

## INTRODUCTION

1. Displayr is an online data analysis software solution. In these Terms of Service, the "Important Terms" deal with the most important aspects of your use of Displayr, and the "General Conditions" set out the legal basis on which Displayr is provided. By using Displayr you are deemed to have accepted these terms.
2. THESE TERMS ARE SUBJECT TO DISPLAYR'S LIMITATION OF LIABILITY AND EXCLUSIONS AS SET OUT IN SECTIONS 12 (DISCLAIMER) AND 13 (LIMITATION AND INDEMNITY) OF THE GENERAL CONDITIONS. PLEASE READ THESE SECTIONS CAREFULLY.
3. SECTION (DISPUTES) ALSO CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER.

## IMPORTANT TERMS

### A. KEY TERMS

- A.1 The following terms are used regularly throughout these Terms of Service and have a particular meaning:
- a) Account means a registered Customer account within Displayr
  - b) Agreement means the agreement formed in accordance with these Terms of Service between the Company and the User.
  - c) Analysis means any table, chart, graph or other visual representation of data, generated by Displayr.
  - d) Application means the Displayr SaaS application accessible via login through the Site.
  - e) Author means any registered user of Displayr authorized to use the Customer's Account in order to create Documents.
  - f) Company means in relation to licenses acquired from (A) our US office Displayr, Inc. a Corporation registered in the State of Delaware; (B) our United Kingdom Office Q Research Software Limited (Company Number 09297555); (C) our Australian Office Displayr Australia Pty Limited (ABN 12 104 572 812).
  - g) Customer means the entity that Displayr is licensed to under this Agreement (which if in doubt shall be the named Account holder).
  - h) Customer Data means all Data Sets, information, data, code, documents and other such materials (including Customer Personal Data) that belong to the Customer.
  - i) Data Set means the raw data set that a registered User uploads from a file or, connects to the Application via a third party service, in order to generate an Analysis.
  - j) Displayr means the Company's suite of tools, Application and services, known together as "Displayr", licensed to the Customer under this Agreement.
  - k) Document means any document, file or webpage containing an Analysis, created or exported by the Application.

- l) Fee means any fees payable to the Company for access to or use of Displayr.
- m) Governing Law means the laws and courts of the jurisdiction described in item E.
- n) Privacy Policy means the Company's privacy policy as updated from time-to-time, accessible from here: <https://displayr.com/privacy-policy>.
- o) Site means the website found at <https://displayr.com>.
- p) Subscription Fee means the fee charged for access to and use of Displayr.
- q) Third Party Services means any third party service account connected to and/or integrated with Displayr.
- r) Usage means the length of time that a User uses Displayr.
- s) User means a Customer, an Author and a Viewer as the use of the term in its context implies.
- t) Viewer means any person that views a Document.

## **B. AGREEMENT**

B.1. The license granted under this Agreement shall be ongoing until terminated in accordance with the terms of this Agreement.

B.2. The User agrees:

- a) To use Displayr in accordance with the terms of this Agreement; and
- b) If creating a Customer Account, that it is authorized to establish, maintain and pay for the Account for the Customer.

B.3. The Customer agrees:

- a) To pay the Fees as and when they fall due; and
- b) That it is responsible for the conduct of each User it authorizes (who each must enter into and agree to comply with this Agreement upon accessing Displayr).

B.4. The Customer may terminate this Agreement by written notice and cease using Displayr, subject to payment of any outstanding Fees. No pro-rata refund shall apply to termination by a Customer without cause

B.5. The Company may terminate this Agreement on no less than 14 days' written notice to the Customer. The Company shall only provide a pro-rata refund to a Customer if:

- o The Company terminates this Agreement without cause; or
- o The Agreement is terminated as the result of a breach by the Company.

## **C. PAYING FOR DISPLAYR**

C.1. Fees

- a) The primary Fee to use Displayr shall be the Subscription Fee
- b) All Fees will be charged in accordance with the prices advertised on the Site, or as otherwise agreed between the Company and the Customer.

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- c) All prices advertised on the Site are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind unless otherwise stated.
- d) In relation to licenses acquired where U.S. sales tax is applicable, the Company maintains responsibility for collecting and remitting sales tax; which is a tax imposed by individual states, not the U.S. federal government, only when the sale takes place within states where the Company maintains a nexus for sales tax purposes.
- e) In complying with U.S. sales tax law the Company collects sales tax only on sales made within states where it currently maintains nexus. Nexus in this document is defined by the relevant sales tax laws by state.
- f) The Company complies with a variety of other U.S. and state reporting and payment obligations for business tax, use tax, payroll tax, excise tax and personal and corporate income tax.
- g) For sales made outside of states where a nexus is maintained the Company hereby informs the Customer that sales tax will not be collected on the Customer's Subscription Fee and any and all responsibility for the collection and payment of use tax will be maintained by the Customer unless otherwise agree upon in writing.
- h) If the Customer is under U.S. jurisdiction and your purchase order includes general language making the Company as sellers responsible for "all taxes" or "all taxes other than income tax", the Company reserves the right to reject the Customer's terms and conditions by written notice.

### c.2. Currency.

- a) All Fees are quoted in US dollars, however transactions may be processed in an equivalent foreign currency (such as Euros or British pounds).

### c.3. Refunds.

c.4. The Company shall only provide a pro-rata refund to a Customer if:

- a) The Company terminates this Agreement without cause;
- b) The Agreement is terminated as the result of a breach by the Company; or
- c) As otherwise required by law.

### c.5. Late Payment.

- a) If the Customer does not pay the full Fees as required, the Company may suspend access to Displayr for that Account.
- b) If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may terminate the Customer's Account in Displayr without notice and end this Agreement.

- The User agrees that the Company shall not be responsible or liable in any way for:
  - i. Interruptions to the availability of Displayr in the event of (a);
  - ii. Loss of Customer Data in the event of (b).

## **D. USING DISPLAYR**

- D.1. To access the Analysis, Document creation and editing functions of the Application, each User must register with Displayr with a valid email address.
- D.2. The Company provides instructions on the Site and within Displayr to assist Users with Displayr. These instructions may be updated from time-to-time. Displayr also provides user support services.
- D.3. The features and tools available to a Viewer may be limited by the Company and/or the Customer.
- D.4. The Company owes no duty of care to a Viewer that is not a Customer, or Author. The Company is under no obligation to such a Viewer, to ensure ongoing access to a Document.
- D.5. The Customer shall be responsible for each Document it makes available to a Viewer that is not an Author, and indemnifies the Company in relation to that Document.
- D.6. Any dispute regarding a Viewer's access to a Document must be dealt with between the Viewer and the Customer only. In no circumstance will the Company perform a dispute resolution role between a Customer and a Viewer.
- D.7. The Customer is responsible for ensuring its use of Displayr complies with the Data Protection Legislation. The Customer indemnifies the Company for any breach the Customer makes of such Data Protection Legislation.
- D.8. The prerequisites to use Displayr are:
  - a) Access to the Application; and
  - b) An internet connection.
- D.9. Application
  - a) The Application is only accessible to registered Users via login from the Site. To use Displayr, it is necessary that the User has access to the Application.
  - b) The Application contains the Customer's Documents, connects the Customer's Third Party Services and provides the Customer with Account management.
  - c) The Application allows a registered User to upload Data Sets in such formats as the Application may be compatible with. However, the Company accepts no responsibility for a User's use of that Data Set.
  - d) Each registered User warrants that it has the requisite rights to each Data Set it uploads or connects to the Application.
  - e) Each registered User uses Displayr at their own risk. The Company makes no representation that a registered User will be able to generate a particular Analysis from a Data Set. A registered User's results may vary depending on:

- i. The quality and type of Data Set;
  - ii. The registered User's skill and ability.
- f) The Company shall not be responsible for any error in computation relating to a Data Set or and code that a registered User enters into the Application.

D.10. Third Party services

- a) Displayr connects to and integrates with many Third Party Services.
- b) Displayr cannot warrant the ongoing availability or efficacy of any Third Party Services.
- c) The User authorizes the Company to access the Customer Data in any Third Party Services enabled by the User.
- d) The User must comply with the terms of use of any Third Party Service notified to the Company or which the Customer or any User has chosen to connect to or integrate with Displayr without the Company's approval, and in no way will the Company be liable for any breach of such terms by the User's connection of Displayr to a Third Party Service.

D.11. Support

- a) The Company provides user support for Displayr via a dedicated support email [support@displayr.com](mailto:support@displayr.com).
- b) The Company shall endeavour to respond to all support requests within 1 Business Day.
- c) The Company reserves the right to require the payment of reasonable Fees for non-standard support requests prior to the provision of such support.
- d) The Company's support service does not include providing information that is available via the Site. Requests for such information may incur a Fee.

## E. DISCLAIMER - THIRD PARTY DEPENDENCIES

E.1. The User acknowledges that Displayr:

- a) Is dependent on third-party services, including but not limited to:
  - i. Banks, credit card providers, BPAY;
  - ii. Telecommunications services;
  - iii. Hosting services;
  - iv. Email services;
  - v. Analytics services; and
  - vi. Databases belonging to third parties.

- b) May provide links to third party websites.

E.2. The User agrees that the Company shall not be responsible or liable in any way for:

- a) Interruptions to the availability of Displayr due to third-party services; or
- b) Any information or content contained on any linked third party website.

## F. SPECIAL CONDITIONS

F.1. The parties may agree to any Special Conditions to this Agreement in writing. Where the parties make such Special Conditions those Special Conditions shall prevail over any inconsistency with any other provisions of this Agreement.

# GENERAL CONDITIONS

## 1. INTERPRETATION

1.1. The following definitions apply in this document:

- a) Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business.
- b) Confidential Information means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:
- c) Customer Data
  - i. all technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;
  - ii. all business and marketing plans and projections, details of agreements and arrangements with third parties, and User and supplier information and lists;
  - iii. all financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
  - iv. all information concerning any employee, customer, contractor, supplier or agent of the relevant party;
  - v. the party's policies and procedures; and
  - vi. all information contained in this document,

but excludes information that the other party can establish:

- i. is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence;

- ii. is in the public domain other than by a breach of this document or any obligations of confidence; or
  - iii. is independently developed by or on behalf of the receiving party without reference to or use of the disclosing party's Confidential Information.
  
- d) Data Protection Legislation means Regulation (EU) 2016/679 of the European Parliament and of the Council, (the General Data Protection Regulation); any other existing or future law, directive or regulation (anywhere in the world) relating to the Processing of Personal Data or privacy, to which the Company is subject
- e) Data Controller, Data Processor, Data Subject, Processing and Personal Data have the meanings given to those expressions or any equivalent or corresponding expressions in the Data Protection Legislation;
- f) Customer Personal Data means any Personal Data that the Customer uploads to Displayr
- g) Standard Contractual Clauses means the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-processor transfers) contained in the Annex to the Commission Decision of 5 February 2010 (Decision 2010/87/EU) amending Decision 2002/16/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries
- h) Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
  - i. act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
  - ii. act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
  - iii. the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
  - iv. embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
  
- i) General Conditions means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
- j) Intellectual Property means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- k) Intellectual Property Rights means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether

registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

- l) Moral Rights means:
  - i. moral rights pursuant to any enactment or legislation governing copyright as determined by, and subject to the Visual Artists Rights Act of 1990 (VARA) and other applicable Federal Statutes, and other equivalent rights in other jurisdictions.
- m) Important Terms means this Agreement's details and variables set out in the section of this Agreement entitled "Important Terms".
- n) Special Conditions means the terms and conditions set out in the section of this agreement entitled "Special Conditions".
- o) Tax Invoice means an invoice that may be used for tax purposes in accordance with the Governing Law.

## **2. APPLICATION OF THIS AGREEMENT**

- 2.1. This Agreement applies to use of and access to Displayr.
- 2.2. Where the User does not accept or can no longer comply with the terms and conditions of this Agreement, the User must immediately cease using Displayr.
- 2.3. This Agreement may be updated by the Company at its absolute discretion from time-to-time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of Displayr at the commencement of the User's next billing period.

## **3. SOLUTION**

- 3.1. The User agrees and accepts that Displayr is:
  - a) hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company's servers and is not available 'locally' from the User's systems; and
  - b) managed and supported exclusively by the Company from the Company's servers and that no 'back-end' access to Displayr is available to the User unless expressly agreed in writing.
- 3.2. As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Displayr.



- 3.3. The Company shall not exercise its rights under clause 3.2 in a manner that would intentionally cause the User to lose access to Customer Data or fundamentally decrease the utility of Displayr to the User, other than in accordance with the terms of this Agreement.

#### **4. LICENSE**

- 4.1. By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use Displayr for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- 4.2. The Customer shall own the Intellectual Property Rights in any Document generated using Displayr, except in relation to the layout of any Document which remains the property of the Company.
- 4.3. The Company may revoke or suspend access to Displayr at any time if the Customer or any User is in breach of this Agreement and has failed to comply with the Company's reasonable request to remedy such breach within a reasonable time period, being no less than 30 days.

#### **5. USE**

- 5.1. The User agrees that it shall only use Displayr for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

#### **6. AUTHORIZED USERS**

- 6.1. The Customer shall authorize users to access Displayr in its absolute discretion.
- 6.2. The Company accepts no liability for access to Customer Data by users authorized by the User or using login details of users authorized by the User.
- 6.3. The User is solely responsible for the security of its username and password for access to Displayr.
- 6.4. The User is responsible for ensuring that users comply with this Agreement in full and are liable for any breach of them.

#### **7. CUSTOMER DATA**

- 7.1. The Company obtains no right, title or interest in Customer Data including any Intellectual Property found within it. The Customer grants the Company a licence to use the Customer Data solely for the purposes of providing Displayr in accordance with this Agreement.
- 7.2. The Company accepts no liability for the content of Customer Data.

- 7.3. The User is responsible for the accuracy, quality and legality of Customer Data and the User's acquisition of it, and the users that create, access and/or use Customer Data. The Customer hereby indemnifies the Company in relation to any claims, losses, damages and costs that the Company may suffer as a result of any claim that the Company's possession or use of the Customer Data to provide Displayr in accordance with this Agreement infringes any applicable Data Protection Legislation or the Intellectual Property Rights of any third party.
- 7.4. Despite clause 7.1, the Company shall be authorized to permanently delete Customer Data where outstanding Fees remain unpaid in accordance with the Important Terms.
- 7.5. The Company shall not access, use, modify or otherwise deal with Customer Data except where required by compulsion of law, or upon the User's authority (such as to provide support for Displayr), or as part of internal testing and troubleshooting.

## 8. PERSONAL DATA

- 8.1. The Company maintains the Privacy Policy in compliance with the provisions of the Data Protection Legislation for data that it collects about the User and other customers, and any processing of Customer Data as required under this Agreement.
- 8.2. To the extent that the Company processes Customer Personal Data in the course of making Displayr available to the Customer, the Company and the Customer will comply with all applicable requirements of the Data Protection Legislation.
- 8.3. The Company shall:
  - a) Process the Customer Personal Data only in accordance with the written instructions of Customer from time to time unless required to do so by law and subject to notifying the Customer (save whereby law the Company is prohibited from so notifying the Customer);
  - b) take reasonable steps to ensure the reliability of its employees, staff, officers and agents who may have access to, or be involved in, the Processing of the Customer Personal Data and that such employees, staff, officers and agents only process the Personal Data in accordance with this Agreement;
  - c) ensure that the Company personnel who have access to and/or Process the Customer Personal Data are obliged to keep it confidential or are under an appropriate statutory obligation of confidentiality;
  - d) ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful Processing of Customer Personal Data and against loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from unauthorized or unlawful Processing or accidental loss, destruction or damage and the nature of the Customer Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures

- e) notify Customer promptly and in any event within 24 hours of any Customer Personal Data breaches so Customer can notify the supervisory authorities and advise Data Subjects. The Company shall take all such measures and actions as are necessary to remedy or mitigate the effects of the breach and shall keep the Customer informed of all developments in connection with the breach.
- f) conduct data protection impact assessments as appropriate;
- g) support Customer's interaction with supervisory authorities or regulators where the data protection risk assessment indicates that there is a high risk to the Processing;
- h) at the written direction of Customer, delete or return Customer Personal Data and copies thereof to Customer on termination or expiry of this Agreement unless the Company is required to store the Customer Personal Data by law or if such Customer Personal Data is retained only in backups which are inaccessible in normal use;
- i) maintain complete and accurate records and information to demonstrate its compliance with these data protection obligations and shall allow at reasonable times and from time to time to audit and review the Company's compliance with these data protection obligations and the Data Protection;
- j) inform Customer immediately if (in the Company's opinion) an instruction for the Processing of Customer Personal Data given by the Customer infringes Data Protection Legislation;
- k) only transfer or process Customer Personal Data outside the European Economic Area on the basis of the Standard Contractual Clauses which are included as Annex 1 of this Agreement;
- l) not subcontract any processing of the Customer Personal Data to a third party subprocessor unless: (i) that third party is subject to contractual obligations no less onerous than those provided in this Agreement in relation to the processing of the Customer Personal Data and (ii) the Customer is notified of the addition or replacement of a subprocessor and given 14 days to object to such subprocessor. In the absence of any objection within that period, the Customer is deemed to have accepted such addition or replacement. The Customer's sole right in the event of an objection to a proposed addition or replacement shall be to terminate this Agreement on written notice, subject to payment of any outstanding Fees. The Company shall remain fully liable for any breach of this Agreement that is caused by an act, error or omission of its subprocessors.

8.4. The Company shall, on Customer's request, promptly provide Customer with such assistance and information about the Company's and any subprocessors' Processing of the Customer Personal Data as Customer may request from time to time to allow Customer to meet its or their obligations under the Data Protection Legislation. In the event that any request, correspondence, enquiry or complaint is made in respect of the Customer or the Customer Personal Data directly to the Company, the Company shall promptly inform the Customer providing full details of the same.

- 8.5. The Company shall be entitled to make any reasonable amendment to this clause 8 necessary to bring this clause 8 and the Company's obligations in respect of the Processing of Personal Data into line with the Data Protection Legislation; or allow any Customer to comply with the Data Protection Legislation and the requirements and recommendations of any appropriate data protection supervisory authority or regulator.
- 8.6. The Company shall indemnify the Customer from and against all losses, damages or regulatory fines suffered or incurred by the Customer as a result of the Company's breach of the data protection provisions set out in this Agreement.

## 9. DATA

- 9.1. Security. The Company takes the security of Displayr and the privacy of its Users very seriously. The Company shall use industry-standard systems and processes to protect the security of data stored in Displayr by the Customer, including using the third party service providers named on the GDPR Compliance Statement available at <https://www.displayr.com/gdpr/>. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- 9.2. Transmission. The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards.
- 9.3. Storage. The Company may limit the amount of data that the User stores in Displayr, and shall advise the User of such. Data that is stored with the Company shall be stored according to accepted industry standards.

## 10. INTELLECTUAL PROPERTY

- 10.1. Trademarks. The Company has moral & registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- 10.2. Proprietary Information. Displayr may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Displayr (U.S. Copyright Act of 1976, Title 17 U.S.C).
- 10.3. Solution. The User agrees and accepts that Displayr is the Intellectual Property of the Company and the User further warrants that by using Displayr the User will not:
  - a) copy Displayr or the services that it provides for the User's own commercial purposes; and
  - b) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Displayr or any documentation associated with it.

- 10.4. Content. All content (with the exception of Customer Data) remains the Intellectual Property of the Company, including (without limitation) any source code, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Displayr.
- 10.5. The Company hereby indemnifies the Customer in relation to any claims, losses, damages and costs that the Customer may suffer as a result of any claim that the Customer's use of Displayr in accordance with this Agreement and any instructions provided by the Company to the Customer infringes the Intellectual Property Rights of any third party. This indemnity shall not apply to any use of Displayr by the Customer or any User otherwise than in accordance with the Company's reasonable instructions.

## 11. CONFIDENTIALITY

- 11.1. The Company agrees to keep all Customer Data in the strictest confidence, and to the extent Customer Data is accessed and/or received by Displayr it shall be deemed as Confidential Information for the purposes of this Agreement.
- 11.2. Each party acknowledges and agrees that:
  - a) the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
  - b) it owes an obligation of confidence to the Discloser concerning the Confidential Information;
  - c) it must not disclose the Confidential Information to a third party except as permitted in this Agreement;
  - d) all Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
  - e) any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- 11.3. A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
  - a) any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
  - b) any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or

- c) any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- 11.4. The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
- a) any actual, suspected, likely or threatened breach of a term of this Agreement; or
  - b) any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.
- 11.5. The protection of all electronic communication is governed by the Electronic Communications Privacy Act (18 U.S.C. §§ 2701-2711). In compliance with this Act the Company makes the following notice: THE COMPANY CAN MAKE NO ABSOLUTE GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEBSITE LINKED TO THE SITE. THE COMPANY WILL THEREFORE NOT BE LIABLE FOR THE PRIVACY OF E-MAIL ADDRESSES, REGISTRATION AND IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT STORED ON THE COMPANY'S EQUIPMENT, TRANSMITTED OVER NETWORKS ACCESSED BY THE SITE, OR OTHERWISE CONNECTED WITH USER'S USE OF THE SERVICE.

## **12. WARRANTIES AND DISCLAIMERS**

- 12.1. The Company warrants that Displayr will conform to all representations and descriptions of functionality and service made available to the Customer [and that Displayr will operate to a 99.5% uptime availability level, excluding downtime for scheduled and emergency maintenance, which shall be notified in advance to Customer wherever possible, and scheduled to minimize disruption to Customer's operations].
- 12.2. The Company warrants that it will use industry standard measures to maintain the security of Displayr as described in this Agreement, and that it will fix defects in the software in a prompt manner.
- 12.3. Except as otherwise provided in this Agreement, each User acknowledges and agrees that:
- a) Displayr (including all content, function, Content and services) is provided "as is," without additional warranty of any kind, either express or implied, including any additional warranty for information, data, data processing services or uninterrupted access, any warranties concerning the availability, accuracy, completeness, usefulness, or content of information, and any warranties of title, non-infringement, merchantability or fitness for a particular purpose.

- b) Company does not warrant that Displayr (or the function, content or services made available thereby) will be timely, secure, uninterrupted or error free. Company makes no warranty that Displayr will meet User's expectations or requirements. No advice, results or information, or Content whether oral or written, obtained through Displayr shall create any warranty not expressly made herein. If a User is dissatisfied with Displayr, the sole remedy is to discontinue using Displayr.
- c) Company does not endorse, warrant or guarantee any products or services offered or provided by or on behalf of third parties on or through Displayr. Company is not a party to, and does not monitor, any transaction between Users and third parties.

12.4. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms.

### **13. LIABILITY & INDEMNITY**

13.1. THE USER AGREES THAT IT USES DISPLAYR AT ITS OWN RISK.

13.2. THE USER ACKNOWLEDGES THAT THE COMPANY IS NOT RESPONSIBLE FOR THE CONDUCT OR ACTIVITIES OF ANY USER AND THAT THE COMPANY IS NOT LIABLE FOR SUCH UNDER ANY CIRCUMSTANCES.

THE USER AGREES TO INDEMNIFY THE COMPANY FOR ANY LOSS, DAMAGE, COST OR EXPENSE THAT THE COMPANY MAY SUFFER OR INCUR AS A RESULT OF OR IN CONNECTION WITH THE USER'S USE OF DISPLAYR OR CONDUCT IN CONNECTION WITH DISPLAYR, INCLUDING ANY BREACH BY THE USER OF THIS AGREEMENT.

13.3. EXCEPT UNDER ANY INDEMNITY, A PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY (OR ANY USER IN THE CASE OF THE COMPANY) IN RELATION TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID IN THE TWELVE MONTHS PRECEDING THE DATE OF THE LIABILITY ARISING.

13.4. IN NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OR CORRUPTION OF DATA, LOSS OF PROFITS, GOODWILL, BARGAIN OR OPPORTUNITY, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER SIMILAR OR ANALOGOUS LOSS RESULTING FROM THE USER'S ACCESS TO, OR USE OF, OR INABILITY TO USE DISPLAYR, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, IN EQUITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE, TO BUSINESS INTERRUPTION OF ANY TYPE, WHETHER IN TORT, CONTRACT OR OTHERWISE.

13.5. IN NO CIRCUMSTANCES WILL THE CUSTOMER OR A USER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OR CORRUPTION OF DATA, LOSS OF PROFITS, GOODWILL, BARGAIN OR OPPORTUNITY, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER SIMILAR OR ANALOGOUS LOSS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, IN EQUITY OR ANY OTHER LEGAL THEORY, AND

WHETHER OR NOT THE CUSTOMER OR USER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE, TO BUSINESS INTERRUPTION OF ANY TYPE, WHETHER IN TORT, CONTRACT OR OTHERWISE.

## 14. BREACH

14.1. Where a party is in breach of this Agreement, the other party may issue a written notice (Breach Notice) requiring the party in breach that must set out:

- a) the nature of the breach;
- b) the provisions of the Agreement that are alleged to have been breached;
- c) a reasonable timeframe to remedy the breach in no less than 10 Business Days; and
- d) the action required to remedy the breach.

14.2. Where a party issues a compliant Breach Notice in accordance with clause 15.1, the receiving party shall be required to respond and/or remedy the breach as so set out in the Breach Notice. Failure to respond in writing setting out:

- a) the steps taken to remedy the breach; or
- b) why the party believes it is not in breach as put forward in the Breach Notice,
- c) shall not in itself confirm the alleged breach but shall be in itself a breach of this Agreement.

14.3. Failure to remedy a breach set out in a Breach Notice shall be a material breach of this Agreement (Material Breach).

## 15. TERMINATION

15.1. Breach. Where a party is in Material Breach of this Agreement, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 Business Days after the date of the notice.

15.2. Insolvency. Either party may terminate this Agreement immediately by notice, if either party:

- a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- b) is insolvent under Company Law.
- c) fails to comply with a demand unless:



- i. the debt to which the demand relates is discharged within 15 Business Days of the date of the failure; or
    - ii. the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
  - d) has an administrator appointed in respect of it;
  - e) has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
  - f) has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
  - g) is subject to any event which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.
- 15.3. Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.
- 15.4. The rights and obligations under the relevant provisions of clauses 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18 and 19 survive termination of this Agreement.

## 16. DISPUTES

- 16.1. The following process shall apply in relation to any dispute arising under this Agreement:
- a) Negotiation. If there is a dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
  - b) Mediation. If the dispute between the parties relating to or arising out of this Agreement is not resolved within five Business Days of notification of the dispute under Clause 16.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
  - c) Arbitration. If the dispute between the parties relating to or arising out of this Agreement is not settled by mediation under clause (b) either party may by written notice to the other refer the dispute binding arbitration before a single arbitrator under the rules of the American Arbitration Association (AAA) as in effect at such time. Both parties agree that either party may, within 30 days after the filing of a demand for Arbitration, demand that the parties' dispute first be submitted to a neutral evaluator pursuant to the American Arbitration

Association's Early Neutral Evaluation Procedures prior to proceeding with arbitration. Any resulting arbitration award may be enforced in any court having valid jurisdiction, wherever located.

- d) Parties to the arbitration shall each pay an equal share of the costs and expenses of such arbitration, except as prohibited by law. Each party shall separately pay for its respective attorneys' fees and costs.
- e) Class Action. BOTH PARTIES AGREE NOT TO BRING OR PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR COLLECTIVE ARBITRATION, EVEN IF AAA PROCEDURES OR RULES WOULD OTHERWISE ALLOW ONE. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT OF THAT PARTY'S INDIVIDUAL CLAIM. BOTH PARTIES ALSO AGREE NOT TO SEEK TO COMBINE ANY ACTION OR ARBITRATION WITH ANY OTHER ACTION OR ARBITRATION WITHOUT THE CONSENT OF ALL PARTIES TO THIS AGREEMENT AND ALL OTHER ACTIONS OR ARBITRATIONS.
- f) If the agreement in this Section not to bring or participate in a class or representative action, private attorney general action or collective arbitration should be found illegal or unenforceable, Both parties agree that it shall not be severable, that this entire Section shall be unenforceable and any claim or dispute would be resolved in court and not in collective arbitration.
- g) Court proceedings. A party may not commence court proceedings in relation to a dispute relating to or arising out of these Terms, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that damages are inadequate to compensate.
- h) Small Claims Court. Notwithstanding this Section, any User has the right to litigate any dispute in small claims court, if all the requirements of the small claims court, including any limitations on jurisdiction and the amount at issue in the dispute, are satisfied.

## **17. ATTORNEY'S FEES**

- 17.1. The prevailing Party in an action to enforce these Terms may recover from the other its reasonable attorneys' fees and costs, if employment of an attorney was necessary.

## **18. FORCE MAJEURE**

- 18.1. If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:

- i. specify the obligations and the extent to which it cannot perform those obligations;
  - ii. fully describe the event of Force Majeure;
  - iii. estimate the time during which the Force Majeure will continue; and
  - iv. specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 18.2. Following a notice of Force Majeure in accordance with clause 18.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.
- 18.3. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 18.4. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.
- 18.5. The term of this Agreement will not be extended by the period of Force Majeure.

## **19. GOVERNING LAW AND JURISDICTION**

- 19.1. These Terms, as well as the respective rights and obligations hereunder, shall be governed by and construed and enforced in accordance with the laws of the State of New York. Please note that use of Displayr by any User may be subject to other local, state, national, and international laws.
- 19.2. Each Party expressly:
- a) Agrees that exclusive jurisdiction for resolving any claim or dispute between the Customer and the Company relating in any way to use of Displayr shall be with the courts of the same country as that stated in the preceding clause relating to governing law;
  - b) To the extent applicable, waives any right to a jury trial in any legal proceeding against the Company; and
  - c) Agrees that any claim or cause of action with respect to use of Displayr must be commenced within one (1) year after the claim arises.

## **20. ELECTRONIC COMMUNICATION AND ASSIGNMENT**

- 20.1. The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- 20.2. The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- 20.3. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law. Notices must be sent to a party's most recent known contact details.
- 20.4. The User may not assign or otherwise create an interest in this Agreement without the written consent of the Company.
- 20.5. The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

## 21. GENERAL

- 21.1. Prevalence. Each party to this Agreement agrees to the clauses in the Important Terms and the Special Conditions. The Important Terms, any Special Conditions and the General Conditions form a single legal agreement. To the extent that the Important Terms or the Special Conditions are inconsistent with the General Conditions, the terms of the Important Terms will prevail. To the extent that the Special Conditions are inconsistent with the Important Terms, the Special Conditions will prevail.
- 21.2. Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 21.3. Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 21.4. Publicity. The Customer agrees that the Company may reference the Customer's use of Displayr in its promotional materials. The Customer may withdraw permission for such use by notifying the Company in writing at any time.
- 21.5. Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 21.6. Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 21.7. Severability. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- 21.8. Updates and amendments. Any part of this Agreement may be amended by the Company at any time, and any aspect of the Displayr service may be updated or discontinued at any time, provided that the core functionality of the software will not be varied in a way that materially affects the Customer's use of Displayr. Any changes to this Agreement or to the Displayr service which will significantly affect the rights and obligations of the

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Customer will be notified to the Customer in advance of such changes taking effect and within 30 days of such notice Customer may terminate this Agreement and shall receive a prorata refund in respect of any prepaid Fees.

**Annex 1 – Standard Contractual Clauses (applicable for customers within the EU only)**

**COMMISSION DECISION**

of 5 February 2010

**on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council**

**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

The data exporting organisation is the organisation purchasing services from Displayr.

(the **data exporter**)

and

Name of the data importing organisation: Displayr Australia Pty Limited, Numbers International LLC, Displayr Inc or Q Research Software Limited, as appropriate

Address: 65 Bellevue Street, Glebe, NSW 2037 Australia (Head Office)

e-mail: support@displayr.com

(the **data importer**)

each a "**party**"; together "**the parties**",

HAVE AGREED on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1*  
**Definitions**

For the purposes of the Clauses:

- (a) '*personal data*', '*special categories of data*', '*process/processing*', '*controller*', '*processor*', '*data subject*' and '*supervisory authority*' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>;
  - (b) '*the data exporter*' means the controller who transfers the personal data;
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- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

*Clause 2*  
**Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

*Clause 3*  
**Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

*Clause 4*  
**Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

*Clause 5*  
***Obligations of the data importer<sup>2</sup>***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
  - (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the
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- warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
  - (d) that it will promptly notify the data exporter about:
    - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
    - (ii) any accidental or unauthorised access, and
    - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
  - (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
  - (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
  - (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
  - (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
  - (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
  - (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

*Clause 6*  
**Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

**Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

**Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

**Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

**Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*  
**Subprocessing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses<sup>3</sup>. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*  
**Obligation after the termination of personal data processing services**

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

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<sup>3</sup> This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

## Displayr Terms of Use – Updated August 2020

### **Data exporter**

The data exporter is the Customer legal entity that has entered into these terms with the Company and receives services from the Company.

### **Data importer**

The data importer is the Company legal entity that has entered into these terms, which is a software company that processes personal data as part of the services provided to the Customer upon the instruction of the data exporter in accordance with the terms of this agreement.

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

Customer may submit personal data to Company to enable Company to provide the Displayr software, the extent of which is determined and controlled by Customer in its sole discretion, and which include:

- Customers, business partners, and vendors of Customer (who are natural persons)
- Employees or contact persons of Customer customers, business partners, and vendors
- Employees, agents, advisors, contractors, or any user authorized by Customer to use the Displayr software (who are natural persons)
- Any other persons whose personal data the Customer choose to upload to the Displayr platform

### **Categories of data**

The personal data transferred concern the following categories of data:

Company has no control over the categories of data that Customer uploads to the Displayr platform, but it is anticipated to include the following categories of data:

- Full names and usernames
- Addresses
- Contact information (emails, addresses, phone numbers)
- IP addresses, device MAC addresses
- Any other personal identifiers
- Employment and education associations and history

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

Company has no control over the categories of data that Customer uploads to the Displayr platform, but it is anticipated to include the following special categories of data:

- personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation

### **Processing operations**

## Displayr Terms of Use – Updated August 2020

The personal data transferred will be subject to the following basic processing activities:

Company will process personal data as necessary to provide the Displayr software service, as further instructed by Customer in the course of its use of the service.

### **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) is available at:

[https://docs.displayr.com/wiki/Security\\_Statement](https://docs.displayr.com/wiki/Security_Statement)