



Peak Software License Agreement | Terms and Conditions

This licence agreement (the **Agreement**) is entered into between:

- (1) **PEAK AI LTD**, a company incorporated in England and Wales with registered number 09307701 and having its registered office at Floor 12, Neo, Charlotte Street, Manchester, M1 4ET (**Peak**); and
- (2) **The Customer** as defined in the Order Form (**Customer**)

BACKGROUND

- (A) The Customer and Peak agree that the terms and conditions set forth below shall apply to the licence of the Peak cloud-based, multi-tenanted data analytics SaaS AI system, the Software and the Interface and the provision of the related data analysis and other Services as specified on the Order Form.
- (B) The Software described on the Order Form shall be delivered by means of the Customer's use of its permitted Access Details.

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement:

Access Date means the date on which access is granted by Peak to the Customer for the Customer to access the Software via the Interface(s), as set out on the Order Form;

Access Details means a unique log in ID and password specific to the Customer to allow Users to access the Software through the Interface(s);

Agreement means the terms and conditions of this licence agreement and the Order Form;

Business Day means any day other than a Saturday, Sunday or a day when the clearing banks are not physically open for business in the City of London;

Confidential Information has the meaning given in clause 10.1;

Configuration means the configuration of the Software as set out in the Vision and Scope Document, via forecasting, network optimisation and/or inventory optimisation;

Core Algorithm means the generic or "raw" algorithm that Peak provides as part of the Services in the format in which it is in prior to being trained by the Customer Data;

Customer Data means the data provided by or on behalf of the Customer or any User for use in connection with the Software or as part of the Services;

Data Protection Legislation means all applicable laws relating to data protection and privacy including the Data Protection Act 2018, the GDPR (to the extent applicable in the UK) and all related or equivalent legislation which is applicable to Peak, in each case as re-enacted, applied, amended, superseded, repealed or consolidated from time to time;

Deliverables means: (i) any data in whatever form extracted or deriving from the Customer Data (but not including the Customer Data, which remains the property of the Customer at all times) and produced as a result of the use of the Software or Services; and/or (ii) any information, data or result deriving from that data; and/or (iii) any information, data materials, results, reports and/or analysis derived from the use by the Customer of the Software provided as part of the Services (but not including, for the avoidance of doubt, the Core Algorithm, the Trained Algorithm, any data collected or provided by Peak, the Interface, the Peak Brand or the Software);

Effective Date means the date of signature of the Order Form;

GDPR means the General Data Protection Regulation ((EU) 2016/679);

Initial Term means the initial term of the agreement as set out in the Order Form;

Intellectual Property Rights means all intellectual and industrial property rights of any nature anywhere in the world, including copyright, database rights, patents, know-how, design rights, registered designs, trade mark rights, service mark rights, domain name rights and topography rights; whether or not registered or capable of protection by registration and the right to apply for any of them, for the full term of such rights and all renewals and extensions, together with all accrued rights of action;

Interface(s) means the Peak interface(s) accessible via the internet and/or API connection through which the Users can access the Software using the Access Details;

Licence has the meaning given in clause 3.1;

Licence Period means, for each Solution, the period from the applicable Access Date to the expiry of the Term;

Maintenance Release means a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

New Version means any new version of the Software which from time to time is publicly marketed and offered for purchase by Peak in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

Order Form means an order form mutually agreed upon by Peak and Customer setting forth the Software and the Services ordered by Customer and to be provided by Peak, including the prices and fees to be paid by Customer and the Subscription Details purchased;

Peak Brand means the name, trade mark, service mark, logo, style and other branding which Peak uses (whether registered or not) in relation to the Software and the Services or the provision of the same;

Privacy Policy means Peak's privacy policy available from time to time at www.peak.ai;

Renewal Period means the period described in clause 2;

Services means the provision of managed service, support and maintenance services in relation to the use of the Software and the Interface(s) and, where applicable, the analysis of the Customer Data, as more particularly set out in the Order Form;

Service Level Agreement or SLA means Peak's service level agreement in relation to the Subscription Details as set out at Schedule 1;



Solution means an advanced analytics solution of the Software which the Customer may select to licence as part of the Licence (subject to an additional charge) as more particularly set out on the Order Form;

Software means the computer programs listed in the Order Form and any Maintenance Release which is acquired by the Customer during the subsistence of this licence;

Subscription Fee means the subscription amount payable by the Customer to Peak for the Licence, as set out in the Order Form;

Subscription Details means the type of subscription selected by the Customer as set out in the Order Form and which relates to the corresponding AI system tier and service tier of the subscription set out in the SLA;

Term means the Initial Term together with any applicable Renewal Periods;

Trained Model Algorithm means the developed algorithm that is the trained version of the Core Algorithm as a result of the Customer's ongoing use of the Software;

Users means those individual employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and who may be given the Access Details for so long as they remain authorised by the Customer (and by Peak);

Virus means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

Vision and Scope Document means the specification document for the Software to be developed and agreed by the Parties following the Access Date.

1.2. In this Agreement:

1.2.1. headings are for identification purposes only and they shall not affect the construction or interpretation of this Agreement;

1.2.2. use of the singular shall include the plural and vice versa;

1.2.3. references to **a person** shall include natural persons, corporate or unincorporated bodies (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns and references to **a party** shall mean either Peak or the Customer as the context requires and **parties** shall mean both of them;

1.2.4. **Group** shall mean a party's parent undertakings and each of its subsidiary undertakings and each of its parent undertakings' subsidiary undertakings from time to time and **parent undertaking** and **subsidiary undertaking** shall take the meanings set out in section 1162 of the Companies Act 2006; and

1.2.5. the word **including** will be construed without limitation unless inconsistent with the context.



2. COMMENCEMENT AND TERM

- 2.1.** This Agreement shall take effect from the Effective Date and subject to clause 2.2, the Licence shall commence on the Access Date and shall continue for the Initial Term.
- 2.2.** This Agreement shall be automatically renewed on expiry of the Initial Term for successive periods of 12 months (each a **Renewal Period**) unless either party gives the other party no less than 30 days' written notice of termination (unless otherwise agreed by the Parties in writing), such notice to take effect at the expiry of the Initial Term or any Renewal Period (as applicable) or unless this Agreement is otherwise terminated.
- 2.3.** These terms and conditions shall apply for the duration of the Term.
- 2.4.** Each Order Form shall be subject to the terms and conditions of this Agreement.

3. LICENCE AND SERVICES

- 3.1.** In consideration of the payment of the sums set out in clause 8.1 by the Customer, and in accordance with the terms of the Agreement, Peak hereby grants to the Customer a non-exclusive, non-transferrable licence to use and permit the Users to use, the Software and Deliverables via the Interface for the Licence Period (the **Licence**).
- 3.2.** Subject to payment of the Subscription Fee in accordance with the payment terms, Peak will make the Software available to the Customer via the Interface(s) from the Access Date and the Parties shall work together to develop the Vision and Scope Document.
- 3.3.** Subject to payment of the Subscription Fee, Peak shall provide the Services specified in the Order Form in accordance with the SLA and the provisions of this Agreement.
- 3.4.** In the event that a Customer wishes to amend the Services to be provided under this Agreement, such changes shall be agreed by the Parties and documented in a new Order Form which shall take effect as a variation to this Agreement. The variation shall take effect from the date of execution of the new Order Form by both parties and shall continue for the remainder of the Term. The Parties acknowledge and agree that these terms and conditions shall apply to the amended Services and the Subscription Fee shall be amended accordingly.

4. USE OF THE SOFTWARE AND SERVICES

- 4.1.** The Customer shall procure that all Users comply with the provisions of this clause 4 and the Customer is responsible for and shall remain liable for any breach of this Agreement by itself or any User.
- 4.2.** The Customer may make the Software and Deliverables available for use only by Users and only via the Interface(s) using the Access Details.
- 4.3.** The Customer may use the Software and Deliverables only for the Customer's own business use. Other than as permitted in this clause 4, the Customer may not (without Peak's prior written consent) use the Software or Deliverables to obtain services on behalf of any other person and/or disclose or circulate the Deliverables to any third party.
- 4.4.** The Customer agrees that Deliverables may only be extracted by the Customer from the Interface(s) in a format approved by Peak and the Customer shall:



- 4.4.1.** not share, disseminate, or distribute the Deliverables other than as permitted; and
 - 4.4.2.** be subject to any restrictions Peak may reasonably impose (in terms of the method of extraction), in its sole discretion acting reasonably.
- 4.5.** Subject to clause 4.2, the Customer shall not, without Peak's prior written consent, use, store, copy, publish, download, sell, resell, redistribute or deal with the Software in any manner or for any purpose. In particular, and without limiting the generality of the foregoing, the Customer shall not without Peak's prior written consent:
 - 4.5.1.** modify, adapt, translate, reverse engineer, decompile or disassemble the whole or any part of the Software or the Core Algorithm or the Trained Model Algorithm in any way or permit the whole or any part of the Software or the Core Algorithm or the Trained Model Algorithm to be incorporated with any computer program or published on any internal intranet;
 - 4.5.2.** copy or extract the Software or the Core Algorithm or Trained Model Algorithm in any way except as expressly permitted by this Agreement;
 - 4.5.3.** allow any third party who is not a User (or any person expressly permitted elsewhere in this Agreement) to access the Software or the Core Algorithm or the Trained Model Algorithm;
 - 4.5.4.** use the Software or the Core Algorithm or the Trained Model Algorithm on behalf of any third party, including any member of its Group;
 - 4.5.5.** use the Software or the Core Algorithm or the Trained Model Algorithm for the purposes of redistributing or reproducing commercial information by the press or media or through any commercial network, cable or satellite system; or
 - 4.5.6.** distribute or circulate the Software or the Core Algorithm or the Trained Model Algorithm outside the organisation of the Customer or a User.
- 4.6.** The Customer agrees to comply with all laws, statutes, regulations, bye-laws and codes of practice applicable to its use of the Software and Services.
- 4.7.** The Customer shall comply with any of Peak's reasonable security requirements in relation to accessing the Software and the Deliverables, including taking all steps to protect and keep confidential all Access Details, and prohibiting unauthorised access to the Software or the Interface(s). All access made using any account Peak makes available to the Customer or a User shall be deemed to have been made by or on behalf of the Customer. The Customer shall immediately notify Peak on becoming aware of any actual or attempted unauthorised use or access of the Software or the Interface(s).
- 4.8.** The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - 4.8.1.** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.8.2.** facilitates illegal activity;
 - 4.8.3.** depicts sexually explicit images;



- 4.8.4.** promotes unlawful violence;
- 4.8.5.** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 4.8.6.** is otherwise illegal or causes damage or injury to any person or property;

and Peak reserves the right, without prejudice to its other rights, to disable the Customer's or any User's access to any material that breaches the provisions of this clause (or in severe or repeated cases suspend access to the Services).

- 4.9.** The Customer shall be responsible for obtaining and maintaining any necessary hardware, communications links and software in order to obtain access to the Interface(s) and use the Software in accordance with this Agreement.
- 4.10.** The Customer acknowledges that Peak cannot guarantee uninterrupted, timely or error-free access to the Interface(s) due to events beyond its control (including operation of public and private networks by Internet service providers, telecoms providers and third parties) and Peak or its contractors may also need to carry out maintenance (whether planned or unplanned, and routine or not) from time to time on the Interface(s); however, Peak shall use reasonable endeavours to minimise the amount of downtime for access to the Services (and where possible seek to carry out any maintenance outside of normal business hours) and give the Customer as much warning as is reasonably practicable in the circumstances of any prolonged planned maintenance or downtime.
- 4.11.** The Customer shall not (and shall procure that any User shall not) use or access the Interface(s) in such a way to cause the Interface(s) or Peak's provision of the Software, to be interrupted, damaged, rendered less efficient or in any way impaired.
- 4.12.** Peak retains the right to audit and/or monitor the Customer's and Users' usage of the Services from time to time in order to:
 - 4.12.1.** review the Customer's compliance with its obligations pursuant to this Agreement; and/or
 - 4.12.2.** review the operation of the Software and, where appropriate, make improvements.
- 4.13.** Peak reserves the right at its discretion to make reasonable changes to the Interface(s).
- 4.14.** Nothing in this Agreement shall prevent Peak from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 4.15.** Peak will provide the Customer with all Maintenance Releases generally made available to its customers. Peak warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

5. SERVICE LEVELS

- 5.1.** In consideration of the payment of the Subscription Fee, Peak shall provide the Services in accordance with the Subscription Details identified on the Order Form. Subject to clause 8.4, the Customer may amend its Subscription Details at any time upon no less than 30 days' written notice to Peak as set out in clause 3.4.



- 5.2.** Peak shall use its reasonable endeavours to perform any obligations in this Agreement within any timescales set out in this Agreement, but time for performance shall not be of the essence. Peak shall not be liable for any delays or failure to perform accurately its obligations if this has been caused by any breach of this Agreement, failure or delay by the Customer (or a User, where relevant).
- 5.3.** In respect of any provision of Services or supply of Deliverables by Peak:
- 5.3.1.** the Customer acknowledges that, in offering the Services, Peak refers to, and relies on, information and data supplied by the Customer and Peak cannot guarantee the accuracy of such information;
 - 5.3.2.** Peak is not responsible for any service or for deliverables not expressly stipulated in the Order Form;
 - 5.3.3.** any Services provided in respect of Deliverables shall be limited to any granularity of data as may be specified in the Order Form and any restrictions in respect of date limitations and any maximum volumes, and to such other restrictions as may be specified in the Order Form or this Agreement; and
 - 5.3.4.** Peak is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Deliverables over communications networks and facilities, including the internet, and the Customer acknowledges that access to the Interface(s), may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6. CUSTOMER DATA AND PRIVACY

- 6.1.** In this clause 6, the terms "**data processor**", "**data controller**", "**personal data**", "**data subject**" and "**processing**" shall be as defined in the Data Protection Legislation.
- 6.2.** The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity and accuracy of the Customer Data.
- 6.3.** In the event of any loss or damage to Customer Data by Peak, the Customer's sole and exclusive remedy shall be for Peak to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Peak. Peak shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any person other than Peak, or those third parties sub-contracted by Peak to perform services related to Customer Data maintenance and back-up.
- 6.4.** Peak shall comply with its Privacy Policy relating to the privacy and security of the Customer Data made available to Peak during the term of the Licence.
- 6.5.** Peak shall:
- 6.5.1.** not delete or remove any proprietary notices or other notices contained within or relating to the Customer Data;
 - 6.5.2.** not alter, store, copy, disclose or use the Customer Data, except as necessary for the performance by Peak of its obligations under this Agreement;



- 6.5.3.** preserve, so far as possible, the integrity of the Customer Data and use reasonable endeavours to prevent any loss, disclosure, theft, manipulation or interception of the Customer Data; and
- 6.5.4.** promptly notify the Customer if any of the Customer Data is lost, becomes corrupted, is damaged or is deleted accidentally.
- 6.6.** The Customer grants to Peak, for the Term, a non-exclusive, non-transferable, royalty-free licence to use the Customer Data solely for the purposes of providing the Licence and the Services and to improve the performance of the Software from time to time.
- 6.7.** On receipt by Peak of any Customer Data and during any collection, processing, storage and transmission by Peak of any Customer Data, Peak shall take such precautions as are reasonably necessary to preserve the security and integrity of the Customer Data and to prevent any corruption or loss of the Customer Data.
- 6.8.** To the extent that Peak processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties acknowledge and agree that the Customer shall be the data controller and Peak shall be a data processor in respect of such personal data and in any such case:
- 6.8.1.** the processing of Data by Peak shall be that which is necessary to comply with Peak's obligations under the Agreement for the term of the Agreement in relation to the subjects of the Data;
- 6.8.2.** Peak shall only process personal data in accordance with the Privacy Policy and on documented instructions from the Customer (including this Agreement), save as required by applicable law and Peak shall inform the Customer immediately if in its opinion, any of Customer's instructions infringe the Data Protection Legislation;
- 6.8.3.** personal data and special categories of personal data may only be transferred outside of the European Economic Area (for the avoidance of doubt, in the event that the UK is no longer a part of the European Economic Area, references in this paragraph to the European Economic Area shall mean the whole territory of the European Economic Area and the UK together) in compliance with the Data Protection Legislation (unless the transferring party is required to do so by applicable law);
- 6.8.4.** Peak shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 6.8.5.** the Customer agrees that if Peak wishes to engage sub-processors, it shall notify the Customer in advance by displaying a notice on its website, thereby providing the Customer with an opportunity to object to the use of such sub-processor(s). When engaging a sub-processor, Peak shall ensure that such sub-processor is engaged by way of a written contract which imposes obligations on such sub-processor which are no less onerous than the obligations imposed on Peak pursuant to this clause (whereby any relevant reference to "processor" within the GDPR shall be read as if it were a reference to the "sub-processor") and Peak shall remain liable to the Customer in respect of any breach of this Agreement that is caused by an act, error or omission of such sub-processor. The Customer hereby acknowledges and agrees that Peak utilises Amazon Web Services in Dublin, Ireland for hosting and infrastructure services;



- 6.8.6.** taking into account the nature of the processing, Peak shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests from data subjects exercising their rights under Data Protection Legislation;
- 6.8.7.** Peak shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32-36 of the GDPR, taking into account the nature of the processing and the information available to it;
- 6.8.8.** following the end of the provision of the Services, Peak shall, at the Customer's option, delete or return all personal data in its possession or control, save where required to retain such data by applicable law or for record-keeping purposes;
- 6.8.9.** Peak shall make available to the Customer all information necessary to demonstrate compliance with its obligations laid down in this clause 6.8;
- 6.8.10.** subject to clause 6.8.11, Peak shall allow for and contribute to audits (including inspections) of Peak's data processing compliance activities (where and to the extent that these relate to processing of the Customer Data), either conducted by the Customer or another independent auditor which is approved by both parties (acting reasonably) and in each case only where such audit or inspection is:
- (a) deemed by the Customer (acting reasonably) to be reasonably necessary, taking into account any information provided to the Customer pursuant to clause 6.8.11;
 - (b) to take place on an accompanied basis, during normal business hours and on the giving of reasonable written notice;
 - (c) subject to the Customer giving (and procuring from the independent auditor, where relevant) a written undertaking to respect and preserve the confidentiality of any information relating to Peak which it (and the independent auditor) accesses as a result of the audit or inspection and on the understanding that no access will be granted to information which originates with or relates to any of Peak's other customers; and
 - (d) at the Customer's cost.
- 6.8.11.** on receipt of a request by the Customer pursuant to clause 6.8.10, before submitting to an audit, Peak shall be entitled to provide to the Customer copies of its own internal reports following any penetration testing or information security tests (or similar) conducted on Peak's behalf itself or by an independent auditor within the 12 months prior to such a request and the Customer agrees to consider (acting reasonably and in good faith) whether the provision of such reports is sufficient to preclude the need for an audit of Peak's systems in accordance with clause 6.8.10;
- 6.8.12.** each party shall take appropriate technical and organisational security measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage and take all measures required by Article 32 of the GDPR; and
- 6.8.13.** the processing activity shall be as follows:

Scope and purpose:	Processing of data provided by or on behalf of Users in order to deliver the Services
Duration:	The duration of the Term and any subsequent period reasonably required in order to cease provision of the Services
Nature:	Collection, storage, analysis, secure deletion
Types of data:	For Users specifically, email addresses, names, job titles, IP addresses and device identifiers will be processed in order to fulfill the Agreement
Classes of data subject:	Employees, consultants and representatives of the Customer

If Personal data is to be processed as part of the agreement, a separate Data Processing Agreement will be completed to reflect the required activities.

6.9. Without prejudice to Peak's obligations in clause 6.8, the Parties acknowledge and agree that except for details of users of the Service, Peak is unable to:

- 6.9.1.** ascertain whether Customer Data includes personal data (and Peak therefore treats all Customer Data as if it might include personal data);
- 6.9.2.** ascertain whether Customer Data includes any special categories of personal data (and Peak accordingly will not treat any such Customer Data as though it includes any special categories of personal data);
- 6.9.3.** determine when personal data ought to be deleted or when processing of personal data ought to cease;
- 6.9.4.** take any steps to comply with the rights of data subjects for access to personal data, rectification or erasure of personal data, data portability, rights to be forgotten, or to act upon any notices from data subjects (and accordingly, such rights will need to be delivered by the Customer); or
- 6.9.5.** keep a record of processing with any greater level of information than that which is evident from this Agreement.

7. CUSTOMER'S OBLIGATIONS

7.1. The Customer shall (and shall procure that each User shall):



- 7.1.1.** report incidents with the Software or Interface(s) and request support in accordance with the SLA;
 - 7.1.2.** use the Access Details to access the Interface(s) as directed by Peak, and shall not access the Interface(s) in any other way;
 - 7.1.3.** protect and keep confidential all Access Details;
 - 7.1.4.** change any user names and passwords as frequently as Peak deem necessary or as mandated by the Interface(s) from time to time;
 - 7.1.5.** choose and procure the choosing of passwords which cannot be easily guessed; and
 - 7.1.6.** prohibit unauthorised access to the Interface(s).
- 7.2.** The Customer shall ensure that:
 - 7.2.1.** it is entitled to transfer the relevant personal data to Peak so that Peak may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf; and
 - 7.2.2.** the relevant third parties have been informed of, and (where necessary) have given their consent to, such use, processing, and transfer as required by the Data Protection Legislation.
- 7.3.** Where possible in the context of the Services and in accordance with the "data minimisation principle" under Data Protection Legislation, the Customer shall ensure that all personal data provided by or on behalf of the Customer shall be limited to what is necessary in order for it to receive the benefit of the Services, including by using measures such as pseudonymisation.
- 7.4.** Each party (the "**Indemnifying Party**") shall indemnify the other and its affiliates and hold them harmless from all direct losses arising out of the Indemnifying Party's breach of any of its obligations in relation to the Customer Data pursuant to the Data Protection Legislation and/or under clauses 6.8.12, 7.1.3, 7.2 and 7.3 (as appropriate) provided that the Peak's liability to the Customer shall be subject to the cap set out in clause 13.5.
- 7.5.** The Customer warrants that it shall throughout the Term:
 - 7.5.1.** have all necessary rights, permissions and consents to enter into this Agreement;
 - 7.5.2.** promptly furnish to Peak all instructions, data, materials, information, input and assistance as required by Peak, so as to enable it to fully carry out its obligations under this Agreement;
 - 7.5.3.** ensure that the Customer and Users and the Customer's and their customers, employees, contractors and agents co-operate with Peak and its employees, contractors and agents;
 - 7.5.4.** ensure that the Customer and Users shall comply with the reasonable requests from Peak from time to time in connection with the Licence and the Services;

- 7.5.5.** ensure that the Customer and Users shall comply with the terms of this Agreement;
- 7.5.6.** use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, the Interface(s), the Services and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify Peak;
- 7.5.7.** ensure that the Customer and Users shall only use the Software, the Services, the Deliverables and the Interface(s) on the Customer's own respective accounts and not as agent for any other person (whether a customer, a client or otherwise);
- 7.5.8.** always include (or permit Peak to include), at Peak's request, a statement of accreditation (i.e. such statement of accreditation reasonably specified by Peak, including as to size, font and colour) and any disclaimer stipulated by Peak in any place referring to or using the Software;
- 7.5.9.** not knowingly make any false or misleading statements, claims or representations in relation to the Software or Peak, and shall (and shall procure that each User shall) fairly represent and display the results of the Deliverables;
- 7.5.10.** promptly inform Peak if the Customer or any User discovers any errors or inaccuracies in the Deliverables;
- 7.5.11.** not (and shall procure that each User shall not) use the Software, the Interface(s), the Services and/or the Deliverables in any way which may be in breach of any law, statute, regulation or bye-law or code of practice of any applicable jurisdiction; and
- 7.5.12.** not make or give any promises, warranties, guarantees or representations to any third party concerning the Software, the Interface(s), the Services and/or the Deliverables other than those already specifically approved by Peak in writing.

8. SUBSCRIPTION AND PAYMENT TERMS

- 8.1.** In consideration for the grant of the Licence by Peak, the Customer shall pay to Peak the Subscription Fee as set out in the Order Form. The amount of the Subscription Fee will depend on the Subscription Details selected by the Customer as set out in the Order Form (as may be amended from time to time in accordance with clause 5.1).
- 8.2.** All sums stated or referred to in this Agreement:
 - 8.2.1.** shall be payable in pounds sterling to the account designated by Peak in writing from time to time;
 - 8.2.2.** are non-cancellable and non-refundable;
 - 8.2.3.** are exclusive of VAT, which shall be added to Peak's invoice(s) at the appropriate rate.
- 8.3.** Peak shall be entitled to increase the Subscription Fee at the start of each Renewal Period upon 30 days' prior notice to the Customer and, unless the Customer gives notice to terminate in accordance with clause 2, the Subscription Fee shall be deemed to have been amended accordingly. Peak shall not seek to increase the Subscription Fee by an amount greater than any proportional cost



increases, including increases in the supply of the Software or Services, such as hosting costs or other such increases.

- 8.4.** The system size as set out in the Order Form will be monitored subject to reasonable fair usage principles. If any of the criteria in the system size are exceeded by 3x over a period of 3 consecutive months, Peak and the Customer will meet to discuss the usage and agree a proportional adjustment to the Subscription Fee for the remainder of the Term.
- 8.5.** If the Customer elects to amend the Subscription Details in accordance with clause 5.1, Peak shall be entitled to adjust the Subscription Fee payable for the remainder of the Term in accordance with the new Subscription Details.
- 8.6.** No payment shall be considered paid until it is received by Peak in cleared funds in full. Payment shall be in pounds sterling, and made by the Customer in full without any set-off, deduction or withholding whatsoever.
- 8.7.** If Peak has not received payment within 10 days after the due date, and without prejudice to any other rights and remedies of Peak:
- 8.7.1.** Peak may, without liability to the Customer, suspend the performance of this Agreement until payment in full has been made;
- 8.7.2.** interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and
- 8.7.3.** Peak may immediately terminate this Agreement without liability or any obligation to refund any sums already paid.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1.** The Customer acknowledges that, as between itself and Peak, Peak owns and shall own all Intellectual Property Rights in the Peak Brand, the Software, the Interface(s), the Services, the Core Algorithm, the Trained Model Algorithm and the Deliverables (the "**Peak IPR**") and, whether or not such Peak IPR has been created in accordance with or pursuant to the Customer's specific requirements, the Customer shall have no rights in respect of such Peak IPR save as expressly provided in this Agreement.
- 9.2.** The Customer shall not reproduce, adapt, translate, arrange, make derivative works of or make available to any third party, either directly or indirectly, the Peak IPR except as expressly permitted in accordance with this Agreement. The Customer agrees to take all necessary steps to prevent access to the Software, the Interface(s), the Services and the Deliverables by any person except those Users who need to have access thereto for the purposes permitted by this Agreement.
- 9.3.** The Customer shall not use Peak IPR in any way which may be detrimental to Peak's reputation or interests.
- 9.4.** The parties each acknowledge and agree the Customer shall at all times own all Intellectual Property Rights in the Customer Data.



- 9.5.** Subject to clause 3.1, whenever: (i) the Deliverables are displayed, offered or reproduced by the Customer (or on the Customer's behalf); or (ii) the Customer wishes to use the Peak Brand or Peak IPR publicly, the Customer shall always obtain Peak's prior written consent.
- 9.6.** Peak may insert or apply any applicable copyright, trade mark or other Intellectual Property Rights and other marks and notices to or on the Software or Interface(s) and/or the Deliverables and the Customer shall not remove, erase, obstruct, change or object to any of the same.
- 9.7.** If the Customer becomes aware of any improper or wrongful use of the Peak IPR, the Customer shall promptly inform Peak of such use as soon as reasonably practicable. The Customer shall, if requested by Peak, assist Peak (at Peak's reasonable cost) in taking any steps in connection with the protection or defence thereof as Peak may reasonably determine.
- 9.8.** The Customer agrees that, in addition to any other right or remedy available to Peak, Peak shall be entitled to immediate injunctive relief to stop or prevent any actual or anticipated infringement of the Peak IPR. The Customer shall indemnify and keep indemnified Peak in full, against all loss, damage, costs and expenses (including loss of profit) which may be incurred by Peak by reason of or in connection with any such infringement by the Customer.

10. CONFIDENTIALITY

- 10.1.** Each party (the **Receiving Party**) shall treat any Confidential Information relating to the other party (the **Disclosing Party**) as strictly confidential except to the extent that such Confidential Information can be proved to be within the public domain at the time of disclosure other than as a result of any breach of this Agreement. The Receiving Party shall not disclose such Confidential Information to any third party nor use it for any purpose except as is strictly necessary for the performance of its obligations under this Agreement. For the purpose of this Agreement, **Confidential Information** means all information (which is marked as, described at the time of disclosure as, or otherwise ought reasonably be considered to be, confidential) disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Disclosing Party to the Receiving Party or otherwise acquired by the Receiving Party in connection with this Agreement or its subject matter whether before or after the commencement of this Agreement including information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property Rights, market opportunities, business affairs, financial information and other confidential information, and in the case of Peak, data relating to its customers.
- 10.2.** The Customer acknowledges that details of the Software, Interface(s) and Services and Deliverables constitute Peak's Confidential Information.
- 10.3.** Peak acknowledges that the Customer Data is the Confidential Information of the Customer and shall be owned by the Customer at all times.

11. NON-SOLICITATION OF EMPLOYEES OR CONTRACTORS

- 11.1.** In order to protect the legitimate business interests of Peak, the Customer covenants with Peak that it shall not (and shall procure that no member of its Group shall) except with the prior written consent of Peak:
- 11.1.1.** attempt to solicit or entice away; or
- 11.1.2.** solicit or entice away,



from the employment or service of Peak the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Peak.

11.2. The Customer shall be bound by the covenant set out in clause 11.1 during the term of this Agreement, and for a period of 6 months after termination or expiry of this Agreement.

11.3. For the purposes of this clause 11, a **Restricted Person** shall mean any firm, company or person employed or engaged by Peak during the term of this Agreement, who has been engaged in the provision of the Services or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

12. WARRANTIES

12.1. Peak warrants that:

12.1.1. the Software will conform in all material respects to the Configuration; and

12.1.2. the Services will be provided using reasonable skill and care;

in each case, during the term of the Licence (**Warranty Period**).

12.2. Subject to the provisions of this clause 12, if within the Warranty Period, the Customer notifies Peak in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Configuration, or of any failure by Peak to provide the Services using reasonable skill and care, Peak shall, at its sole option, do one of the following:

12.2.1. repair the Software or re-perform the Services (as applicable);

12.2.2. replace the Software; or

12.2.3. terminate the Licence immediately by notice in writing to the Customer and refund any of the Subscription Fee paid by the Customer as at the date of termination on a pro rata basis.

12.3. Peak shall not have any responsibility in respect of this clause 12 and/or the Licence or Services to the extent that any defects or errors or issues are caused by any of the following:

12.3.1. acts or omissions, in either case, by or on behalf of the Customer, a User, or anyone acting with authority of the Customer;

12.3.2. use of the Software or Services contrary to Peak's instructions;

12.3.3. changes, modifications, adjustments, amendments or alterations to the Software or Services or any attempt at doing so (other than with Peak's specific express prior written consent); or

12.3.4. use of the Software outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed, or in combination with any other software not provided by Peak.



- 12.4.** Any remedies (as set out in clause 12.2) available to the Customer for breach of warranty by Peak shall be conditional on:
- 12.4.1.** the Customer providing Peak with full details of any breach as soon as it is reasonably practicable, and in any event not later than seven days, after becoming aware of the problem;
 - 12.4.2.** the Customer providing Peak with full information, assistance and co-operation to resolve the problem as is reasonable in the circumstances; and
 - 12.4.3.** payment of the full Subscription Fee and other sums due under the Agreement having been received in full by Peak from the Customer by the due date.
- 12.5.** Peak does not warrant that the use of the Software or the provision of Services or Deliverables will be uninterrupted up-to-date, complete, wholly accurate or error-free.
- 12.6.** The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 12.7.** The Customer acknowledges that any open-source software provided by Peak is provided "as is" and expressly subject to the disclaimer in clause 12.8.
- 12.8.** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by applicable law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

13. LIMITATION OF LIABILITY

- 13.1.** This clause 13 sets out the entire financial liability of Peak (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 13.1.1.** arising under or in connection with this Agreement;
 - 13.1.2.** in respect of any use made by the Customer of the Software, Interface(s), Services and Deliverables or any part of them; and
 - 13.1.3.** in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2.** Except as expressly and specifically provided in this Agreement:
- 13.2.1.** the Customer assumes sole responsibility for results obtained from the use of the Software, Services and the Deliverables by the Customer, and for conclusions drawn from such use. Peak shall have no liability for any damage caused by errors or omissions in any information, instructions or analysis provided to Peak by the Customer, or by Peak to the Customer, in connection with the Software, Services, or any actions taken by Peak at the Customer's direction;



- 13.2.2.** 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; and
- 13.2.3.** the Software, Services and the Deliverables are provided to the Customer on an "as is" basis.
- 13.3.** Nothing in this Agreement excludes or limits Peak's liability: (i) for death or personal injury caused by Peak's negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any matter which it would be illegal for Peak to exclude or attempt to exclude its liability under applicable law.
- 13.4.** Subject to clause 13.3, Peak shall not be liable whether in tort (including negligence), breach of statutory duty, contract, misrepresentation, restitution or otherwise for: (i) any indirect, special or consequential losses, damages, costs, expenses or liabilities; (ii) any pure economic loss; (iii) any loss of actual or anticipated profits; (iv) any loss of revenue or anticipated savings; (v) any loss of business, opportunity or contracts; (vi) any loss of goodwill or reputation; (vii) any loss of, damage to, or corruption of, computer programs, data or information; or (viii) any loss of operation or management time, howsoever caused, suffered in respect of this Agreement whether or not such losses were reasonably foreseeable or whether or not Peak or its agents had been advised of the possibility of the incurring of such losses. For the avoidance of doubt, clauses (ii) to (viii) apply whether such losses are direct, indirect, consequential or otherwise.
- 13.5.** Subject to clause 13.3, Peak's total aggregate liability to the Customer under this Agreement whether for tort (including negligence), breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall in no circumstance exceed 110% of the total Subscription Fees paid, in aggregate, by the Customer to Peak during or in respect of the 12 months immediately preceding the date on which the claim arose.
- 13.6.** Peak shall have no liability to any User in connection with this Agreement, only the Customer shall be entitled to bring any claim.
- 14. TERMINATION**
- 14.1.** Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:
- 14.1.1.** is in material breach of an obligation under this Agreement (including any failure to pay any sum by the due date) and, if the breach is capable of remedy, the other party has failed to remedy such breach within a period of 30 days after being given notice by the terminating party to remedy the breach; or
- 14.1.2.** is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or suffers any event which could be reasonably considered to indicate that it is insolvent or at serious risk of becoming so in the relatively near future including, insolvent liquidation, a declaration of bankruptcy, the presentation of a bankruptcy or a winding up petition which is not withdrawn, dismissed or discharged within 30 days of its presentation or the appointment of an administrator, receiver or similar over any of its assets or undertaking or the directors of the other party give notice of their intention to appoint an administrator or the other party ceases or threatens to cease to carry on business.

- 14.2.** Peak may terminate this Agreement by giving 30 days' notice to the Customer if there is a change in the Customer's control. Peak shall act reasonably at all times in exercising its termination right under this clause 14.2. For the purposes of this clause 14.2, "control" shall have the same meaning given to it in Section 1124 of the Corporation Tax Act 2010.
- 14.3.** Without affecting any other right or remedy available to it, Peak may terminate this Agreement on giving not less than 30 days written notice to the Customer.
- 14.4.** On termination or expiry of this Agreement for any reason:
- 14.4.1.** the Customer shall (and shall procure that all Users shall) immediately cease to use the Software, the Interface(s), the Services, any Deliverable s and the Access Details;
 - 14.4.2.** the Licence and all rights and warranties granted by Peak under this Agreement shall cease and the Customer shall have no further rights of use of the Software, Interface(s), Services or the Deliverables
 - 14.4.3.** the Customer shall immediately pay to Peak any sums due to Peak under this Agreement;
 - 14.4.4.** Peak shall refund the portion of the Subscription Fee paid by the Customer on a pro rata basis in respect of the fees attributable to the remainder of the contract year, subject to a right of set-off whereby Peak shall be entitled to deduct any sum of money which is due to it under this Agreement such right of set-off shall only be exercisable where Peak is terminating the Agreement in accordance with its rights under clause 14;
 - 14.4.5.** each party shall return and make no further use of any equipment, property, documentation (including, for the avoidance of doubt, any Confidential Information in its possession or control) and other items (and all copies of them) belonging to the other party;
 - 14.4.6.** without prejudice to clause 6, Peak may destroy or otherwise dispose of any of the Customer Data in its possession unless Peak receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Peak shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Subscription Fees and charges outstanding at, and/or resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Peak in returning or disposing of Customer Data; and
 - 14.4.7.** any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. FORCE MAJEURE

If Peak is prevented, hindered or delayed from, or in, providing the Licence and/or the Services in accordance with this Agreement by an event which is beyond Peak's reasonable control, including:



acts of terrorism, insurrection, riots, civil unrest and military action; the exercise of powers by any local, regional or national governmental authority; fire, flood, earthquake, storm and other natural disasters; industrial action, strikes and lock-outs; blockage or embargo; or the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials) (a Force Majeure Event), Peak may, at its option: (a) suspend the provision of the Services while the Force Majeure Event continues; and/or (b) if Peak has insufficient capacity and/or resources to meet its commitments, apportion available capacity and/or resources between its customers as it decides; and/or (c) terminate this Agreement with immediate effect by written notice to the Customer, and Peak will not be liable for any loss or damage suffered by the Customer as a result. For the avoidance of doubt, the obligation to pay the Subscription Fee shall be suspended for as long as Services are suspended on a pro rata basis.

16. NOTICES

- 16.1.** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.
- 16.2.** A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is outside 9am-5pm, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at 9am on the second Business Day after posting (for pre-paid first class post) and at the time recorded by the delivery service (for recorded delivery post).

17. GENERAL

- 17.1.** Without prejudice to the terms of service applicable to each User of the Software, this Agreement alone shall govern the licence of Software and the provision of Services by Peak to the Customer. It shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Customer, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing.
- 17.2.** Peak may at its discretion sub-contract any of its obligations under this Agreement to any member of its Group without the need to consult with or obtain approval from the Customer.
- 17.3.** Unless otherwise stated in this Agreement, this licence agreement, the Order Form and any documents referred to in them constitutes the entire understanding between the parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Agreement. No party has relied on any warranty or representation except as expressly set out in the Agreement.
- 17.4.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.5.** No material variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives), although each of the parties acknowledge that Peak may make minor amends to this Agreement (acting reasonably in its own discretion) in order to: (i) ensure compliance with new or amended legislation; (ii) facilitate technical change to the Software or Interface which Peak is introducing in order to improve its security, improve its Services; or (iii)



make other necessary technical changes. The parties agree that such amends will be an effective variation to that Agreement on and from the date which is three Business Days after the day when Peak notifies the Customer of the amends.

- 17.6.** Either Party may reasonably request a variation of this Agreement in accordance with clause 17.5 to address any consequences of the UK ceasing to be a member of the European Union (**Brexit**) (whether arising at the date of Brexit, during any transition period thereafter or occurring after the expiry of such transition period) which are outside of either Party's control and that may reasonably impact either Party's ability to perform the Agreement.
- 17.7.** The Customer may not sub-contract, assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement without first having obtained Peak's written consent. Peak may assign, novate or transfer this Agreement or any part of it to any person on the giving of written notice to you.
- 17.8.** Upon execution of the Agreement, the Customer agrees to the use of their name, logo or trademarks for the purposes of any public release or public announcement regarding this Agreement. The parties shall work together in good faith to issue a mutually acceptable press release announcing the relationship created hereunder, as well as a testimonial and case study during the course of the Agreement. These statements may be used in printed publications, multimedia presentations, on websites or in any other distribution media.
- 17.9.** If any clause of this Agreement, (or part of a clause), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other clauses shall remain in force.
- 17.10.** If any invalid, unenforceable or illegal clause of this Agreement would be valid, enforceable or legal if some part of it were deleted, the clause shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.11.** Nothing in this Agreement is intended to confer on any person any right to enforce any clause of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 17.12.** The failure or delay by either party to exercise any right, power or remedy provided by this Agreement or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by this Agreement shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
- 17.13.** Each right or remedy of a party under this Agreement is without prejudice to any other right or remedy of such party whether under the Agreement or not.
- 17.14.** This Agreement shall be governed by the laws of England of Wales. The courts of England and Wales shall have exclusive jurisdiction in relation to any action or proceedings which may arise out of or in connection with this Agreement.

SCHEDULE 1 – SERVICE LEVEL AGREEMENT

To be issued with Order Form depending on service tier subscribed for

