



End-User Software License Agreement

Yellowfin, Inc.

Revised June 2022

PLEASE READ THIS END-USER SOFTWARE LICENSE AGREEMENT (“**EULA**”) CAREFULLY BEFORE DOWNLOADING, INSTALLING, COPYING, ACCESSING OR OTHERWISE USING THE PRODUCT (DEFINED BELOW) AND DOCUMENTATION TO WHICH THIS EULA RELATES. BY ACCEPTING THIS EULA, 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 EULA IS A LEGAL AGREEMENT BETWEEN YOU AND YELLOWFIN, INC., A DELAWARE CORPORATION (“**YELLOWFIN**”) AND EACH REFERRED TO AS A “**PARTY**”. IN THIS EULA “**YOU**” REFERS TO THE INDIVIDUAL WHO HAS ACCEPTED THE TERMS OF THIS EULA. IF THE INDIVIDUAL WHO HAS ACCEPTED THE TERMS OF THIS EULA IS DOING SO 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. WHERE “**YOU**” COMPRISES TWO (2) OR MORE PERSONS, THEN EACH OF THE PERSONS COMPRISING “**YOU**” ARE BOUND BY THIS AGREEMENT SEVERALLY. THE EULA 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’S SOFTWARE IS INCLUDED WITH YOUR PURCHASE OF THIRD-PARTY SOFTWARE OR HARDWARE, YOU MUST RETURN THE ENTIRE SOFTWARE OR HARDWARE PACKAGE.

1. Definitions

In this EULA:

- 1.1. **Agreement** means this EULA together with the Order (if any).
- 1.2. **Channel Vendor** means any one of Yellowfin’s appointed distributors, resellers or independent software vendors.
- 1.3. **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.
- 1.4. **Commencement Date** means the commencement date set out in the Order and if no commencement date is stated, the date You accept the terms and conditions of this EULA.
- 1.5. **Documentation** means Yellowfin’s written materials that set out the installation and configuration requirements with respect to the version of the Product which You have subscribed for in the Order 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 does not form part of the Documentation.
- 1.6. **Fees** means the fees payable by You to Yellowfin or Channel Vendor as set out in the Order and if no fee is set out in the Order or for the relevant subscription period, then Yellowfin’s list price (USD) shall apply pro rata.
- 1.7. **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).
- 1.8. **Initial Term** means the initial term set out in the Order and if no such term is set out in the Order then the initial term is one (1) year from the Commencement Date.
- 1.9. **Order** means: (a) any order submitted by You to Yellowfin for a license to Yellowfin’s product(s) which has been accepted by Yellowfin or Channel Vendor (as the context requires); (b) any signed agreement regarding Yellowfin’s licensing of the Yellowfin’s product(s) to You; and (c) a Proposal.
- 1.10. **Product** means Yellowfin’s Product(s) and/or Resale Partner Software specified in the Order (as applicable), subject to the functionality and parameters set out therein and unless specifically and expressly stated as included as part of the Order, for the avoidance of doubt, excludes: (a) Yellowfin’s products called “Yellowfin Signals” and third party BI integration of “Yellowfin Stories”; (b) all application program interfaces, plug-ins, custom login pages, custom JSPs, ETL scripts; code widgets, third-party components, applications and services; (c) any components not shipped to You by Yellowfin; (d) Trial Product(s) unless subclause 2.10 below applies; (e) features and/or functionality that is installed or configured in a manner other than as specified in the Documentation; (f) features in earlier versions which have been removed, retired, deprecated or are unsupported.
- 1.11. **Proposal** means any proposal prepared by Yellowfin and accepted by You in accordance with its terms.
- 1.12. **Renewal Term** means one (1) year, on a rolling basis unless otherwise stated in the Order.
- 1.13. **Resale Partner** means the partner whom has authorized Yellowfin to sublicense and/or resell the Partner Software to You.
- 1.14. **Resale Partner Software** means software of a Resale Partner that Yellowfin is reselling.
- 1.15. **Term** means the Initial Term, together with all Renewal Terms.
- 1.16. **Trial Product** means any function, feature, component, module, application and/or other of Product provided to You free-of-charge on a trial basis (for example a beta version of a Product).
- 1.17. **Update** means any amendments, non-chargeable enhancements, modifications, revisions, updates, patches, or new releases of the Product distributed by Yellowfin from time to time.
- 1.18. **Yellowfin’s Product** means the Product excluding any Resale Partner Software.

2. Grant of License

- 2.1. Subject to the terms and conditions of this EULA, Yellowfin grants You a non-exclusive, non-transferable, non-sublicensable, personal, limited license for Your internal business purposes to use the Product for the Term.

- 2.2. Any Update is subject to the terms and conditions of the EULA and any additional terms accompanying the Update.
- 2.3. 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 the EULA, and Yellowfin reserves all rights not expressly granted to You.
- 2.4. The term of this Agreement is the Initial Term unless otherwise terminated in accordance with the Agreement. Upon expiration of the Initial Term, the Agreement will automatically renew for an additional year on the same terms of this Agreement on a rolling basis unless otherwise stated in the Order (**Renewal Term**) except that the then current list price (USD) will prevail if no alternative fee is agreed to in writing between the Parties. Notwithstanding the foregoing, the Initial Term or Renewal Term (as applicable) will not be renewed where a Party provides written notice to the other Party no 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 the Agreement, in which event the Agreement will expire at the end of the then-current Initial or Renewal Term. The term of any subsequent order placed by You and accepted by Yellowfin will align with the term of the Order, unless the Parties agree otherwise in writing.
- 2.5. If You request that Yellowfin references an Order with a specific purchase order number provided by You, and/or if You submit a document such as a purchase order that does not satisfy the requirements to constitute an Order (**Purchase Record**), You acknowledge and agree that unless either Yellowfin's director, Chief Financial Officer or Corporate Counsel has given written confirmation that any of the terms of Purchase Record shall apply to the Order, your Purchase Record, including any terms of conditions contained therein, is solely the information for Your record keeping convenience and/or Your internal procurement process and that Purchase Record: (a) is not incorporated into the Order or this Agreement; (b) does not modify, alter, supersede or supplement this Agreement; or (c) constitute a counter-offer by You, notwithstanding it may have been issued to us prior to delivery of the Product.
- 2.6. You agree to pay the Fees within thirty (30) days of date of Yellowfin's invoice. The Fees are inclusive of all technical support and maintenance set out in clause 6.2 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.
- 2.7. Following an Order, Yellowfin will first issue You a "temporary software license key", which will time-out and stop the Product from functioning after forty-five (45) 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 the context requires) are paid in full in connection with the Product, and You are not in material default of the Agreement, Yellowfin will send You a permanent software license key applicable for the remainder of the Term before the temporary key expires. Yellowfin does not waive any of its rights under this Agreement where it extends temporary software license key or issues a permanent key notwithstanding non-payment or other breach of this Agreement.
- 2.8. The Product is delivered electronically. Yellowfin will make the Product available for download at the electronic software download site specified by Yellowfin and provide You with instructions on how to access and download the Product. Delivery is completed when the Product is made available for download. You must promptly notify Yellowfin if You are unable to download the Product.
- 2.9. Where Yellowfin provides You with a Trial Product, the Parties acknowledge and agree that the Trial Product is provided for evaluative purposes only and is subject to the terms of this EULA applicable to the Product, mutatis mutandis, except that:
- 2.9.1. Yellowfin may at any time, in its sole absolute discretion, suspend, disable or restrict Your access to the Trial Product without notice or liability to You;
- 2.9.2. Yellowfin may at any time, in its sole absolute discretion, notify You that additional fees will be charged for Your continued access to the Trial Product, provided You have the opportunity to "opt out" of using the Trial Product before any charges are imposed; and
- 2.9.3. the Trial Product is provided without any warranty whatsoever, unless the Order, as agreed by the Parties, expressly provides otherwise.
- 2.10. For the avoidance of doubt, where You have been provided with a Trial Product but later subscribe for it under a paid subscription under an Order, then that Trial Product shall form part of the Product as defined in clause 1.10.
- 2.11. Where the Order allows you to place subsequent orders, any subsequent orders will be deemed to incorporate all of the terms and conditions of this Agreement and any terms and conditions You submit 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.
- ### 3. License Restrictions
- 3.1. You acknowledge and agree that the license restrictions contained in this clause 3 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 such foregoing persons.
- 3.2. The licensing model (for example Analytics, Analytics Plus) for the Product is the model set forth in the Order.
- 3.3. 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. You are responsible for the conduct of persons whom You permit to access the Product. You must ensure that You and persons whom You permit to access the Product do not circumvent or attempt to circumvent any limitations that Yellowfin imposes on You.
- 3.4. Yellowfin reserves all rights, title and interest in and to the Product, including all related Intellectual Property rights not expressly granted to You in the 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:
- 3.4.1. 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 laws) 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;
- 3.4.2. Without 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 (for the avoidance of doubt, using the Product to produce reports or other tasks permitted by the Product are not deemed to be works derived from the Product for the purpose of this clause 3);
- 3.4.3. 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;
- 3.4.4. Alter, remove or obscure any patent, trademark or copyright notice in the Product or any other material provided to you by Yellowfin;
- 3.4.5. 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 software or the Product and its source-code to be made freely available; or
- 3.4.6. Sublicense, sell, encumber, outsource, or grant any other rights in the Product and/or the Documentation, or allow the Product to be accessed by another party in a manner not authorized by this Agreement.
- 3.5. You must not upload, post or otherwise transmit any content that You do not have a right to transmit.

- 3.6. You agree You will not upload, post or otherwise transmit any material that contains software viruses or any other computer codes, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- 3.7. You agree that You will not import, export or re-export the Product and all related technical information, Documentation and materials, including technical data, to any country, person, entity or end user in violation of export control or data privacy 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 and all related technical information, Documentation and materials 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; (iv) any country set forth on the U.S. Department of Commerce's list of sanctioned countries (currently, Cuba, Iran, North Korea and Syria), including any future changes to the government's list of T-5 countries; or (v) any person or entity where such export, re-export or provision violates any U.S. export control or regulation.
- 3.8. 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. In consistency 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, Inc., a Delaware corporation of 10801 N Mopac Expressway, Building 1, Suite 100, Austin, TX 78759, USA.
- 3.9. You may not assign the Agreement without prior written consent of Yellowfin. However, You may assign the 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 in writing to be bound by the Agreement; (iii) You are not in breach of the Agreement at the time of the proposed assignment; and (iv) You provide Yellowfin with thirty (30) days prior notice of proposed assignment. Any prohibited assignment by You shall be null and void. Notwithstanding the foregoing, this Agreement shall inure to the benefit of successors and permitted assigns.
- 3.10. You agree to immediately notify Yellowfin of any unauthorized use of the Product or any other breach of security with respect to the Product and/or your information technology systems. Yellowfin will not be liable for any loss or damage arising from Your failure to comply with this clause.
- 3.11. You must not disclose benchmark test results for the Product without written consent of Yellowfin.
- 3.12. If, as part of the Product, You have access to Google Maps/Google Earth APIs, You agree that all such use will be pursuant to the terms and conditions of the EULA, 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.
- 3.13. Insofar as the Product contains third-party components and/or applications, they are set forth in the "[readme].txt" file and the [notices.txt] file ("**Special Notices**"). Subject to clause 3.14 below, Yellowfin warrants that it complies with the terms of the licenses applying to third-party components incorporated into the Product and that it is permitted to license the Product to You. You agree that You must not delete, modify or alter the Special Notices. In the event of any inconsistency between the EULA and a license associated with an open-source component, the relevant open-source component license, to the extent of any inconsistency, 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 the EULA, You are entitled to use the open-source component as permitted under its associated license.
- 3.14. Where You alter any script or code in connection with the Product, including any third-party component shipped with the Product, or any other electronic file accompanying the Product, You do so at your own risk and liability and agree to compensate Yellowfin for any loss or damage suffered by Yellowfin arising from Your alteration of the script or code.

4. Installation and Use

- 4.1. You may install and/or access and use the Product only in the configuration and for the number of licenses You subscribe 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 or other mechanisms. 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.
- 4.2. Subject to the receipt of all applicable fees, Yellowfin grants You a limited, non-exclusive, non-transferable, non-assignable and non-sublicensable license to use any reports which You can (and are authorized to) export through the functionality of the Product.
- 4.3. 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 all necessary Third-Party Applications' external licenses and conditions of use.

5. Consent to use of data

- 5.1. 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.
- 5.2. 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 and represent and warrant that You have the right to grant such access to Yellowfin.
- 5.3. 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. You warrant that You comply with all domestic and international laws and regulations regarding Your collection, use and transmission of data.

6. Limited Warranty and Disclaimer

- 6.1. Yellowfin warrants, for a period of ninety (90) days from the date of delivery of the Yellowfin's Product (the "**Warranty Period**"), that Yellowfin's Product will conform in all material respects to the Documentation PROVIDED THAT you install, administer, access and use the Yellowfin's Product strictly in accordance with the set up and configuration requirements set out in the Documentation and for the avoidance of doubt the foregoing warranty does not apply: (i) if you set up, configure or install, or attempt to set up, configure or install Yellowfin's Product in a manner other than as specified in the Documentation; or (ii) if a third party combines Yellowfin's Product with its software or product and Yellowfin's Product is then sold, licensed sub-licensed as a "combined product" by a third party; (iii)

- to any Update; (iv) to a Trial Product; (v) where defects to Yellowfin's Product are due to abuse, alteration or modification of Yellowfin's Product code (including but not limited to use in code mode and incorporation of additional code through code extensions); or (vi) defects or errors arising from deprecation of previous features or functionality. 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 the Agreement and provide You with a full refund of the license fee and any support fees paid with respect to the Product.
- 6.2. Yellowfin must provide You with support in accordance with Yellowfin's current and applicable support policies unless You have been granted access to the Product under a license between You and an independent software vendor as part of a combined product in which case the independent software vendor is responsible for providing You with support to the Product.
- 6.3. YOU ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO SELECT THE CORRECT PRODUCT WITHIN YELLOWFIN'S SUITE OF PRODUCTS AND RESALE PARTNER SOFTWARE AND THE CORRECT LICENSE MODEL TO ACHIEVE YOUR INTENDED RESULTS WITH THE PRODUCT.
- 6.4. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA UNDER CLAUSE 6.1 ABOVE, YELLOWFIN, ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT OR TRIAL PRODUCT, OR ANY SERVICES OR UPDATES.
- 6.5. NOTWITHSTANDING ANY CLAUSE UNDER THIS EULA OR STATEMENT IN THE DOCUMENTATION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PRODUCT, TRIAL PRODUCT, ANY UPDATES OR SERVICES, AND ANYTHING ELSE SHIPPED OR PROVIDED TO YOU BY YELLOWFIN AND ANYTHING GENERATED BY THE PRODUCT OR TRIAL PRODUCT, ARE DELIVERED "AS IS" AND, EXCEPT FOR THE WARRANTY SET FORTH IN CLAUSE 6.1 ABOVE, ARE NOT WARRANTED TO BE ERROR-FREE, AND YOU ACCEPT THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE, RELIABILITY, ACCURACY AND RESULTS OF THE PRODUCT WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE.
- 6.6. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, 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 TRIAL PRODUCT, ANYTHING ELSE SHIPPED OR PROVIDED TO YOU BY YELLOWFIN, OR ANY SERVICES OR UPDATES.
- 6.7. YELLOWFIN DOES NOT WARRANT THAT THE PRODUCT, TRIAL PRODUCT, ANYTHING ELSE SHIPPED OR PROVIDED TO YOU BY YELLOWFIN OR ANY SERVICES OR UPDATES 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 IN A MANNER SET OUT IN THE DOCUMENTATION.
- 6.8. 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.
- 6.9. YELLOWFIN WILL NOT BE LIABLE FOR DAMAGES ARISING FROM THIRD-PARTY SOFTWARE THAT OPERATES SEPARATELY, BUT IN CONJUNCTION WITH THE PRODUCT, AS THIRD-PARTY SOFTWARE IS LICENSED TO YOU UNDER SEPARATE AGREEMENTS.
- 6.10. THE PRODUCT, TRIAL PRODUCT, ANYTHING ELSE SHIPPED OR PROVIDED TO YOU BY YELLOWFIN AND ANY SERVICES OR UPDATES ARE NOT FAULT-TOLERANT AND ARE 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 THEIR FAILURE 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, TRIAL PRODUCT, ANYTHING ELSE SHIPPED OR PROVIDED TO YOU BY YELLOWFIN AND ANY SERVICES OR UPDATES FOR ANY SUCH HIGH RISK USES.
- 6.11. WHERE STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF WARRANTY TO THE EXTENT THEY CONFLICT WITH A LAW IN AN APPLICABLE STATES OR JURISDICTION, SHALL BE READ DOWN TO THE MINIMUM EXTENT NECESSARY REQUIRED TO COMPLY WITH THE RELEVANT LAW.
- ## 7. Intellectual Property Ownership and Indemnity
- 7.1. Except otherwise disclosed to You in its Special Notices, You acknowledge that Yellowfin owns all Intellectual Property rights in: (i) Yellowfin's Product; (ii) any Documentation; and (iii) all amendments, enhancements and modifications of the Yellowfin's 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, unless the parties have agreed otherwise in a separate confidentiality agreement, with respect to any such amendments, enhancements or modifications.
- 7.2. While You are not required to do so, You may from time to time provide feedback to Yellowfin with regard to 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.
- 7.3. Yellowfin will defend and indemnify You from all costs and reasonable expenses awarded by a court or agreed to in settlement which directly results from any third-party Claim that Yellowfin's Product infringes an Intellectual Property right of a third party, but subject to and only if You: (a) notify Yellowfin in writing of such Claim immediately upon becoming aware of the 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.
- 7.4. In the event that a final injunction is obtained against Your use of the Product, or 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 have the option to: (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 the Agreement and refund: (a) if You are licensed to use the Product on a subscription basis, any prepaid fees for the period after 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.
- 7.5. Yellowfin will have no liability under this clause 7 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, configuration requirements 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 the Agreement; or (vi) if the Claim is based on Your continued use of the

Product notwithstanding Yellowfin has elected to undertake option 7.4(iii) above; or (vii) the version of the Product that You are using is not the current release version of the Product.

- 7.6. 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.

8. Limitation of Liability

- 8.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, UNDER NO CIRCUMSTANCES WILL YELLOWFIN, ITS RELATED ENTITIES, OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY YOU OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY, ANTICIPATED SAVINGS, OR USE OF THE LICENSED MATERIALS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, BREACH OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. EACH FOREGOING EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND SEVERABLE EXCLUSION. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING AGAINST YELLOWFIN, ITS RELATED ENTITIES OR ITS AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY YOU, IN THE TWELVE (12) MONTHS PRIOR TO YOUR CLAIM, FOR THE PRODUCT, UPDATE AND/OR SERVICES (AS APPLICABLE) THAT DIRECTLY CAUSED THE DAMAGE.
- 8.2. TO THE EXTENT LIMITATIONS AND EXCLUSIONS IN THIS CLAUSE 8 CONFLICT WITH A LAW IN AN APPLICABLE STATE OR JURISDICTION, THE LIMITATIONS AND EXCLUSIONS SHALL BE READ DOWN TO THE MINIMUM EXTENT NECESSARY REQUIRED TO COMPLY WITH THE RELEVANT LAW.

9. Audit Rights

- 9.1. Yellowfin may install and use automated license tracking, management and/or enforcement tools with the Products, which You must not disrupt or alter.
- 9.2. Yellowfin may, from time to time, request information from You in connection with, and relation to, its compliance (or non-compliance) with the terms of this Agreement. You must respond within seven (7) days of any such foregoing information request. Yellowfin foregoing rights under is independent of the following auditing rights.
- 9.3. You agree to maintain books and records in connection with the 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 the Agreement. Yellowfin must only conduct one (1) audit per year unless an audit discloses a breach of the Agreement in which case Yellowfin will have the right to conduct follow-up audits as it considers 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's listed 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.

10. Termination

- 10.1. Your right to access and use the Product will cease upon the earlier of expiration or termination of the 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, and Yellowfin shall not be liable for loss of data following termination of this Agreement.
- 10.2. Subject to clause 10.3 and clause 10.4, a Party ("**Party A**" for the purpose of this clause only) may terminate the Agreement by written notice if the other Party ("**Party B**" for the purpose of this clause only) materially defaults in the performance of the 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 the Agreement or otherwise.
- 10.3. Yellowfin may terminate the 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 the Agreement if You breach the license restrictions in clause 3 and/or breach Yellowfin's Intellectual Property rights set out in clause 7 of the Agreement. If Yellowfin is terminating the Agreement for cause, You remain liable for all unpaid fees that are payable for the entire Term.
- 10.4. Where You have entered into a separate agreement with a Channel Vendor for the supply of the Product to which the 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 the 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.
- 10.5. Where Yellowfin has a right to terminate the Agreement, Yellowfin may at its absolute discretion elect to suspend the Agreement. The Parties agree that an election by Yellowfin to suspend the Agreement in no way alters, derogates, extinguishes or waives Yellowfin's right to subsequently terminate the Agreement for breach under the Agreement or at law. You remain liable for any fees which accrued prior to suspension of the Agreement.
- 10.6. Any bankruptcy, insolvency, or liquidation or assignment of Your assets for the benefit of creditors will be void and the Agreement and the licenses granted under the Agreement will automatically terminate without further notice.
- 10.7. Within ten (10) days of the date of expiration or termination of the 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.
- 10.8. All fees due or payable under the Agreement, as well as the rights and obligations of the Parties under clauses 6 (limited warranty and disclaimer), 7 (intellectual property), 8 (mutual limitation of liability) and 9.3 (audit rights) shall survive expiration or termination of this Agreement. Any accrued rights prior to expiration or termination of this Agreement survives expiration or termination. For the avoidance of doubt, if at the time of expiration or termination of this Agreement (as the context requires), You have not fully paid any fees, whether invoiced or not, such fees will continue to be a debt owed by You to Yellowfin post expiration or termination (as the context requires) until such debt has been fully paid.

11. Miscellaneous

- 11.1. This Agreement constitute the complete agreement between You and Yellowfin with respect to the Product and supersede all other agreements, proposals, communication or advertising, oral or written, signed or unsigned unless the Parties have mutually agreed in another document signed by an officer or director of the party that states in clear and unambiguous language that a term or the terms of that other document prevails, supersedes and/or replaces the Agreement (or parts hereof). Where there is any inconsistency between the terms of the EULA and an Order, the terms of the EULA shall prevail to the extent of the inconsistency.

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- 11.2. 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.
- 11.3. You acknowledge and agree that to the maximum extent permitted by law, Yellowfin may independently update the terms of the EULA from time to time. Yellowfin will inform You when it updates the EULA. The terms of the updated EULA will apply to You and supersede any former end user license agreement between the Parties unless Yellowfin's ability to independently update the EULA is restricted by applicable laws, in which case, the terms of the EULA without the update(s), will continue to apply to the Parties.
- 11.4. If any provision of the 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 the Agreement will remain in full force and effect.
- 11.5. 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. YELLOWFIN AND YOU 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.
- 11.6. 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.
- 11.7. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.8. 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.
- 11.9. Yellowfin may identify You (by name and logo) as a Yellowfin's customer in promotional materials or during promotional events. If You do not want Your name and/or logo to be used in this way, please contact Yellowfin's You Success team.
- 11.10. 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.
- 11.11. If You are entering into the 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 the Agreement on behalf of that entity.
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[End of EULA]
