



## TERMS AND CONDITIONS

PLEASE READ CAREFULLY BEFORE SUBSCRIBING TO THE SERVICES PROVIDED HEREUNDER

IMPORTANT NOTICE: THIS SUBSCRIPTION AGREEMENT AND THE PRIVACY NOTICE AVAILABLE AT <http://www.talenytics.com> (THE 'AGREEMENT') FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU ('THE CUSTOMER AS NAMED ON THE ORDER FORM) AND TALENYTICS LIMITED A COMPANY INCORPORATED AND EXISTING UNDER THE LAWS OF SCOTLAND (REGISTERED WITH COMPANY NUMBER SC470098) WHOSE REGISTERED ADDRESS IS AT BUCHANAN BUSINESS PARK, CUMBERNAULD ROAD, GLASGOW G33 6HZ (THE 'SUPPLIER'). THIS IS A SUBSCRIPTION AGREEMENT FOR THE USE OF THE CUSTOMER OF THE SERVICES (AS DEFINED BELOW). THE SUPPLIER REMAINS THE OWNER OF THE SERVICES AS WELL AS OF ALL COPIES IN ORDER TO AVAIL OF THE PROVISIONS OF THIS AGREEMENT AND ACCEPT THE TERMS OF THIS AGREEMENT. IF THE CUSTOMER DOES NOT ACCEPT THIS AGREEMENT, THE CUSTOMER MAY NOT INSTALL, OR USE THE SERVICES.

### 1. DEFINITIONS

In this Agreement the following words shall have the following meanings:

<b>Agreement:</b>	means the terms and conditions in this subscription agreement and the Order Form and any other documents explicitly incorporated by reference by agreement of the Parties;
<b>Authorised Users:</b>	means those employees, directors, agents and independent contractors of the Customer who are authorised by the Customer to use the Services;
<b>Confidential Information:</b>	means information that is proprietary or confidential to the disclosing party to the extent that a reasonable person would consider such information as confidential;
<b>Customer:</b>	means the company referenced on the Order Form. Where relevant references to the Customer shall include Authorised Users;
<b>Customer Data:</b>	means the data input by the Authorised Users into the Supplier Platform to facilitate the Customer's use of the Supplier Platform;
<b>Effective Date:</b>	means the date this Agreement is accepted by the Customer;
<b>Fee:</b>	means the fees payable by the Customer to Supplier for use of the Services, as set out in the Order Form;
<b>Initial Term:</b>	means the term set out in the Order Form;
<b>Non-Software Failure:</b>	means any defect, error or fault in the Services which is caused by (i) the Services being used other than in accordance with the description or its proper intended purpose; (ii) any modification, variation or reconfiguration of the Services unless the same is performed by or on behalf of the Supplier or with Supplier's content; (iii) any defect in the hardware, network or device on which the Service is used; (iv) the combination, operation, use or failure of third party or end user proprietary software or networks with which the Service interfaces or is connected; or (v) any virus or worm infecting the Services save where such virus is introduced by the Supplier;
<b>Order Form:</b>	means the online form or hardcopy document which sets out the specific details of the Customer order including the Changes and the number of Authorised Users;
<b>Renewal Term:</b>	has the meaning provided at clause 12.1;
<b>Services:</b>	means the services provided by Supplier under this Agreement including the provision of access to the Supplier Platform and training and support for the Supplier Platform;
<b>Subscription Term:</b>	means the Initial Term together with any subsequent Renewal Terms;
<b>Supplier Content:</b>	means all content available as part of Supplier Platform which includes video, audio, text or other materials created by, or for which the commercial rights are owned or licensed by, the Supplier and other documents;
<b>Supplier IP:</b>	means the intellectual property rights in the Supplier Content, the Supplier Platform and the Services including trademarks, service marks, graphics and logos used in connection with the Services and any updates or modifications thereto;
<b>Supplier Platform:</b>	means the web based platform licensed by Supplier to the Customer as part of the Services including the Supplier IP and the Supplier Content; and





**User Licences:** has the meaning given at clause 2.1.

- 1.1 In this Agreement (except where the context otherwise requires):
  - 1.1.1. use of the singular includes the plural and vice versa;
  - 1.1.2. use of any gender includes the other genders;
  - 1.1.3. any reference to a statute, statutory provision, subordinate legislation, code or guideline is a reference to such legislation as amended and in force from time to time and to any legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation; and
  - 1.1.4. any phrase introduced by the terms “including”, “include” and “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2. USER LICENCES**

- 2.1 Supplier hereby grants to the Customer a non-exclusive, non-transferable license to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer’s internal business operations and for the number of licences subscribed for in the Order Form (each using a “**User Licence**”).
- 2.2 If any additional User Licences are purchased by the Customer part way through the Initial Term or any Renewal Term, the Fees shall be pro-rated for the remainder of the relevant period.
- 2.3 The customer undertakes:
  - 2.3.1. that the number of Authorised Users shall not exceed the maximum number of User Licences for the Customer banding specified in the Order Form;
  - 2.3.2. that each User Licence may only be used by one Authorised User. Customer acknowledges that sharing User Licences will be deemed a material breach of this Agreement which is not capable of remedy;
  - 2.3.3. that each Authorised User shall keep a secure password for use of the Supplier Platform and shall keep that password confidential;
  - 2.3.4. to immediately notify Supplier of any security breach for any losses arising out of the unauthorised use of the User Licences; and
  - 2.3.5. to maintain a list of current Authorised Users and provide such list to Supplier upon request
- 2.4 The Customer shall not access, store, distribute or transmit any viruses or any material when using the Services that is considered illegal or harmful or facilitates illegal activity.
- 2.5 The Customer shall not, except to the extent expressly permitted under this Agreement:
  - 2.5.1. attempt to modify, duplicate, create derivative works from, or distribute all or any portion of Supplier Platform (as applicable);
  - 2.5.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form all or any part of the Supplier Platform;
  - 2.5.3. access all or any part of the Supplier Platform in order to build a product or service which competes with the Supplier Platform;
  - 2.5.4. use the Supplier Platform to provide services to third parties; or
  - 2.5.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit, or otherwise make the Supplier Platform available to any third party except the Authorised Users.
- 2.6 The Authorised Users may be granted different rights of access to the Supplier Platform as may be further described in the Order Form.

**3. SERVICES**

- 3.1. Supplier shall provide the Services to the Customer on and subject to the terms of this Agreement during the Subscription Term.
- 3.2. Supplier will provide the Customer with support services and training on the use of Supplier Platform. Please contact [info@talentytics.com](mailto:info@talentytics.com) for further details.
- 3.3. Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned maintenance (carried out during such times which are notified to the Customer) and unscheduled maintenance.





- 3.4. The Customer shall own all rights, title and interest in and to all of the Customer Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.

**4. THIRD PARTY PROVIDERS**

- 4.1. The Customer acknowledges that as part of using the Services, the Customer may be able to access the website content of, correspond with, and purchase products and services, from third parties via third-party websites. The Customer accesses this information at its own risk.
- 4.2. Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third-party, and not Supplier.

**5. SUPPLIER'S OBLIGATIONS**

- 5.1. Supplier undertakes that the Services will conform to the description specified in the Order Form and to provide the Services with reasonable skill and care.
- 5.2. If the Services do not conform to the description in the Order Form, the Supplier will, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any non-conformance of the Services with their description.
- 5.3. Notwithstanding the forgoing:
  - 5.3.1. Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Supplier Platform, the Services, the Supplier Content, and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
  - 5.3.2. Supplier is not responsible for any delays, delivery failures, or any loss or damage resulting from the transfer of data over communications networks and facilities, including the internet; and
  - 5.3.3. use of the Services requires compatible devices, internet access and certain software including periodic updates. Performance may be affected if these are not available. High-speed internet access is strongly recommended for regular use and is required for video. The latest version of required software is recommended to access the Services and may be required to download certain features available on the Supplier Platform.
- 5.4. Supplier reserves the right to modify the Services at any time and Supplier will make available to the Customer all improvements from time to time made available by it to other customers.
- 5.5. The Services are (except as expressly provided in this Agreement) provided "as is" and "as available". All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

**6. CUSTOMER'S OBLIGATIONS**

- 6.1. The Customer warrants and represents that it has all necessary rights and authority to enter into this Agreement and, where relevant, that Customer has the right and authority to legally bind any entity or organisation to the terms and obligations of this Agreement.
- 6.2. The Customer warrants that it shall:
  - 6.2.1. comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - 6.2.2. ensure that the Authorised Users use the Supplier Platform in accordance with the terms and conditions of this Agreement and shall be responsible and liable for any Authorised User's breach of this Agreement;
  - 6.2.3. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitations the Services including any consents required from the Authorised Users; and
  - 6.2.4. be solely responsible for procuring and maintaining its systems, network connections and telecommunications links to access the Supplier Platform.

**7. CHARGES AND PAYMENT**

- 7.1. As consideration for receipt of the Services, the Customer shall pay the Fees to Supplier.





- 7.2. The Fees are payable in advance of the Initial Term or any Renewal Term and Supplier shall send the relevant invoice to the Customer thirty (30) days prior to the relevant period. The Customer shall provide the Supplier valid, up-to-date and complete bank account information or purchase order information acceptable to Supplier and any relevant valid, up-to-date and complete contact and billing details.
- 7.3. If the Supplier has not received payment in accordance with this Agreement:
- 7.3.1. Supplier may, without liability to the Customer, disable the Customer's account and access to all or part of the Supplier Platform. Supplier shall be under no obligation to provide any or all of the Services while invoice(s) remain unpaid; and
- 7.3.2. Supplier may charge interest at an annual rate equal to three percent (3%) over the then current base lending rate of the European Central Bank at the date the relevant invoice was issued.
- 7.4. All Fees stated or referred to in this Agreement:
- 7.4.1. shall be payable in the currency specified in the Order Form;
- 7.4.2. are non-cancellable and non-refundable; and
- 7.4.3. are exclusive of value added tax or other applicable sales tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 7.5. Supplier reserves the right to modify the Fees for the Services. Any increase in the Fees will apply to the next Renewal Term and be notified to the Customer forty five (45) days in advance.

## 8. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- 8.1. The Customer acknowledges and agrees that Supplier and/or its licensors own all intellectual property rights in the Supplier IP. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Supplier IP.
- 8.2. Each party may be given access to Confidential Information of the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 8.2.1. is or becomes publicly known other than through any act or omission of the receiving party;
- 8.2.2. was in the other party's lawful possession before the disclosure;
- 8.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 8.2.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 8.3. Each party shall hold the others Confidential Information in confidence and, unless otherwise required by law, shall not make the others Confidential Information available to any third party, or use the others Confidential Information for any purpose other than the implementation of this Agreement.
- 8.4. Each party shall take all reasonable steps to ensure that the others Confidential Information to which it has access is not disclosed or distribution by its employees or agents in violation of the terms of this Agreement.
- 8.5. Supplier acknowledges that the Customer Content is the Confidential Information of the Customer.
- 8.6. The Customer acknowledges that Supplier IP is the Confidential Information of Supplier.

## 9. PERSONAL DATA

- 9.1. The Customer agrees that by submitting any individuals personal information to Supplier, Customer agrees and confirms its authority for Supplier's collection, use and disclosure of such personal information in order to provide the Service under this Agreement.
- 9.2. The Services are provided in accordance with the Supplier's privacy policy available at [www.talentytics.com/privacy](http://www.talentytics.com/privacy)
- 9.3. If Supplier processes any personal data on the Customers behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Supplier shall be a data processor and in any such case:
- 9.3.1. The Supplier will process the personal data only for the purposes of providing the Services under this Agreement and during the Subscription Term;
- 9.3.2. the Supplier will keep all personal data safe and secure;
- 9.3.3. the Supplier will notify Customer as soon as it becomes aware of any security or data breach;
- 9.3.4. the Customer shall ensure that the Customer is entitled to transfer the relevant data to Supplier, and has all necessary permission and consents required (including those from the Authorised Users) to enable the Supplier to





- lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf; and
- 9.3.5. Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time.
- 9.4. The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- 9.4.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure a level of security appropriate to:
- 9.4.1.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- 9.4.1.2. the nature of the data to be protected.
- 9.5. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, the Supplier will not be liable for any claim brought by a data subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customers Instructions.
- 9.6. The Supplier will provide a copy of the personal data to the Customer upon request and in any event upon termination, and will delete personal data in accordance with clause 12.4.3, save to the extent that such information is required to be retained under applicable law.

## **10. INDEMNITY**

- 10.1. Subject to clause 11, Supplier shall defend the Customer against any third-party claims that the Supplier IP infringes any copyright, trade mark, or database right and shall indemnify the Customer for any amounts awarded against the Customer in judgement or settlement of such claims, provided that:
- 10.1.1. Supplier is given prompt of any such claim;
- 10.1.2. the Customer provides reasonable co-operation to Supplier in the defence and settlement of such claim, at Suppliers expense; and
- 10.1.3. Supplier is given sole authority to defend or settle the claim.
- 10.2. In the defence or settlement of any claim, Supplier may procure the right for the Customer to continue using the Supplier IP, replace or modify the Supplier IP so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) days' notice to the Customer without any additional liability to the Customer as a result of such early termination.
- 10.3. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 10.3.1. a modification of the Supplier IP by anyone other than Supplier; or
- 10.3.2. the Customers use of the Services in a manner contrary to the instructions given to the Customer by the Supplier or in breach of the terms of this Agreement; or
- 10.3.3. the Customers use of the Services after notice of the alleged or actual infringement from Supplier or any appropriate authority.
- 10.4. The Supplier shall have no liability for any claim of infringement or otherwise resulting from a Non Software Failure
- 10.5. The foregoing states the Customers sole and exclusive rights and remedies, and Suppliers (including Suppliers employees', agents', and sub-contractors') entire obligations and liability, for infringement of any intellectual property right.
- 10.6. The Customer shall defend and indemnify Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customers breach of this Agreement of use of the Services other than in accordance with this Agreement.

## **11. LIMITATION OF LIABILITY**

- 11.1. The clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, contributing experts, agents and sub-contractors) to the Customer.
- 11.2. Nothing in this Agreement limits or excludes the liability of Supplier, for death or personal injury caused by Suppliers negligence or for fraud or fraudulent misrepresentation.
- 11.3. Subject to clause 11.2.:





11.3.1. Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement (in each case whether reasonably foreseeable or not); and

11.3.2. Suppliers total aggregate liability in contract (including indemnity), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid by the Customer during the twelve (12) months immediately preceding the date on which the claim arose.

11.4. Any claim under this Agreement must be made within one (1) year of the incident which gives rise to the claim occurring.

## 12. TERMS AND CONDITIONS

12.1. This Agreement shall, unless otherwise terminated as provided in this clause 12, commence on this Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods equivalent to the Initial Term (each a “**Renewal Term**”), unless:

12.1.1. either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or

12.1.2. this Agreement is otherwise terminated in accordance with the provisions of this Agreement.

12.2. Supplier may grant access to the Supplier Platform on a trial basis under this Agreement. Such access may be terminated by Supplier at any time.

12.3. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement immediately and without liability to the other if:

12.3.1. the other party is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy (as determined at the sole discretion of the non-breaching party), or the other party has failed to remedy that breach within twenty (20) days after receiving written notice requiring it to remedy that breach. Any breach of the licencing provisions of this Agreement shall be deemed a breach incapable of remedy; or

12.3.2. the other party is unable to pay its debts or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

12.4. On termination of this Agreement for any reason:

12.4.1. the User Licences granted under this Agreement shall immediately terminate;

12.4.2. each party shall make no further use of any Confidential Information (and all copies of them) belonging to the other party;

12.4.3. Customer shall have thirty (30) days to export the Customer Content using the Supplier Platform export to Excel function. Following this period Supplier may delete all Customer Content in its possession; and

12.4.4. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

12.5. Any expiry or termination of this Agreement will not affect any accrued rights or liabilities of either party up to and including the date of such expiry or termination nor will it affect the coming into force or continuation in force of any other clauses or provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after such termination.

## 13. FORCE MAJEURE

Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligation under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion,





malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm of default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**14. GENERAL PROVISIONS**

- 14.1. If any provision (or part of any provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 14.2. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous agreement, understanding or agreement between them relating to the subject matter they cover.
- 14.3. Each of the parties acknowledge and agree that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 14.4. The Customer shall not, without the prior written consent of Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.5. Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.6. Any notice to be given under this Agreement will be in writing and addressed to the party at the address stated in the Order Form. Notices will be deemed given and effective:
  - 14.6.1. if personally delivered, upon delivery;
  - 14.6.2. if sent by an overnight service with tracking capabilities, upon receipt;
  - 14.6.3. if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt of the applicable method of transmittal; or
  - 14.6.4. if sent by certified or registered mail, within five days of deposit in the mail.
- 14.7. The terms and conditions in the Order Form shall prevail over the terms and conditions in this Agreement to the extent of any conflict. Terms contained in any purchase order or acknowledgement will be of no effect, even if such acknowledgement provides that Suppliers acceptance of the purchase order is conditioned on Customers agreement to the proposed terms contained in such purchase order or acknowledgement.
- 14.8. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with the laws of the Scotland.
- 14.9. The parties irrevocably agree that in relation to any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) the courts of the Scotland shall have jurisdiction.

