes hereof, the Parties agree that Public Licenses are licenses of open-source technology which may require or purport to require that the relevant part of any other information technology, product or software, when combined, incorporated or distributed with such open-source technology, be:

- 10.5.1. disclosed or distributed in source code form,
- 10.5.2. licensed for the purpose of making derivative works, or
- 10.5.3. re-distributable at no cost.

10.6. The Special Notices include important licensing and warranty information and disclaimers which apply to the license granted to ISV and End Users. In the event of conflict between the Special Notices and the other portions of this Agreement, the Special Notices will take precedence (but solely with respect to the non-proprietary third-party component(s) to which the Special Notice relates).

10.7. OTHER THAN THE LIMITED WARRANTY SET FORTH ABOVE IN CLAUSE 10.1, OR IN THE END USER LICENSE AGREEMENT ACCOMPANYING THE PRODUCT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER LICENSOR, OR ITS AFFILIATES, OR ITS LICENSORS NOR THEIR RESPECTIVE SUPPLIERS MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PRODUCT OR SERVICES TO ISV, ANY CHANNEL PARTNER, OR ANY OTHER PERSON OR ENTITY. WITHOUT LIMITING THE BROAD APPLICATION OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY SET FORTH ABOVE IN CLAUSE 10.1, ARE HEREBY DISCLAIMED IN THE EVENT THAT THE PRODUCT IS NOT PROPERLY SET UP AND CONFIGURED TO APPROPRIATELY PROCESS APPLICABLE BUSINESS INFORMATION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXCLUDED. LICENSOR MAKES NO REPRESENTATION OR WARRANTY, AND ISV HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY FROM LICENSOR WITH REGARD TO THE NUMBER OF END USERS OR CHANNEL PARTNERS THAT ISV MAY OBTAIN OR THE AMOUNT OR VOLUME OF PRODUCTS ISV MAY EXPECT TO DISTRIBUTE PURSUANT TO THIS AGREEMENT.

10.8. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, A PARTY'S LIABILITY FOR DAMAGES TO THE OTHER PARTY SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY ISV TO LICENSOR IN THE PRECEDING TWELVE (12) MONTHS PRIOR TO THE BREACH GIVING RISE TO THE CLAIM HEREUNDER, HOWEVER, THE ABOVE LIMITATION OF LIABILITY DOES NOT APPLY:

- 10.8.1. TO the intellectual property infringement indemnities SET FORTH IN CLAUSE 9 above; OR
- 10.8.2. A breach of A PARTY'S intellectual property rights; or
- 10.8.3. A BREACH OF a party's CONFIDENTIALITY OBLIGATIONS under clause 8 above; OR
- 10.8.4. Debt or Fees due or payable under this agreement.

10.9. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, except for the exclusions set out in subclauses 10.8.1, 10.8.2, 10.8.3 and 10.8.4 IN NO EVENT SHALL a Party or its Affiliates BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR TORT DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THE PRODUCTS OR PERFORMANCE OF SERVICES PROVIDED HEREUNDER OR OTHERWISE RELATED TO THE PRODUCTS OR OF ANY OTHER OBLIGATIONS RELATING TO THE PRODUCTS, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.10. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, except for the exclusions set out in subclauses 10.8.1, 10.8.2, 10.8.3 and 10.8.4, any claim by a party against the other party must be made within three (3) years of the event giving rise to the claim.

11. CHANNEL PARTNERS

11.1. ISV shall, prior to distributing any Product to a Channel Partner, enter into a written mutually-executed agreement with the Channel Partner that: (a) specifies a territory that is consistent with, and no more expansive than the Territory specified herein, (b) provides Channel Partner with a non-exclusive appointment to distribute the Combined Product that is consistent with, and no more expansive than the appointment granted to ISV hereunder, (c) contains terms and conditions sufficient to allow ISV to satisfy its obligations hereunder, (d) contains terms and conditions substantially

similar to clauses 8 and 10 of this Agreement; and (e) if the ISV Agreement is terminated, expires or otherwise comes to an end, then the ISV's Agreement with its customer with respect to the Product as part of the Combined Product shall also concurrently terminate.

12. GENERAL

- 12.1. *Execution of Agreement.* This Agreement shall become effective only after it has been duly signed by the parties to this Agreement.
- 12.2. *Controlling Law, Jurisdiction and Venue.* This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to any choice of law rules. Licensor and ISV hereby irrevocably agree that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be in an appropriate federal or state court in the State of Texas located in Travis County.
- 12.3. *Dispute Resolution.* Except with regard to a Claim by either Party for infringement of the other Party's intellectual property or a Claim by Licensor for ISV's non-payment of Fees other than a Disputed Sum, all Claims will be addressed and resolved as follows:
- 12.3.1. *Notice of Dispute.* A Party must first provide the other Party with written notice of any Claim, which notice must set forth a detailed description of the Claim, the nature of the Claim, the factual and legal basis for the Claim, and the relief demanded ("Notice of Dispute").
- 12.3.2. *Response to Notice of Dispute.* Within fifteen (15) days of receipt of a Notice of Dispute, the receiving Party will provide a written response to the sending Party responding to the key points set forth in the Notice of Dispute.
- 12.3.3. *Meeting between principals.* Within fifteen (15) days of receipt by the sending Party of the response to the Notice of Dispute, one or more senior officers of both Parties will meet at a mutually agreed time and place, which meeting will be in person, or by phone or video call. Both Parties agree to use best commercial efforts, acting in good faith, to reach a mutually acceptable resolution to the Claim at this meeting.
- 12.3.4. *Negotiation Period.* The Parties further agree, if the Claim is not resolved at or prior to the meeting set forth in Clause 12.3.3, that for a fifteen (15 day) period following the meeting between principals, the Parties will use best commercial efforts, acting in good faith, to negotiate and agree to a resolution of the Claim.
- 12.3.5. *Legal Action.* Only after: (a) all of the steps required by Subclauses 12.3.1 through 12.3.4 have been completed and if the Claim is not resolved; or (b) after forty-five (45) days after a Notice of Dispute has been provided to the receiving Party and the sending Party has used best commercial efforts in a good faith effort to resolve the matter, and the matter is not resolved; then the Parties can, at their option, proceed to assert the Claim through legal proceedings as set forth in Clause 12.2.
- 12.4. *Headings.* The headings used herein are for reference and convenience only and shall not be considered substantive parts of this Agreement and shall not enter into the interpretation hereof.
- 12.5. *Choice of Language.* The English language version of this Agreement shall be the official text hereof, despite translations or interpretations of this Agreement in other languages.
- 12.6. *Severability.* If any part or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement without affecting the validity, legality or enforceability of any other part or provision of this Agreement which shall remain in full force and effect.
- 12.7. *Waiver.* No failure to exercise and no delay in exercising, any right, power or remedy by a Party shall 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.
- 12.8. *Notices.* Any notice required to be given by either Party to the other shall be deemed given on the date sent by e-mail to the other Party, provided that it is sent to the email address specified by the other Party for notifications. Both Parties agree to keep each other promptly updated regarding each Party's correct and current email address.
- 12.9. *Relationship of the Parties.* ISV's relationship with Licensor during the Term of this Agreement will be that of an independent contractor. Neither Party will have, nor will represent that it has, any power, right or authority to bind the other Party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or in the other Party's name. Nothing stated in this Agreement shall be construed as constituting ISV and Licensor as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the Parties.
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- 12.10. *Force Majeure.* Neither Party shall be liable for any loss or damage which may be incurred as a result of any delay or failure in performance of its obligations (except failure to pay) under this Agreement or interruption of service resulting directly or indirectly from acts of God, or any causes beyond the reasonable control of such Party.
- 12.11. *Entire Agreement.* The Agreement consisting of the Order Form, ISV Standard Terms and Schedules 1 hereto constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersede any and all prior written or oral proposals, understandings or agreements between the Parties relating to the same. Each Party acknowledges that it is not entering into this Agreement on the basis of any representation not expressly contained herein. This Agreement shall not be interpreted to the disadvantage of either Party merely because it was prepared by that Party or by its legal advisors. All amendments to this Agreement must be in writing and signed by an authorized representative of each Party hereto.
- 12.12. Unless there is an express provision in any of the documents listed below that states in clear and unambiguous language stating otherwise, the documents comprising this Agreement shall be read in the following order of precedence:
- 12.12.1. the latest amendments to this Agreement (if any);
 - 12.12.2. the Order Form;
 - 12.12.3. these ISV Standard Terms; and
 - 12.12.4. Schedules 1.
- 12.13. Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- 12.14. *Publicity and Joint Marketing.* ISV consents to Licensor identifying ISV (by name and logo) as a Licensor customer in promotional materials or during promotional events and ISV will upon reasonable request by Licensor provide references and take part in joint marketing activities (including but not limited to case studies) that Licensor will prepare. If ISV no longer consents to its name and/or logo being used in this way for promotional events or materials developed in the future, it must inform Licensor in writing. The Parties may engage in joint marketing and sales activities in addition to those otherwise addressed herein.
- 12.15. *Further assurances.* Each of the Parties hereby agrees to execute and procure the execution of all such further documents and do all such things as may be reasonably desirable to give full effect to the provisions of this Agreement and the Parties' intent as evidenced herein.
- 12.16. *Due Execution, Counterparts, and Originals.* The individual signing this Agreement on behalf of each Party represents and warrants that he or she has been duly authorized to do so. This Agreement may be executed in multiple counterparts and all of them together will be deemed to be the same Agreement. Any signed copy of the Agreement made by reliable means (e.g., electronic signature, photocopy, scanned image, or facsimile) is considered an original for all purposes.

SCHEDULE 1: LAUNCHPAD SERVICES

Where Launchpad is selected in the [Commercial Terms Sheet](#), during the Launchpad Term, Licensor will provide the following services ("Launchpad Services"):

No.	Services	Descriptions	Maximum Duration
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1	Kick-Off & Discovery	<p>Discuss Launchpad Program, validating the priorities for this project. Establish project members, their roles, and responsibilities. Set out initial plan and expectations around project timeline. This session also provides an overview on what is included in Launchpad project delivery and what is not included.</p> <p>Discover analytics requirements and technical environment. Discover data and integration requirements.</p> <p>Identify any additional services or training which may be required under a separate commercial engagement.</p> <p>Discover analytics requirements and technical environment. Discover data and integration requirements.</p> <p>Identify any additional services or training which may be required under a separate commercial engagement.</p> <p>Coordination of the Launchpad Workshops, onboarding project management, pre/post onboarding communication, and onboarding project summary update and satisfaction validation and feedback.</p>	5 hours
2	Deployment & Automation	Understand how Yellowfin fits within your infrastructure. Education and planning on deployment, installation, content automation, backup and recovery methods.	3 hours
3	Data Readiness	Review your data and its general readiness for use in a business analytics tool.	10 hours
4	Integration & Embedding	Explore integration aspects of your embedded analytics application.	8 hours
5	Analytics Experience (AX) Design	Discover your projects analytics design need and capability and share an overview of Yellowfin design examples and features.	1 hour
6	Adoption & Education	Review your value proposition and go to market messaging around analytics. Discuss user and customer training and support planning. Establish communication channels with Yellowfin Support and Customer Success.	3 hours

Launchpad Workshop Terms

- The Launchpad Services which ISV is entitled to as part of Launchpad, during the Launchpad Term, are set out in this Schedule 1.
- Licensor will consult with ISV to determine the dates and method of delivery.
- Licensor will issue the Launchpad Services schedule within fourteen (14) days of Effective Date and the Parties may by mutual agreement amend the dates and/or delivery method.
- Licensor will commit its resources to the maximum duration for each type of the Launchpad Services comprising of work undertaken jointly with ISV and independently by Licensor.
- Licensor shall be discharged of its obligation to deliver the relevant type of Launchpad Services where ISV declines, cancels or fails to attend all or part of that scheduled Launchpad Services.
- Where ISV does not wish to undertake or is unable to take part in any or all of the Launchpad Services:
 - o (a) ISV must promptly inform Licensor; and
 - o (b) ISV will not be eligible for Launchpad Services outside the Launchpad Term.
- Launchpad Services are non-transferrable and non-refundable and any unused hours (or part thereof) of Launchpad Services does not entitle ISV to any rebate, refund of any monies, credit note or alternative sessions.
- Where ISV requires additional professional services or training beyond that provided under the Launchpad Services, such services and training fall outside the scope of this Agreement. ISV may enter into a separate written agreement with a certified "Yellowfin Partner" for such services or training.
- Licensor may update or change the content of the Launchpad Services from time to time to ensure that these remain

relevant and up-to-date.

- Licensor may at all times sub-contract any part of the Launchpad Services, but this will not relieve Licensor from any obligation or liability under the Agreement.

