

## TERMS AND CONDITIONS OF SERVICE (ONLINE)

## 1. AGREEMENT

- 1.1 The Terms and Conditions of Service (the "Agreement") constitutes a binding legal agreement between 11Ants Analytics Group Limited, an incorporated New Zealand limited liability company with its registered office at 16K Fisher-Point Drive, Auckland Central, Auckland 1010 New Zealand ("11Ants") and the Customer (as defined below) where the Customer accesses or uses the Services.
- 1.2 This Agreement governs (subject to clauses 1.3 and 1.4) the terms and conditions of the use of and subscription to the Services by Customer (as defined below) provided by 11Ants.
- 1.3 This Agreement governs where an Order Form and Terms and Conditions of Service (collectively a 'Negotiated Customer Agreement') have not been executed between the Customer and 11Ants.
- 1.4 Where a Negotiated Customer Agreement has been executed between the Customer and 11Ants, that Negotiated Customer Agreement governs, and this Agreement does not have any effect.

## 2. DEFINITIONS AND INTERPRETATION

## 2.1 Definitions

In this Agreement the following terms have the following meanings:

**Ancillary Services** means the:

- (a) Initial Implementation Services
- (b) Initial Training Services; and
- (c) Additional Services;

provided by 11Ants to the Customer in connection with the Services;

**Appropriate Industry Practice** means the relevant practices, skill and care which would ordinarily be applied by a service provider of the same or similar scale to 11Ants, providing services similar to the services under this Agreement;

**Applications** means the data analytics and reporting applications supplied by 11Ants for access and subscription by the Customer for use as part of the Services, including any optional Modules, custom or standard enhancements developed by 11Ants, updates and upgrades, including associated offline components and excluding any Third Party Offerings;

**Business Day** means a day on which registered banks are open for ordinary over the counter business in Auckland, New Zealand excluding Saturdays, Sundays and statutory public holidays in Auckland, New Zealand;

**Business Hours** means 9:00am to 5:00pm on a Business Day;

**Calendar Quarter** means any one the three-month periods commencing: January 1, April 1, July 1 or October 1;

**Commencement Date** means the first date and time that the Customer accesses the Services or provides Customer Data;

**Confidential Information** means:

- (a) Customer Data, Enhanced Customer Data and pricing information of the Customer;
- (b) the data, Fees and other pricing information of 11Ants;
- (c) the source code and object code relating to the Applications;
- (d) the visualizations developed by the Applications;
- (e) the technology, ideas, know-how, documentation, processes, algorithms and trade secrets embodied in the Applications;

- (f) any software keys relating to the Applications; and
- (g) any other information in written or electronic media that is inherently confidential due to its nature or is identified as “confidential,” “proprietary” or with a similar legend at the time of such disclosure;

**Customer** means the organization or person whose representatives are accessing or using the Applications or Services;

**Customer Data** means all transactional and related data:

- (a) provided to 11Ants directly; or
- (b) submitted or uploaded to the Services,

by or on behalf of the Customer but excluding any data resulting from the computation or processing by the Applications of that data

**Disclosing Party** means a party disclosing Confidential Information to the other party under this Agreement;

**Documentation** means any online user instructions and help files which may be made available by 11Ants as part of the user interface for the Services, as updated from time to time by 11Ants;

**Enhanced Customer Data** means any data resulting from the computation or processing by the Applications of the Customer Data;

**Fees** means the applicable fees payable by the Customer to 11Ants for the Services or the Ancillary Services;

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985 (New Zealand);

**Intellectual Property Rights** means any intellectual or industrial property (whether registered or not) including, patents, patent applications, copyright, designs, trademarks, service marks, trade secrets, computer code (including source, library, object, and executable code), inventions and logical sequences;

**Major Release** means a new version of an Application that contains significantly new functionality or features and is accompanied by a Major Release notification;

**Module** means the functionality available in one subset of the solution, commonly referred to and labelled as a ‘module’ in any Application;

**Order Form** means the document requesting or ordering the Services from 11Ants that are executed from time to time;

**Quarterly** means a period of three calendar months (all dates inclusive);

**Receiving Party** means the party receiving Confidential Information of the Disclosing Party under this Agreement;

**Related Companies** has the meaning given to it in section 2(3) of the Companies Act 1993 (New Zealand);

**Services** means the online web-based Applications provided by 11Ants via the URL <https://cloud.11antsanalytics.com> (or as location may be changed from time to time) to the Customer and any other designated URLs which are described in the Documentation;;

**Third Party Offerings** means services performed by and offerings provided by third parties independently of 11Ants and which are related to the performance of the Services, including but not limited to including Microsoft Azure cloud computing services, Azure Low Priority Virtual Machines, Azure Spot Virtual Machines (or substantially equivalent offerings subject to Microsoft name changes from time to time), any online Web-based CRM, help desk, training, ERP or other business application subscription services, third party websites, software, and any associated offline products provided by third parties and that interoperate with the Services;

**Unauthorised Conduct** has the meaning set out in clause 5.2;

**User** means individuals who are authorised by the Customer to access and use the Applications or

Services, and who have been supplied user identifications and passwords (where required) for the purpose of accessing the Services limited to the Customer's employees, consultants, contractors and agents; and

**Version** means modification or fixes to an Application that correct errors, support new releases of operating systems, support new input/output devices, or provide other incidental or minor enhancements, performance improvements and corrections and not including any Major Release.

## 2.2 Interpretation

Unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause of this Agreement;
- (b) a reference to a Schedule or an Annexure is a reference to a schedule or an annexure to this Agreement;
- (c) a reference to parties means the Customer and 11Ants;
- (d) the singular includes the plural and vice versa;
- (e) whenever the words includes or including are used in this Agreement, they are deemed to be followed by the words "without limitation";
- (f) a reference to any legislation, policy or standard includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (g) headings to clauses in this Agreement and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (h) a reference to a day, other than a Business Day, is a reference to any calendar day of the year; and
- (i) a reference to currency is a reference to New Zealand currency, unless expressly provided otherwise.

## 2.3 Precedence

If there is any conflict or inconsistency between which document is the active Agreement between Customer and 11Ants the order of precedence is (from highest to lowest):

- (a) an Order Form and Terms and Conditions of Service (Negotiated Customer Agreement) signed by both parties; and
- (b) these Online Terms and Conditions of Service;

## 3. SERVICES

### 3.1 Description of Services

- (a) The Customer's use of the Services includes the right to use all functionality made available to the Customer for the specific Applications included with the Services as at the Commencement Date.

### 3.2 Terms of Use of Services

- (a) 11Ants will:
  - (i) provide the Customer during normal New Zealand Business Hours with basic email support (available at support@11antsanalytics.com) for the Services;
  - (ii) use commercially reasonable efforts to make the ordered Services available to the Customer with minimal downtime, except for:
    - A. planned downtime (of which 11Ants will endeavour to provide at least 48 hours' notice in advance of the maintenance time); or

- B. permanent or temporary unavailability, interruption or delay caused by circumstances beyond the reasonable control of 11Ants including but not limited to the unavailability or modification by third parties of any Third Party Offerings;
- (iii) maintain reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data uploaded to the Applications or Services; and
- (iv) provide the Services and the Ancillary Services in accordance with all applicable laws, government regulations and Appropriate Industry Practices.

### 3.3 Providing Applications

11Ants will host the relevant Applications (except for off-line components or applications) and may update the functionality and the user interface of the Services from time to time in its sole discretion for the purpose of improving the delivery of the Services.

11Ants utilizes Third Party Offerings, including Azure Low Priority Virtual Machines and Azure Spot Virtual Machines (or substantially equivalent offerings subject to Microsoft name changes from time to time), as components of the Applications and Services. Availability of the Third Party Offerings, including pre-emption of the Azure Low Priority Virtual Machines or Azure Spot Virtual Machines, may impact the operation of the Services, causing interruptions, delays and/or temporary unavailability.

## 4. RIGHTS OF PARTIES

### 4.1 11Ants Licence

- (a) Subject to the terms and conditions of this Agreement, the Customer grants 11Ants a limited, non-exclusive, royalty-free and worldwide licence to use the Customer Data and Enhanced Customer Data and perform all acts with respect to the Customer Data and Enhanced Customer Data to the extent necessary for 11Ants to provide the Services under this Agreement.
- (b) 11Ants agrees to access and use the Customer Data and Enhanced Customer Data solely for the Customer's benefit, unless otherwise provided in this Agreement.
- (c) The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data provided or uploaded to the Services.

### 4.2 Customer Use

Subject to the terms and conditions of this Agreement, 11Ants grants the Customer a limited, non-exclusive, revocable and worldwide right to use the Services and Applications for the Term in accordance with the terms of this Agreement.

## 5. CUSTOMER'S RESPONSIBILITIES

### 5.1 The Customer is responsible for:

- (a) ensuring its Users comply with the terms of this Agreement and for its Users use of the Services and the Applications; and
- (b) ensuring that Users maintain the confidentiality of their passwords and user names.

### 5.2 The Customer will not engage in the following conduct (collectively "Unauthorised Conduct"):

- (a) license, sublicense, sell, resell, rent, lease, transfer, assign, export, distribute, time share or otherwise commercially exploit or make the Services, Applications or Enhanced Customer Data available to any third party, other than to its Users or as otherwise provided by this Agreement;
- (b) use the Services to collect, transmit or process:
  - (i) infringing, obscene, threatening, defamatory, or otherwise unlawful or tortuous material, including material that is harmful to children or violates third party privacy rights; or
  - (ii) personally identifiable information, including data elements that may disclose or lead

to the specific identification of any individual;

- (c) send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to or which may damage, detrimentally interfere with, intercept or expropriate any systems, data, personal information or property of another;
- (d) interfere with or disrupt the integrity or performance of the Services or the Applications;
- (e) attempt to gain unauthorized access to the Services or its related systems or networks (including any Third Party Offerings);
- (f) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services without first obtaining the written consent of 11Ants;
- (g) access the Services or download an Application for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorised access of the Applications;
- (h) perform or publish any results of any benchmark testing relating to the Services to any third party without first obtaining the written consent of 11Ants; or
- (i) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, merge or decompile the Applications or Services or any part thereof or otherwise attempt to discover any source code or modify the Applications or Services.

### 5.3 User Accounts

The Customer will:

- (a) be responsible for ensuring the security and confidentiality of all passwords or accounts;
- (b) notify 11Ants immediately of any unauthorised use of any password or account or any other known or suspected breach of security impacting the Services;
- (c) report to 11Ants immediately and use reasonable efforts to stop immediately any copying or distribution of Customer Data or Enhanced Customer Data that is known or suspected by Customer or its User as being unlawful or unauthorised; and
- (d) if the Customer does not use its own corporate Azure Active Directory to authenticate Users to the Services, request 11Ants via email to disable access to any Users no longer permitted to access the Services (for example leaving employees) providing 48 hours notice;

### 5.4 Use Limitation

- (a) 11Ants may, at its sole discretion, restrict access to the solution if usage is excessive.

### 5.5 Temporary Suspension

- (a) 11Ants monitors all use of the Services for security and operational purposes and may temporarily suspend the Customer's or its Users' access to the Services or any Application if either the Customer or any of its Users' is engaged in, or 11Ants suspects in good faith is engaged in any:
  - (i) Unauthorised Conduct;
  - (ii) breach of the terms of this Agreement;
  - (iii) breach of any applicable law; or
  - (iv) breach of any third party right, including the terms of any Third Party Offering on which Customer's use of the Services relies.
- (b) Suspension may take effect for the Customer's entire account including any User sub-accounts. 11Ants will not be liable to the Customer, to any User or any other third party if 11Ants suspends any Service or Application in accordance with this clause 5.5.

## 5.6 Third-Party Offerings and Services

- (a) The Customer must at all times comply with the terms of service governing any Third Party Offerings.
- (b) The Customer understands and agrees that the availability of the Applications, or certain features and functions of the Applications, are dependent on the corresponding availability of Third Party Offerings or specific features and functions of Third Party Offerings. 11Ants will not be liable to the Customer or any third party if any Third Party Offerings change and those changes result in Applications being unavailable.
- (c) 11Ants does not provide any warranty or make any representation in respect of any Third Party Offerings.
- (d) To the extent that 11Ants requires the Customer to grant 11Ants authorisations, passwords or other user credentials to a Third Party Offering ("**Access Codes**") to retrieve Customer Data or interoperate with the Service, the Customer will promptly provide those Access Codes. 11Ants will not share, reassign, divulge or disclose any Access Codes except to the extent necessary to provide the Services or comply with any applicable law or regulation.

## 6. COMMERCIAL RELATIONSHIP

### 6.1 Order Form

- (a) An Order Form between 11Ants and the Customer must be executed in order for the Customer to commence using the Services as a paid service on a commercial basis.

## 7. PROPRIETARY RIGHTS

### 7.1 Reservation of Rights

- (a) Subject to the rights granted to the Customer and any User under this Agreement, 11Ants reserves all its rights, title and interest in and to the Applications and the Services, including all associated Intellectual Property Rights and copyrights.
- (b) No rights are granted to the Customer under this Agreement other than as expressly provided and the Customer will not dispute any ownership of the Intellectual Property Rights or copyrights of 11Ants.
- (c) Neither the Customer nor any Users will delete or in any manner alter the copyright, trademark, and other proprietary notices of 11Ants, if any, appearing on any Application, Documentation or output reports or visualizations.

### 7.2 Improvements

The Customer acknowledges and agrees that any improvements, enhancements, and/or modifications that 11Ants makes to the Applications and/or Services as a response to any suggestions, recommendations or other feedback made by the Customer or its Users will be the sole and exclusive property of 11Ants and any such improvements, enhancements or modifications are free from any confidentiality obligations that might apply to 11Ants pursuant to clause 8.

### 7.3 Customer Data

#### (a) Ownership

As between 11Ants and the Customer, the Customer exclusively owns all right, title and interest in and to all Customer Data and the Customer Data will constitute Confidential Information of the Customer under this Agreement.

#### (b) Representation

The Customer warrants that:

- (i) it has, and will continue to have, during the Term, the legal right and authority to access, use and disclose the Customer Data to 11Ants; and

- (ii) 11Ants' use of the Customer Data solely for the provision of the Services will not violate any applicable laws including those of New Zealand, or cause a breach of any agreement or obligation between the Customer and any third party.

**(c) Indemnity**

The Customer indemnifies 11Ants in respect of any claims, liabilities, losses, causes of action, damages, settlements, costs and expenses (including legal fees and costs on a solicitor and client basis) arising from claims that 11Ants is not entitled to access or use Customer Data for the purpose of providing the Services and the Ancillary Services, or claims relating to personally identifiable information included in the Customer Data.

**(d) Preparation**

The Customer is solely responsible for, and will ensure that the Customer Data is prepared to the format required by the Applications. If 11Ants is required to perform data transformation work in respect of the Customer Data, 11Ants may charge the Customer additional to the Fees. Delays by the Customer in preparing and uploading the Customer Data will not cause change to the Commencement Date or the Customer's obligations under this Agreement.

**(e) Backup**

The Customer is solely responsible for, and will ensure that all Customer Data is backed up in the equivalent format to as required by the Application, to enable rapid restoration of the Application in the case of any failure of the Application or Services. This responsibility lies solely with the Customer. In particular, the Customer will maintain archived, organised, and easily accessible copies of all data tables which have been uploaded to the Application.

## 7.4 Statistical and Pattern Information

- (a) Despite anything else in the Agreement, 11Ants may monitor the Customer's use of the Services and use data related to Customer's use of the Services or the results of the Services in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Services. The Customer agrees that 11Ants may make such information publicly available, provided that such information does not incorporate any identifiable Customer Data or identify any Customer individually. 11Ants retains all rights, title and interest in and to such information, including all associated Intellectual Property Rights.

- (b) Notwithstanding clause 7.3(a), the Customer hereby grants 11Ants a limited, irrevocable license to utilize natural patterns occurring in the Customer Data and Enhanced Customer Data to build derived anonymous data sets which may be used by 11Ants for purposes of development, testing, marketing materials, and public (or published) demonstrations of 11Ants' capabilities. 11Ants shall ensure that:
  - (i) any resultant data set does not contain any reference to the Customer;
  - (ii) any resultant data set does not identify the Customer through the use of the derivative Customer Data or derivative Enhanced Customer Data (including by way of identifying products, services that are unique to the Customer).

## 8. CONFIDENTIALITY

### 8.1 Obligations

Subject to the written consent of the Disclosing Party, the Receiving Party must not use or disclose any Confidential Information of the Disclosing Party for any purpose other than as permitted under this Agreement.

### 8.2 Permitted Disclosure

The obligations of confidence will not apply to Confidential Information that:

- (a) is or becomes publicly available without the Receiving Party breaching any obligation owed to the Disclosing Party;
- (b) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party;
- (c) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to the Disclosing Party;
- (d) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information; or
- (e) the Receiving Party is required to disclose under any applicable law, rule or regulation provided that the Receiving Party provides the Disclosing Party with prior written notice of the requirement to disclose that information, in which case the Disclosing Party provide reasonable assistance to oppose or limit that disclosure.

### 8.3 Injunctive Relief

The parties agree that any unauthorised disclosure of Confidential Information will cause immediate and irreparable injury to the Disclosing Party and that, in the event of a breach, the Receiving Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without the necessity of showing actual damages.

## 9. TERM AND TERMINATION

### 9.1 Term

This Agreement will be effective from the Commencement Date and will be effective until terminated in accordance with clause 9.2

### 9.2 Termination

- (a) This Agreement may be terminated without notice at any time by either party for any reason whatsoever.

### 9.3 Consequences of Termination

- (a) On termination of this Agreement all the Customer's rights granted under this Agreement will terminate. The Customer will promptly discontinue use of and destroy any copies of the Applications and Confidential Information in its possession or control and provide 11Ants with a certificate signed by a duly authorised officer of Customer that it has complied with this provision.
- (b) Termination of this Agreement will automatically terminate the Customer's rights to access the Applications and/or Services.
- (c) On the Customer's request (made within thirty (30) Business Days after the effective date of termination) 11Ants will make available to Customer the Customer Data stored in the Applications. Following the thirty (30) Business Day period, 11Ants will have no obligation to maintain or provide any Customer Data and may delete all Customer Data in the Services or its systems or otherwise in its possession or under its control.

### 9.4 Survival

Except as expressly provided in this Agreement, clauses 5 to 11 will survive the termination of this Agreement together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

## 10. WARRANTIES AND DISCLAIMERS

### 10.1 Warranties



- (a) Each party warrants that it has the power and authority to enter into this Agreement;
- (b) 11Ants makes no further warranties.

## 10.2 Disclaimer

- (a) The warranties under clause 10.1 are the sole and exclusive warranties given by 11Ants under this Agreement. To the maximum extent permitted by law, 11Ants and its licensors make no other representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service, the Applications or the results of the Services.
- (b) 11Ants and its licensors do not represent or warrant that:
  - (i) the Application or the Services will meet Customer's or its Users specific needs, requirements or expectations, or achieve a particular marketing or other business result;
  - (ii) the use of the Service or Applications will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;
  - (iii) any stored data will be accurate or reliable;
  - (iv) the quality of any products, Services, information, or other material obtained by Customer through the Services will meet Customer's requirements or expectations;
  - (v) errors or defects will be corrected; or
  - (vi) the Service or the server(s) that make the Service available are free of viruses or other harmful components or are not susceptible to intrusion or attack.
- (c) The Services and all outputs are provided to Customer strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are disclaimed to the maximum extent permitted by law by 11Ants and its licensors. The Service may be subject to limitations, delays and other problems inherent in the use of the internet, electronic communications and/or concurrent use by the Customer Users. 11Ants is not responsible for any delays, delivery failures, or other damage resulting from such problems.
- (d) Despite anything else contained in this Agreement:
  - (i) the parties agree and acknowledge that there has been no consideration provided by the Customer to 11Ants in exchange for accessing the Services.

## 11. INDEMNITY

The Customer agrees to defend, indemnify and hold harmless 11Ants from all liabilities, claims of any nature, losses, costs, amounts and expenses, including attorney's fees on a solicitor and client basis, that arise from, relate to or are otherwise connected with (directly or indirectly):

- (a) any misuse of and access to the Services and Applications by Users or anyone using the Users' credentials; and
- (b) any alleged or actual breach of this Agreement by the Customer or any of its Users; and
- (c) any allegation or cause of action brought against 11Ants by a third party as a result of any act or omission by the Customer or any User.

## 12. LIMITATION OF LIABILITY

- 12.1 In no event will 11Ants be liable to the Customer or any other person or entity for any incidental or consequential damages, indirect, special, punitive, or exemplary damages, loss of business, loss of profits, loss of goodwill or business reputation, or business interruption arising out of or connected in any way with this Agreement or the Services, even where 11Ants has been advised of the possibility of such damage or loss. The total liability of 11Ants to the Customer for all damages, losses, and causes of action (whether in contract, tort (including negligence), or otherwise) must not exceed the total Fees

paid by the Customer to 11Ants in the quarter prior to the event causing liability.

- 12.2 11Ants will have no responsibility or liability whatsoever, whether in contract, tort, equity or otherwise by law, for any liability, damage, loss, cost, expense, proceedings or claims that the Customer suffers or incurs in connection with the Service or this Agreement.
- 12.3 The parties agree that the limitation of liability in this clause 12 represents a fair allocation of risk and is a material inducement to 11Ants entering into this Agreement.
- 12.4 The Customer agrees that:
- (a) the warranties and indemnities in this Agreement do not apply to any Third Party Offerings or materials (even if furnished by 11Ants);
  - (b) it will direct all claims relating to any Third Party Offerings or materials directly to the third party and not to 11Ants; and
  - (c) any warranties and indemnities, if any, that relate to Third Party Offerings or materials will be provided to that third party and not 11Ants.

## 13. Disputes

- 13.1 If a dispute arises out of or in relation to this Agreement a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause.
- 13.2 A party claiming a dispute (the Dispute) has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the Dispute.
- 13.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 13.4 Only if the Dispute is not resolved within fifteen (15) Business Days of the notice being given pursuant to clause 13.2, either party may resort to arbitration in accordance with clause 13.5.
- 13.5 Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity, or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the New Zealand International Arbitration Centre. The place of arbitration shall be Auckland, New Zealand. The language of the proceedings shall be English. The parties also agree that hearings via video conference shall be expressly allowed for (including oral hearings where evidence is taken), subject to the discretion of the arbitral tribunal to conduct the proceedings.
- 13.6 Nothing in this clause 13 will preclude either party from commencing court proceedings relating to any Dispute where that party seeks urgent interlocutory relief.

## 14. Notices

- 14.1 Every notice to be given by a party to another party under or in connection with this Agreement must be in writing and sent to the email address associated with the User accessing the system or an appropriate representative (in the case of the Customer) and to [Finance@11AntsAnalytics.com](mailto:Finance@11AntsAnalytics.com) (in the case of 11Ants).
- 14.2 Every notice to be given by a party under or in connection with this Agreement will be deemed to be received, as follows:
- (a) email transmission, at the time the email leaves the information system of the sender provided the sender does not receive any error message relating to the transmission of the email.
- 14.3 For the purposes of this Agreement, any notice transmitted by email or delivered after 5.00 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00 am on the next Business Day.

## 15. GENERAL TERMS

### 15.1 No Relationship

The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents. This is a non-exclusive arrangement.

## 15.2 Entire Agreement

This Agreement contains the entire understanding between the parties with respect to the subject matter of this Agreement, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement.

## 15.3 Modification and Waiver

- (a) Except for 11Ants' modification or update of the Documentation, the Services or Applications, or any pricing or other policies referenced by a URL, or as necessary to comply with applicable law, rules, regulations, no modification of this Agreement, and no waiver of any breach of this Agreement, will be effective unless agreed to in writing by both parties.
- (b) No waiver of any breach of this Agreement, and no course of dealing between the parties, will be construed as a waiver of any subsequent breach of this Agreement. A determination that any provision of this Agreement is invalid or unenforceable will not affect the other provisions of this Agreement.

## 15.4 Force Majeure

11Ants shall not be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labour disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control.

## 15.5 Governing Law

This Agreement, including the arbitration clause in clause 13.5 is governed by the laws of New Zealand with the exclusion of its conflict of law rules or the United Nations Convention on the International Sale of Goods (even if it was applicable).