

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
YELLOWFIN BI NORTH AMERICA, INC. AND THE CITY OF ANN ARBOR
FOR DATA VISUALIZATION AND ANALYSIS/BUSINESS INTELLIGENCE PLATFORM**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Yellowfin BI North America, Inc. ("Contractor"), a(n) Idaho Corporation with its address at 110 Lindsay Circle, Suite A Ketchum, ID 83340, agree as follows:

I. DEFINITIONS

Administering Service Area/Unit means Finance and Administrative Services Area/Information Technology Unit.

Contract Administrator means IT Director of the City, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means City of Ann Arbor Data Visualization and Analysis/Business Intelligence platform implementation.

II. DURATION

Contractor shall commence performance on Monday, April 2, 2018 ("Commencement Date"). This Agreement shall remain in effect until July 1, 2023, unless terminated as provided for in Article XI. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date or Commencement Date.

III. SERVICES

A. The Contractor agrees to provide a Data Visualization and Analysis/Business Intelligence platform as well as written materials that describe the features, functions and operation of the Product (collectively "Product"), by the grant of a license to the City to use of the Product internally by its employees for the purposes set out in Exhibit A and for the public accessing the City's website (through limited read only licenses as to the public), along with related implementation services ("Implementation Services") in connection with the Project. The Project, including the Product and Implementation Services (together referred to as the "Services"), is further described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order in accordance with the variation procedure set out below. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator, acting reasonably, against the specifications set out in Exhibit A. Services shall be deemed to be of an acceptable quality where Contract

Administrator has not advised Contractor otherwise (in writing with reasons) within sixty (60) days of provision of said Services.

C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

E. If either of the Parties becomes aware of anything that may delay the Services, (including without limitation: anything beyond the reasonable control of the Parties; industrial conditions; unavailability of qualified persons necessary to carry out the Services; latent conditions in, or updates to, the system or third party application; changes in the law; changes in the third party application; an act or omission of City or its employees, consultants, other suppliers or agents), then the Party aware of the possible delay must promptly notify the other party in writing with relevant details of the possible delay, and date for performance of the Services shall be extended accordingly.

Grant of License

F. As part of the provision of the Services, the Contractor grants the City a non-exclusive, non-transferable, non-sublicensable, personal, limited license to use the Product for the Duration of this Agreement (as described in Article II). City acknowledges that Contractor will require that all end users of the Product (means a person who obtains access to the Product from the City) ("End User") must comply with the clickthrough end user license agreement accompanying the Product as amended and attached to Exhibit D ("EULA"). City must comply with the terms and conditions of the Product EULA. Notwithstanding anything to the contrary in the EULA, if any term(s) of this Agreement conflicts with any term(s) of the EULA, the term(s) of this Agreement shall prevail to the extent of the inconsistency. Except for the license rights granted herein, Contractor at all times retain all rights, title, and interest in the Product. The Product is licensed, not sold, for use only under the terms of this Agreement, and Contractor reserves all rights not expressly granted to City.

G. For the avoidance of doubt Contractor shall continue to retain all intellectual property in "Underlying Contractor Technology" which means Contractor's proprietary technology and methodologies, including Contractor's product(s), software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), and any related intellectual property rights throughout the world existing at the Effective Date, and also including any derivatives, improvements, enhancements or extensions of Underlying Contractor Technology conceived, reduced to practice, or developed during the term of this Agreement.

H. City agrees and acknowledges that all amendments, enhancements, updates, derivative works and modifications to the Product shall in no way alter Contractor's full ownership of all Intellectual Property rights in the Product. City will provide reasonable and prompt assistance to Contractor to give effect to this section.

Third Party Issues

I. Subject to Section III(J) below, City expressly acknowledges and agrees that Contractor's obligation to perform the Services does not include the performance of any services that may be required to resolve problems caused by any of the following (each a "Third Party Issue"):

- (i.) Non-Contractor software or hardware products;
- (ii.) City's failure to properly maintain City's site and equipment which Contractor uses to provide the Services or develop Deliverables;
- (iii.) Alterations to City's site or equipment made by City or a third party after Contractor's completion of Services;
- (iv.) Modifications made to a Deliverable by a party other than Contractor.

J. Where Contractor determines in performing the Services, that it is necessary for it to perform additional services to resolve problems caused by a Third Party Issue, Contractor will notify City thereof as soon as Contractor is aware of such Third Party Issue and pending City's acceptance of the further work to be carried out by Contractor, Contractor will have the right to invoice City at Contractor's then current daily rate for all services performed with respect to the Third Party Issue, in addition to any fees and expenses payable by City with respect to the Services. All additional work carried out by Contractor with respect to Third Party Issues shall be subject to the terms and conditions of this Agreement.

Variations

K. If City wishes to vary the Services, then City must deliver to Contractor a written notice describing the variation(s) requested ("City's Notice of Variation"). Contractor must advise City in writing whether the proposed variation(s) can be effected and, if so, the effect which Contractor anticipates that the variation(s) will have on the fees.

L. Contractor is not bound to undertake any variation of the Services unless the scope and any additional price of the variation are agreed in writing between the Parties within ten (10) business days of City's Notice of Variation. If no such agreement can be reached between the Parties with regard to the scope and price of the variation within the ten (10) business day deadline, then the Parties must continue to perform their respective obligations on the basis that the Services do not include the proposed variations in the City's Notice of Variation. For the avoidance of doubt, the Agreement does not come to an end but shall remain on foot and operative.

M. If Contractor wishes to vary the Services, then Contractor shall give City a written notice that: (a) describes the variation; (b) states why Contractor wishes to make the variation; (c) states the effect the variation will have on the Services; (d) gives a reasonable estimate of change in the development schedule (if any) the variation is likely to cause; (e) states the cost of the variation; and states the effect of that cost on the Fees. Contractor shall not commence any variation it has requested unless: City has given Contractor a signed consent to the variation attached to a copy of the notice referred to above; or if the variation arose as a result of circumstances beyond the control of the Contractor.

N. If a variation is requested by City and the Parties reach an agreement as to the scope and price of the variation; or a variation is proposed by Contractor and agreed to by City,

results in a change to the fees, the amount of the variation will be deducted or added (whichever is applicable) to the fee to which the variation applies.

O. Unless otherwise mutually agreed in writing by the Parties, the Parties shall continue to perform their respective obligations under this Agreement during the period in which they negotiate any variations to the Services.

IV. INDEPENDENT CONTRACTOR AND NON-SOLICITATION

A. The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

B. During the term of this Agreement, and for a period of one (1) year immediately following its expiration or termination, neither party shall solicit, directly or indirectly, any employee of the other party who was involved in providing Services. Notwithstanding the foregoing, either Party may hire any individual who responds to a bona fide advertisement for employment which is placed by such party in a newspaper, website, electronic forum or other medium of general circulation.

V. COMPENSATION OF CONTRACTOR

A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator and such approval must not be unreasonably withheld nor delayed. Contract Administrator must inform Contractor in writing of whether invoice has been approved or whether there is any objection within fifteen (15) days of receipt.

B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.

C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION

A. The Contractor shall procure and maintain from the Effective Date or Commencement Date of this Agreement (whichever is earlier) through the conclusion of this Agreement, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C.

B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

D. In entering into this Agreement, City acknowledges it had recourse to its own skill and judgment and has not relied on any representations made by Contractor not otherwise incorporated into this Agreement.

E. SUBJECT ALWAYS TO THIS LIMITATION OF LIABILITY CLAUSE, EXCEPT FOR FRAUD OR DISHONESTY BY THE CONTRACTOR, THE AGGREGATE LIABILITY OF CONTRACTOR FOR DAMAGES TO CITY OR TO ANY OTHER PERSON OR ENTITY FOR ANY CAUSE WHATSOEVER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE SHALL BE LIMITED TO THE FEES PAID BY CITY TO CONTRACTOR FOR THE SERVICES.

F. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE PERFORMANCE OF THE PRODUCT OR SERVICES PROVIDED HEREUNDER OR OTHERWISE RELATED TO THE FOREGOING, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

VII. COMPLIANCE REQUIREMENTS

A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if

requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY THE CONTRACTOR

A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.

B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.

C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.

D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

F. For a period of ninety (90) days following the delivery of the Product, Contractor warrants to City that the Product will conform to the specifications in Exhibit A.

G. Contractor will have no warranty obligation under this Agreement with respect to warranty claims with respect to the Product:

(i.) Arising as a result of modifications to the Product performed by parties other than Contractor;

(ii.) Arising as a result of combination of the Product with products other than those supplied by Contractor; and

(iii.) Made by City with respect to the Product following expiration of the warranty period.

H. AS THE SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF THE PRODUCT TO MATERIALLY CONFORM TO THE SPECIFICATIONS, CONTRACTOR SHALL REPAIR OR REPLACE THE PRODUCT IF SUCH FAILURE IS REPORTED DURING THE WARRANTY PERIOD OR, IF CONTRACTOR, AT ITS DISCRETION, REASONABLY DETERMINES THAT SUCH REMEDY IS NOT ECONOMICALLY OR TECHNICALLY FEASIBLE, THE LICENSE GRANTED WITH RESPECT TO SUCH PRODUCT WILL TERMINATE AND CONTRACTOR SHALL PROVIDE A FULL REFUND OF THE FEES WITH RESPECT TO THE THAT PRODUCT.

I. The above warranty does not cover updates to the Product or defects due to abuse, unauthorized alteration, unauthorized modification or improper installation or configuration by City or an End User, or any third party.

J. Contractor does not warrant that the functions of the Product will meet the requirements of City or any End User or that operation of the Product will be uninterrupted or error free. City assumes responsibility for selecting the specifications to achieve its intended results and for the use and results obtained from the Product.

K. APART FROM ANY TERM, CONDITION OR WARRANTY IMPLIED BY STATUTE WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT AND ANY WARRANTY EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO WARRANTIES IN RELATION TO THE SERVICES, PRODUCTS OR UNDERLYING CONTRACTOR TECHNOLOGY INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, OR OF FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM BUGS, CORRECTNESS, ACCURACY, AND RELIABILITY AND THAT THE USE OF THE UNDERLYING CONTRACTOR TECHNOLOGY (OR ANY DERIVATIVES THEREOF) WILL BE UNINTERRUPTED OR ERROR FREE.

IX. OBLIGATIONS OF THE CITY

A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.

B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

C. The City shall procure all hardware and applicable software licenses necessary to host the Contractor platform on premise.

D. City must provide Contractor with all reasonable assistance and access to facilities, software, personnel, third party application and City's information technology systems to enable Contractor to comply with its obligations under the Agreement in order for Contractor to carry out the Services, and, subject to Contractor's compliance with City's security requirements ("Assistance and Access"). Contractor must not circumvent any security and/or data access policies instituted by City.

E. City must not do, or countenance or permit to be done, anything that may obstruct, interfere with or hinder Contractor in carrying out its obligations under this Agreement. If the City does not provide the Assistance and Access that Contractor reasonably requires, after at least five (5) days written notice to the City of such requirement, to perform the Services, then any additional costs and expenses which are reasonably incurred by Contractor will be paid by the City.

F. Contractor must comply with all relevant work, health, safety and welfare standards and regulations determined by the City or as prescribed by legislation.

G. City represents that: (i) all information its provides to Contractor in relation to the Services is true and accurate and not misleading in any respect whether by omission of information or otherwise; and (ii) it has full capacity and authority, and all necessary licenses,

permits and consents to enter into and perform this Agreement and that those signing this Agreement are duly authorized to bind the Party for whom they sign.

X. ASSIGNMENT

A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City which will not be unreasonably withheld. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.

B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. TERMINATION OF AGREEMENT AND SUSPENSION OF WORK

A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice provided such breach is capable of remedy within fifteen (15) days and, if not, the party in breach must be given reasonable time to remedy the breach before foregoing action can be taken. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.

B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.

C. City acknowledges and agrees that in the event City terminates this Agreement for convenience or Contractor terminates for breach by City, then: (i) any fees which have been paid by City to the Contractor will not under any circumstances be refunded or returned to the City; (ii) Contractor is entitled to retain all fees paid to it; (iii) City disclaims all rights to a refund of fees (or any part thereof) paid to Contractor; and (iv) Contractor is entitled to recover from City all loss, expense and damage (including but not limited to "expectation loss") resulting therefrom as if Client had wrongfully repudiated the Agreement.

D. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, after reasonable effort, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

E. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party,

including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

F. Contractor may at its absolute discretion suspend carrying out the Services upon reasonable cause including but not limited to where City: (i) is unable or unwilling to make any payment required under this Agreement; (ii) fails to comply with the terms of this Agreement; (iii) obstructs, interferes with or hinders the carrying out of the Services; and/or (iv) refuses to give Contractor reasonable Assistance and Access.

G. If any completion date is provided for the Services, such completion date shall be extended for the period of any suspension of the Services by Contractor.

XII. REMEDIES

A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.

B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.

C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Yellowfin BI North America Ltd
110 Lindsay Circle
Suite A
Ketchum, ID 83340
ATTN: Peter Baxter

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Tom Shewchuk, Director, Information Technology Services Unit
301 E. Huron St.
Ann Arbor, Michigan 48104

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. OWNERSHIP OF DOCUMENTS

Subject to any intellectual property identified in this Agreement and/or Product EULA as belonging to, and/or remaining the property of, the Contractor:(a) upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City; and (b) original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor where the foregoing applies.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

While City and its end users are not required to do so, City may from time to time provide feedback to Contractor with regard to the functionality and performance of the Deliverables or other materials related to the Deliverables including, without limitation, identifying potential errors and improvements ("Feedback"). Feedback provided by City may be used by Contractor to improve or enhance the Products and any related documentation, or other materials related to the Products and City hereby grants Contractor a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have

made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such Feedback without restriction

XVI. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVII. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVIII. EXTENT OF AGREEMENT

This Agreement, together with Exhibits A, B, C, and D, and the portions of RFP (#17-27) referenced in Exhibit A, (attached hereto), constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

XIX. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

XX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

XXI. SURVIVAL

The following clauses shall survive termination or expiry of this Agreement: grant of license (clause III(G) and clause III(H)); non-solicitation (clause IV(B)); indemnification (clause VI(C) and clause VI(F)); Termination of the agreement (clause XI (C)), remedies (clause XII); choice of law and forum (clause XIV).

FOR CONTRACTOR

By _____

Glen Rabie
Chief Executive Officer

FOR THE CITY OF ANN ARBOR

By _____

Christopher Taylor, Mayor

By _____

Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus, City Administrator

Tom Crawford
Financial Services Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

**EXHIBIT A
THE PRODUCT AND SCOPE OF SERVICES**

SERVICES CONTRACTOR SHALL PROVIDE:

I. DATA VISUALIZATION AND BUSINESS INTELLIGENCE PLATFORM INCLUDING RELATED IMPLEMENTATION AND TRAINING SERVICES

PRODUCT: DATA VISUALIZATION AND BUSINESS INTELLIGENCE PLATFORM

Contractor will provide the City with a data visualization and business intelligence platform that supports the following functionality:

- Single sign-on via Active Directory
- Ability to white label user interface
- Ability to assign security to data views, reports, KPIs, and dashboards by user or role
- Ability to connect to multiple data sources including: ODBC; JDBC; JSON; XML; API; flat file
- Ability to combine multiple, disparate datasets into a single data view
- Ability to link one or more data views into a single visualization
- Ability to leverage in-memory caching of data
- Support for mobile devices (ex. mobile phones; tablets)
- Supports collaboration amongst City users
- Ability for City users to drill into datasets
- Ability for City users to create dashboards/reports combining multiple visualizations
- Ability to share/export/broadcast reports
- Supports Artificial Intelligence (AI) and Data Science concepts including the R and Predictive Model Mark-up Language (PMML) languages
- Support for geospatial visualizations
- Support for “what if” scenarios
- All other functionalities listed in Contractor’s proposal to the City’s RFP (#17-27), which are incorporated into this Agreement as if fully set forth herein.

IMPLEMENTATION AND TRAINING SERVICES

Implementation and training will commence upon successful execution of this contract and will be completed within 30 days. Contractor will create two environments: Internal – which includes 50 user licenses and will be used by City employees only; and External – which includes unlimited read-only licenses and will be used by the general public/constituents to view reports/KPIs. The internal environment will be further broken out into three sub environments: Production; Development; and User Acceptance Testing. All environments will be created on hardware provided and hosted by the City.

Contractor will provide a pool of 10 days (80 hours) for installation, configuration, and training. An additional pool of 10 days (80 hours) will be held in reserve to complete any additional

report/dashboard development or training as needed. Any implementation hours not used by the City during implementation will be credited back to the City on the 2nd invoice.

II. ANNUAL MAINTENANCE CONTRACT WITH INCLUDED SERVICES

SOFTWARE MAINTENANCE

The City will receive product updates and defect fixes as they become available. City shall receive the standard maintenance and support offering as listed in Contractor's "Support Offering & Policies" attached to Contractor's proposal to the City's RFP (#17-27); such Support Offering and Policies is incorporated into this Agreement as if fully set forth herein.

SUPPORT

Consultant will provide both unassisted and assisted support channels including, but not limited to:

- **Assisted**

Consultant will provide phone support Monday – Friday, excluding public holidays, from 8 AM to 5 PM (MST).

- **Unassisted**

Consultant will provide the City with access to the following unassisted channels:

- Yellowfin Community
- Yellowfin Product Wiki
- Yellowfin University
- Yellowfin YouTube Channel
- Yellowfin Customer Portal
- Yellowfin Email Support

ADDITIONAL SERVICES

The City will receive up to 5 days (40 hours) of consulting/professional services annually as part of this contract. Hours in excess of those mentioned above will be billed to the City at a rate of \$980/day.

EXHIBIT B COMPENSATION

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

Total Year 1: \$138,350.00 USD, payable at contract signing

Total Year 2: \$118,750.00 USD, payable on the anniversary of the contract signing

Payment must be made within thirty (30) days of receipt of invoice issued by the Contractor.

The above totals include the following:

- 50 user enterprise license for both production and non-production environments
- Unlimited licenses for public (view only)
- Annual bank of 5 days (40 hours) of professional services outside of normal support to be used at the City's discretion.
- Additional days of professional services (in excess of those specified above) can be purchased at a rate of \$980/day.

EXHIBIT C INSURANCE REQUIREMENTS

From the Earlier of the Effective Date or Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Civil Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than AU\$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Product, Property Damage and Personal Injury Liability (any one claim subject to sub-limits of policy): \$ AU 20,000,000 in accordance with the attached Certificate of Currency.

B. Insurance required under A.3 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.

Certificate of Currency



This Certificate confirms that the undermentioned Policy is effective on the date of issue and in accordance with the details shown:

Class of Insurance Civil Liability Insurance

Policy Number IE-ME-SPC-07-110856

Named Insured YELLOWFIN INTERNATIONAL PTY LTD
YellowfinBI North America, Inc.
Yellowfin Japan Co Ltd
Yellowfin EMEA Ltd
Yellowfin Australia Pty Ltd (presently dormant)

Policy Period: From: 25 November 2017 at 4:00pm local standard time
To: 25 November 2018 at 4:00pm local standard time

Limit of Liability \$1,000,000

Excess \$25,000

Policy Wording LIU AUS OQS Maxx Civil Liability Information Technology Policy Wording (12-15)

Retroactive Date 25 November 2011

Authorised by Liberty



Date of Issue 14 December 2017

This Certificate:

- Is issued as a matter of information only and confers no rights upon the holder.
- Does not amend, extend or alter the coverage afforded by the Policy listed.
- Is only a summary of the cover provided.
- Reference must be made to the current policy wording for full details.
- Is current at the date of issue only.

Level 20
600 Bourke Street
Melbourne VIC 3000

PO Box 117
Collins St West
VIC 8007

Telephone: +61 3 9619 9800
Web site: www.liuaustralia.com.au

Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A.
(The liability of members is limited)

Certificate of Currency



This Certificate confirms that the undermentioned Policy is effective on the date of issue and in accordance with the details shown:

Class of Insurance Combined General Liability Insurance

Policy Number IG-ME-SPC-07-110856

Named Insured YELLOWFIN INTERNATIONAL PTY LTD
YellowfinBI North America, Inc.
Yellowfin Japan Co Ltd
Yellowfin EMEA Ltd
Yellowfin Australia Pty Ltd (presently dormant)

Policy Period: From: 25 November 2017 at 4:00pm local standard time
To: 25 November 2018 at 4:00pm local standard time

Limit of Liability \$20,000,000

Excess \$5,000

Policy Wording LIU AUS OQS Combined General Products Liability Information Technology Policy Wording (12-15)

Remarks The indemnity granted by this Policy extends to 54 Miller Street Pty Ltd as Landlord in respect of that Landlord's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 6.2 and arising out of the Insured's business at Suite 11.01, Level 11, 54 Miller Street North Sydney, but this Policy does not extend to the liability of the Landlord howsoever arising out of the negligence, breach of contract or breach of duty of such Landlord

Authorised by Liberty



Date of Issue 14 December 2017

This Certificate:

- Is issued as a matter of information only and confers no rights upon the holder.
- Does not amend, extend or alter the coverage afforded by the Policy listed.
- Is only a summary of the cover provided.
- Reference must be made to the current policy wording for full details.
- Is current at the date of issue only.

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Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A.
(The liability of members is limited)

Policy Schedule



Policy Number	IE-ME-SPC-07-110856
Named Insured	YELLOWFIN INTERNATIONAL PTY LTD YellowfinBI North America, Inc. Yellowfin Japan Co Ltd Yellowfin EMEA Ltd Yellowfin Australia Pty Ltd (presently dormant)
Policy Period	From: 4.00pm on 25 November 2017 local standard time To: 4.00pm on 25 November 2018 local standard time
Limit of Liability	\$1,000,000
Sub-Limits of Liability	Extension 2.1 Loss Mitigation & Rectification \$250,000 Extension 2.7 Intellectual Property Rights \$1,000,000 Extension 2.12 Replacing or Restoring Documents \$250,000 Extension 2.13 Inquiry Costs \$250,000 The Sub-Limits of Liability to Extensions 2.1, 2.7, 2.12 and 2.13 apply in respect of any one claim and in the aggregate. They form part of, and are not in addition to, the Limit of Liability .
Territorial Limits	Worldwide
Jurisdictional Limits	Worldwide (subject to 2.6, 2.7 and 2.18)
Optional Extensions	3.1 Multiple Causes of Loss Not Included 3.2 Novated Contracts Not Included 3.3 Principal's Indemnity Not Included 3.4 Proportionate Liability Not Included 3.5 Reinstatement Included
Excess	\$25,000
Policy Wording	LIU AUS OQS Maxx Civil Liability Information Technology Policy Wording (12-15)
Endorsements	Amended Excess North America Specific Entity Retroactive date Exclusion Contract Specific Limit Increase
Retroactive Date	04 December 2017

Policy Schedule



This policy is valid only if this schedule is signed and dated below by a person authorised by **Liberty**.

Issued 04 December 2017 in Melbourne

Authorised by Liberty



A handwritten signature in black ink, appearing to read "M. D. D.", written over a horizontal line.

Policy Schedule



Policy Number	IG-ME-SPC-07-110856
Named Insured	YELLOWFIN INTERNATIONAL PTY LTD YellowfinBI North America, Inc. Yellowfin Japan Co Ltd Yellowfin EMEA Ltd Yellowfin Australia Pty Ltd (presently dormant)
Policy Period	From: 4.00pm on 25 November 2017 local standard time To: 4.00pm on 25 November 2018 local standard time
Limit of Liability	\$20,000,000
Sub-Limits of Liability	Extension 2.6 Inquiry Costs \$250,000 Extension 2.10 Property in Care, Custody or Control \$50,000
	The Sub-Limit of Liability to Extensions 2.6 and 2.10 apply in respect of any one claim and in the aggregate. They form part of, and are not in addition to, the Limit of Liability .
Territorial Limits	Worldwide
Jurisdictional Limits	Worldwide excluding North America
Excess	\$5,000
Policy Wording	LIU AUS OQS Combined General Products Liability Information Technology Policy Wording (12-15)
Endorsements	Amended Excess North America Change to Limit of Liability

This policy is valid only if this schedule is signed and dated below by a person authorised by **Liberty**.

Issued 04 December 2017 in Melbourne

Authorised by Liberty





END-USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END-USER SOFTWARE LICENSE AGREEMENT (“**AGREEMENT**”) CAREFULLY BEFORE DOWNLOADING, INSTALLING, COPYING, ACCESSING OR OTHERWISE USING THE PRODUCT (DEFINED BELOW) AND DOCUMENTATION TO WHICH THIS AGREEMENT RELATES. BY ACCEPTING THIS AGREEMENT, WHICH YOU CAN DO SO BY CLICKING THE ACCEPT BUTTON, DOWNLOADING, INSTALLING, COPYING, ACCESSING OR OTHERWISE USING THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET OUT BELOW.

THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND YELLOWFIN INTERNATIONAL PTY LTD A.C.N. 107 122 234 (“**YELLOWFIN**”) AND EACH REFERRED TO AS A “**PARTY**”. IN THIS AGREEMENT “**YOU**” REFERS TO THE INDIVIDUAL WHO HAS ACCEPTED THE TERMS OF THIS AGREEMENT. IF THE PRODUCT IS BEING USED ON BEHALF OF AN ENTITY, THEN “**YOU**” ALSO REFERS TO THAT ENTITY. IF YOU ARE ACCESSING THE PRODUCT ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ALSO AGREE TO THESE TERMS ON ITS BEHALF. THE AGREEMENT WILL ALSO BE APPLICABLE TO THE USE OF THE PRODUCT ON A TRIAL BASIS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS: DO NOT INSTALL OR USE THE PRODUCT; OR IF YOU ACCESSED THE PRODUCT ELECTRONICALLY, CLICK “DISAGREE/DECLINE” OR SIMILAR TERM; AND YOU MUST PROMPTLY RETURN ALL COPIES OF THE PRODUCT AND DOCUMENTATION TO YOUR SUPPLIER TO BE ELIGIBLE FOR A FULL REFUND. IF YELLOWFIN SOFTWARE IS INCLUDED WITH YOUR PURCHASE OF THIRD-PARTY SOFTWARE OR HARDWARE, YOU MUST RETURN THE ENTIRE HARDWARE/SOFTWARE PACKAGE IN ORDER TO OBTAIN A REFUND.

1. GRANT OF LICENSE

- 1.1. Subject to the terms of this Agreement, and up-to-date payment of all applicable license fees to Yellowfin or its distributor, reseller, independent software vendor (“**Channel Vendor**”) (as the context requires), set out in the document pursuant to which You subscribe for a license to the Product (and related services) and which is approved by Yellowfin or Channel Vendor (as the context requires) (“**Order**”), Yellowfin grants You a non-exclusive, non-transferable, non-sublicensable, personal, limited license for Your internal business purposes to use the “**Product**”.
- 1.2. “**Product**” under this Agreement means a business intelligence and analytics platform comprised of copies of computer software programs developed and owned by Yellowfin and branded ‘Yellowfin’, or any other name or trademark belonging to Yellowfin, comprising various machine-readable computer files with the following components: metadata layer for connecting to and describing data sources, reporting and data analysis creation, dashboard builder, storyboard, collaboration, mobile apps for iOS and Android, and DashXML; however, excludes without limitation: all application program interfaces, plug-ins and third-party components, applications and services as well as any components not shipped to You by Yellowfin.
- 1.3. Any amendments, enhancements, modifications, revisions, updates, patches, or new releases of the Product distributed by Yellowfin (“**Update**”) are subject to the terms and conditions of this Agreement; however, they may also be subject to additional terms accompanying the Update.
- 1.4. Yellowfin grants You and Your Affiliates a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use Yellowfin’s written materials that describe the features, functions and operation of the Product located at www.yellowfinbi.com/YFSupportCentre.i4 as of the delivery date of the Product (the “**Documentation**”).
- 1.5. Except for the license rights granted herein, Yellowfin and/or its licensors at all times retain all rights, title, and interest in the Product and the Documentation. The Product is licensed, not sold, for use only under the terms of this Agreement, and Yellowfin reserves all rights not expressly granted to You.



- 1.6. The term of this license is set out in the Order. If no term is set out in the Order then the term is one (1) year from the Commencement Date (“**Initial Term**”), unless otherwise terminated in accordance with this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one (1) year, on a rolling basis (each renewal a “**Renewal Term**”), unless a Party provides written notice to the other Party not less than thirty (30) days prior to the expiration of the Initial Term or any Renewal Term (as the context requires), that it does not intend to renew this Agreement, in which event the Agreement will expire at the end of the then-current Initial or Renewal Term. The Initial Term, together with all Renewal Terms, will be considered the “**Term**” of this Agreement.
- 1.7. You agree to pay the Annual License Fee as set out in the Order. The Annual License Fee is inclusive of all technical support and maintenance unless otherwise provided in the Order. You also agree to pay any applicable value-added taxes or other applicable taxes, tariffs or withholding taxes that the relevant authorities require You to pay in connection with the Order. All fees are exclusive of any such taxes or tariffs unless expressly stated.
- 1.8. Following acceptance of your Order, Yellowfin will first issue You a temporary software license key”, which will time-out and stop the Product from functioning after sixty (60) days or other time period set out in the Order. Provided all fees and charges payable by You to Yellowfin or its Channel Vendor (as applicable) are paid in full in connection with the Product, and You are not in material default under this Agreement, Yellowfin will send You a permanent software license key before the temporary key expires.
- 1.9. The Product is delivered electronically. Yellowfin will make the Product available for download at the electronic software download (“**ESD**”) site specified by Yellowfin and provide You with instructions on how to access and download the Product. Delivery is complete when You have fully downloaded the Product. Delivery will be deemed complete after seven (7) days of notice that the Product is available for ESD and where Yellowfin has not, in the seven (7) days prior, been informed by You in writing that You are unable to download the Product. You must promptly notify Yellowfin if You are unable to download the Product. You may only use the Product through to the date for which You have paid all applicable fees. Any rights You may have to use the Product cease immediately when payments are no longer current.

2. LICENSE RESTRICTIONS

- 2.1. You acknowledge and agree that the license restrictions contained in this clause 2 apply to You and any person who, under the license granted to You, has access to the Product. References to “You” and “Your” in this clause will also include foregoing persons.
- 2.2. The license model for the Product is the model set forth in the Order.
- 2.3. Your use of the Product and Documentation is limited to internal use within Your organization in the configuration and for the number of users in accordance with Your Order.
- 2.4. Yellowfin reserves all rights, title and interest in and to the Product, including all related intellectual property rights not expressly granted to You in this Agreement. Without limiting the generality of the foregoing, You acknowledge that the Product contains trade secrets and is subject to applicable laws. You agree that You will not, and will not enable or permit others to:
 - 2.4.1. Copy, disassemble, reverse-engineer, decompile, modify or create derivative works of the Product or the Documentation (to the extent that such restrictions are not prohibited by applicable law) except with regard to components of the Product identified as “open-source components” and in strict compliance with the applicable open-source license governing use of that open-source component;
 - 2.4.2. Without the prior written consent of Yellowfin, use the Product to: (i) develop any works that are functionally compatible with, or competitive to, the Product that can function independently of the Product; or (ii) create any works that are derived from the Product (using the Product to produce reports or other tasks permitted by the Product are not deemed to be works derived from the Product);
 - 2.4.3. Utilize any equipment, device, software, or other means designed to circumvent, tamper,



- disable or remove any security mechanisms or form of copy or usage protection used by Yellowfin in connection with the Product;
- 2.4.4. Alter, remove or obscure any patent, trademark or copyright notice in the Product or Documentation;
 - 2.4.5. Combine the Product with any other software (including open-source software), where the combined software is subject to the GNU General Public License or any other license that requires the combined program or the Product and its source-code to be made freely available;
 - 2.4.6. Sublicense, sell, encumber, outsource, or grant any other rights in the Product and/or the Documentation, or allow the Product or Documentation to be possessed by another party.
- 2.5. You must not upload, post or otherwise transmit any content that You do not have a right to transmit.
 - 2.6. You agree You will not upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 2.7. You agree that You will not import, export or re-export the Product, including technical data, to any country, person, entity or end user in violation of export control laws, regulations or restrictions of any of the locations in which You have a business connection. For example, if you have a business connection in the United States, You agree not to export, re-export, or provide the Product to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.
 - 2.8. If You are acquiring the Product by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government's rights in the Product will be only as set forth herein. The Product and related Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software Documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Product and such Documentation with only those rights set forth herein. Contract/Manufacturer is: Yellowfin International Party Ltd, Level 46, 360 Elizabeth Street, Melbourne, Victoria 3000, Australia.
 - 2.9. You may not assign this Agreement without the prior written consent of Yellowfin. However, You may assign this Agreement, in whole, to any successor in interest by operation of law, or pursuant to a merger, corporate reorganization, or sale of all or substantially all of Your business provided: (i) foregoing change does not involve a competitor of Yellowfin; (ii) the corporate successor by merger or the purchaser of the assets (as the context requires) agrees to be bound by this Agreement; and (iii) You provide Yellowfin with thirty (30) days prior notice of proposed assignment.
 - 2.10. You agree to immediately notify Yellowfin of any unauthorized use of the Product or any other breach of security. Yellowfin will not be liable for any loss or damage arising from Your failure to comply with this clause.
 - 2.11. You may not disclose benchmark test results for the Product without the written consent of Yellowfin.
 - 2.12. If, as part of the Product, You have access to Google Maps/Google Earth APIs: (i) You agree that all such use will be pursuant to the terms and conditions of this Agreement, together with Google's Terms of Service, which may be found at: www.google.com/intl/en/policies/terms (or such successor URLs that Google may designate from time to time), together with any changes to such terms as Google may make from time to time.
 - 2.13. Insofar as the Product contains third-party components, they are set forth in the Documentation, the "[readme].txt" file, the [notices.txt] file, or another electronic file accompanying the Product ("**Special Notices**"). Subject to clause 2.14 below, Yellowfin warrants that it complies with the terms of the license applying to third-party components incorporated into the Product and that it is permitted to license the Product to You, and Your Affiliates, to use. Where the Product or Documentation contains, or otherwise



incorporates, Special Notices, You agree that You must not delete, modify or alter the Special Notices. In the event of any inconsistency between this Agreement and a license associated with an open-source component, the relevant open-source component license will take precedence (but solely with respect to the open-source component(s)). For example, where an open-source component license permits use of that open-source component in a manner otherwise restricted under this Agreement, You are entitled to use the open-source component as permitted under its associated license.

- 2.14. Where You alter the script (code) shipped with the Product, any third-party component shipped with the Product or any other electronic file accompanying the Product (“**Altered Component**”), You do so at your own risk and liability, and You acknowledge that You are wholly responsible for, and warrant You will comply with, the terms of any license(s) applicable to that Altered Component, including, but not limited to, payment of any applicable license fees triggered by enabling features subject to a commercial license, arising from any such foregoing action by You; and You agree to indemnify and compensate Yellowfin for any loss or damage suffered by Yellowfin for any breach of said warranty.

3. INSTALLATION AND USE

- 3.1. You may install and/or access and use the Product only in the configuration and for the number of licenses You acquire under the Order. Individual licenses may not be shared for use on different computers or servers unless permitted under the terms of the Order. Yellowfin may control the number and type of licenses and the use of the Product by key codes. If a license key or other security device is provided with the Product, You must not share or transfer the security device to any other third party.
- 3.2. Certain third-party applications, components or services (“**Third-Party Applications**”) may be available for use with the Product. You acknowledge and agree that Yellowfin is not responsible for the availability of Third-Party Applications notwithstanding that they may be made available by Yellowfin. Yellowfin will not be liable whatsoever for any Third-Party Applications. You expressly acknowledge and agree that use of Third-Party Applications is at Your own discretion and risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with You. You acknowledge and agree that the use of any Third-Party Applications is governed by such Third-Party Applications’ terms of use, license agreement, privacy policy, or other such terms and conditions it specifies and that any information or personal data you provide, whether knowingly or unknowingly, to such Third-Party Applications, will be subject to such Third-Party Applications’ privacy policy, if such a policy exists. You are solely responsible for any fees, charges, loss or damage that results from using Third-Party Applications without any apportionment or attribution to Yellowfin. Insofar as You use the Product with any Third-Party Applications, You warrant that You have obtained and complied with the necessary license, and have obtained a consent or right to do so from the relevant third parties.

4. CONSENT TO USE OF DATA

- 4.1. You agree that Yellowfin and its authorized representatives may collect and use technical information You provide as a part of support services related to the Product.
- 4.2. In order for Yellowfin to assist You in isolating the cause of a problem with the Product, Yellowfin may request that You (i) allow Yellowfin to remotely access Your system; or (ii) send Your information or system data to Yellowfin, and for these purposes You authorize Yellowfin (and its subcontractors) to do so.
- 4.3. You remain responsible for (i) any data and the content of any database You make available to Yellowfin; (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data); and (iii) backup and recovery of any database and any stored data.

5. LIMITED WARRANTY AND DISCLAIMER

- 5.1. Yellowfin warrants, for a period of ninety (90) days from the date of delivery of the Product (the “**Warranty Period**”), that the Product will conform in all material respects to the Documentation provided that you administer, access and use the Product in accordance with the Documentation and that it is



properly set up and configured. As the sole and exclusive remedy for any breach of this warranty, Yellowfin will, within a reasonable time, repair or replace the Product if the failure is reported during the Warranty Period. If Yellowfin reasonably determines that repair or replacement is not economically or technically feasible, Yellowfin may terminate this Agreement and provide You with a full refund of the license fee and any support fees paid with respect to the Product.

- 5.2. Yellowfin must provide You with support in accordance with Yellowfin's current and applicable support policies listed at www.yellowfinbi.com.
- 5.3. YOU ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO SELECT THE CORRECT LICENSE MODEL TO ACHIEVE YOUR INTENDED RESULTS WITH THE PRODUCT.
- 5.4. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, YELLOWFIN, ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, OR ANY SERVICES OR UPDATES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY UPDATES OR SERVICES ARE DELIVERED "AS IS" AND ARE NOT WARRANTED TO BE ERROR-FREE, AND YOU ACCEPT THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE, RELIABILITY, ACCURACY AND RESULTS OF USE OF THE PRODUCT WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YELLOWFIN DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE WITH RESPECT TO THE PRODUCT, OR ANY SERVICES OR UPDATES. YELLOWFIN DOES NOT WARRANT THAT THE PRODUCT WILL: (I) BE ERROR-FREE; (II) OPERATE WITHOUT INTERRUPTION; (III) CORRECT ALL PROGRAM ERRORS; (IV) BE COMPATIBLE WITH ANY PRODUCTS NOT SUPPLIED BY YELLOWFIN; OR (V) MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE THAT YELLOWFIN DISCLAIMS ALL WARRANTIES IF THE PRODUCT IS NOT PROPERLY SET UP AND CONFIGURED.
- 5.5. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY YELLOWFIN, ITS CHANNEL VENDORS, OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, DISTRIBUTORS OR AGENTS, WILL INCREASE THE SCOPE OF THE EXPRESS WARRANTIES OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.
- 5.6. YELLOWFIN WILL NOT BE LIABLE FOR DAMAGES ARISING FROM THIRD-PARTY SOFTWARE THAT OPERATES SEPARATELY, BUT IN CONJUNCTION WITH THE SOFTWARE, AS THIRD-PARTY SOFTWARE IS LICENSED TO YOU UNDER SEPARATE AGREEMENTS.
- 5.7. THE PRODUCT IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE (INCLUDING, WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY NUCLEAR FACILITY; DIRECT LIFE SUPPORT MACHINES; WEAPON SYSTEMS; OR CONTROL OF AIRCRAFT, AIR TRAFFIC, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATIONS), IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY OR INDIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YELLOWFIN FOR ITSELF, AND ON BEHALF OF ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS, DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCT FOR ANY SUCH HIGH RISK USES.
- 5.8. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO THE LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY LAW. NO WARRANTIES APPLY AFTER THAT PERIOD.

6. INTELLECTUAL PROPERTY OWNERSHIP AND INDEMNITY

- 6.1. You agree that Yellowfin owns intellectual property rights in: (a) the Product; and (b) all amendments, enhancements and modifications of the Product, including any created solely by Yellowfin or as a result



of collaboration with You. You further agree that Yellowfin is not bound by any duty of confidentiality with respect to any such amendments, enhancements or modifications.

- 6.2. While You are not required to do so, You may from time to time provide feedback to Yellowfin with regard to the functionality and performance of the Product and/or Documentation including, without limitation, identifying potential errors and improvements (“**Feedback**”). Feedback provided by You may be used by Yellowfin to improve or enhance the Product and/or Documentation, and You hereby grant Yellowfin a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such Feedback without restriction.
- 6.3. Yellowfin will defend, indemnify and hold You harmless from all costs and reasonable expenses awarded by a court or agreed to in settlement which directly results from any third-party claim that the Product infringes either a valid: (i) Australia or United States patent; or (ii) copyrighted material, but only if You: (a) notify Yellowfin promptly in writing of such claim; (b) give Yellowfin sole control of the defense of any such claim and all negotiations for its settlement or compromise; and (c) You reasonably assist and cooperate with Yellowfin in the defense, settlement or compromise of any claim including providing Yellowfin with information, authority and assistance; however, Yellowfin must not make any admission of liability on behalf of You in relation to criminal charges unless it first obtains Your prior written consent to do so, which must not be unreasonably withheld.
- 6.4. In the event that a final injunction is obtained against Your use of the Product, if Yellowfin reasonably believes that Your use of the Product could be enjoined, or if in Yellowfin’s opinion the Product is likely to become the subject of a successful claim of infringement, Yellowfin will: (i) obtain the right for You to continue using the Product; (ii) modify or replace the Product so that it becomes non-infringing or, in the event neither of the previous two options are commercially reasonable for Yellowfin; (iii) terminate this Agreement and refund: (a) if You are licensed to use the Product on a subscription basis, any prepaid but unused fees as of the date of termination; or (b) for any other license type, the amount You paid for the Product less an amount for depreciation to reflect the unused period determined on a straight-line five-year depreciation basis with a commencement date as of the Commencement Date. Yellowfin will have no liability for a claim if the claim is based on: (A) Your use of the Product more than thirty (30) days after Yellowfin has notified You of (i), (ii) or (iii) above; or (B) the version of the Product that You are using is not the current release version of the Product.
- 6.5. Yellowfin will have no liability under this Section for any infringement or claim based upon: (i) the combination, operation or use of the Product with equipment or software not supplied exclusively or solely by Yellowfin to the extent that the alleged infringement would have been avoided without foregoing combination, operation or use; (ii) Your failure to comply with designs, specifications or instructions provided by Yellowfin; (iii) Your use of the Product in an application or environment for which it was not designed or not contemplated; (iv) modifications to the Product made by anyone other than Yellowfin; or (v) use of the Product not permitted by this Agreement or Order.
- 6.6. THE FOREGOING INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY OF YELLOWFIN AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

7. MUTUAL LIMITATION OF LIABILITY

- 7.1. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 7 (MUTUAL LIMITATION OF LIABILITY) APPLY TO THE FULL EXTENT THAT THEY ARE NOT PROHIBITED BY APPLICABLE LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER.
- 7.2. EXCEPT FOR LIABILITY ARISING UNDER CLAUSE 3 OR BREACH OF YELLOWFIN’S INTELLECTUAL PROPERTY RIGHTS OR FEES OWED ON TERMINATION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) THE LIABILITY OF EACH OF THE PARTIES, IF ANY, FOR DAMAGES RELATING TO ANY PRODUCT, UPDATE AND/OR SERVICES IS LIMITED TO THE ACTUAL AMOUNTS YOU PAID FOR THE PRODUCT, UPDATE AND/OR SERVICES; (II) A PARTY’S LICENSORS AND ITS SUPPLIERS HAVE NO LIABILITY TO THE OTHER PARTY FOR ANY



DAMAGES; (III) IN NO EVENT WILL ANY PARTY TO THIS AGREEMENT, ITS LICENSORS, AND/OR ANY OF ITS RESPECTIVE SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, GOODWILL, ANTICIPATED SAVINGS OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, ANY UPDATE, AND/OR ANY SERVICES, EVEN IF A PARTY, ITS LICENSORS AND/OR ANY OF ITS RESPECTIVE SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EACH FOREGOING EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND SEVERABLE EXCLUSION.

8. AUDIT RIGHTS

- 8.1. Yellowfin may install and use automated license tracking, management and/or enforcement solutions with the Products, which You must not disrupt or alter. You agree to maintain books and records in connection with this Agreement and Your use of the Product and any Updates and/or services provided by Yellowfin. Such books and records must include at a minimum the number of licenses that You purchased and the number that You are using. At its expense and with reasonable written notice, Yellowfin or a third party appointed by Yellowfin may audit the books, records, and if necessary, the systems on which the Product or any Update is installed for the sole purpose of ensuring compliance with the terms of this Agreement. Yellowfin must only conduct one (1) audit per year unless an audit discloses a breach of this Agreement in which case Yellowfin will have the right to conduct follow-up audits as necessary. All audits must be conducted during regular business hours at Your office and will not unreasonably interfere with Your activities. Yellowfin will treat all such records and books as confidential information. If any audit reveals that You have underpaid license or support fees by more than five percent (5%), You agree to pay for the underpaid fees based on Yellowfin list prices in effect at the time the audit is completed and all reasonable audit expenses within thirty (30) days of invoice by Yellowfin for those underpaid fees and auditing expenses.

9. TERMINATION

- 9.1. Your right to access and use the Products will cease upon the earlier of expiration or termination of this Agreement. You acknowledge that you should take all necessary precautions to avoid any loss of data that might result when the Product can no longer be used.
- 9.2. Subject to clause 9.3 and clause 9.4, a Party ("**Party A**") may terminate this Agreement by written notice if the other Party ("**Party B**") materially defaults in the performance of this Agreement and fails to cure the default to the reasonable satisfaction of Party A within a reasonable time after such notice. This remedy will not be exclusive and is in addition to any other remedies that Party A may have under this Agreement or otherwise.
- 9.3. Yellowfin may terminate this Agreement after ten (10) days written notice of Your failure to pay outstanding fees to Yellowfin or its Channel Vendor (as the context requires), and immediately terminate this Agreement if You breach the license restrictions in clause 2 and/or breach Yellowfin's intellectual property rights set out in clause 6 of this Agreement. If Yellowfin is terminating this Agreement for cause, you remain liable for all unpaid fees that are payable for the entire Term.
- 9.4. Where You have entered into a separate agreement with a Channel Vendor for the supply of the Product to which this Agreement relates, whether the Product is licensed as a stand-alone or as part of a packaged solution or service, and any such foregoing agreement is terminated or expires, then this Agreement will also automatically concurrently terminate or expire (as the context requires) at the same time as the foregoing agreement unless otherwise agreed in writing between the Parties.
- 9.5. Where Yellowfin has a right to terminate this Agreement, Yellowfin may at its absolute discretion elect to suspend the Agreement. The Parties agree that an election by Yellowfin to suspend this Agreement in no way alters, derogates, extinguishes or waives Yellowfin's right to terminate this Agreement for breach under this Agreement or at law.
- 9.6. Any bankruptcy, insolvency, or liquidation or assignment of Your assets for the benefit of creditors will be



void and this Agreement and the licenses granted under this Agreement will automatically terminate without further notice.

- 9.7. Within ten (10) days of the date of expiration or termination of this Agreement, You agree to destroy all copies of the Product, Updates and Documentation and, if requested by Yellowfin, certify in writing that You have done so.

10. MISCELLANEOUS

- 10.1. This Agreement and Order constitutes the complete agreement between You and Yellowfin with respect to the Product and supersedes all other agreements, proposals, communication or advertising, oral or written, signed or unsigned unless the Parties have mutually agreed in another signed document, expressed in clear and unambiguous language, that a term or the terms of that other document prevails, supersedes and/or replaces this Agreement (or parts hereof).
- 10.2. You agree that your Order of the Product is neither contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Yellowfin or its employees, agents, representatives or Channel Vendors regarding future functionality or features.
- 10.3. **[Intentionally deleted]**
- 10.4. If any provision of this Agreement is held unenforceable or in conflict with the laws of a relevant jurisdiction or be invalid then it shall be read down to the minimum extent necessary to render it enforceable and valid and, if incapable of being read down, it will be severed from the remainder of this agreement which shall then be interpreted so to give full effect to the purpose or intent of the parties in entering into the same, and the remaining provisions of this Agreement will remain in full force and effect.
- 10.5. This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.
- 10.6. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder will not constitute a waiver thereof. A waiver of default will not operate as a waiver of any other default or of the same type of default on future occasions.
- 10.7. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 10.8. No failure to exercise and no delay in exercising, any right, power or remedy by a Party will operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on any Party unless made in writing.
- 10.9. You agree that Yellowfin may include your name in its published customer list, which may be provided to other potential customers of Yellowfin and/or its affiliates or distributors. Yellowfin will remove You from this list if You notify Yellowfin in writing that You wish to be removed.
- 10.10. If You are entering into this Agreement on behalf of an entity (for example, business, partnership, company) You represent then You warrant that You have been duly authorized to enter into this Agreement on behalf of that entity.

[Exhibit-A Follows]



EXHIBIT A

LICENSE MODELS AND DEFINITIONS:

The license model (including associated rights and obligations) for the Product applicable to You is set forth in the Order. The description of each Yellowfin license model is set forth below, along with any applicable definitions.

Definition: "Deployment" means one installation within a single or clustered environment.

Named User License: This license grants You the right to designate a specific individual (a "Named User") to either: (i) access and use the Product, or (ii) access and use an application which can access the Product. Where You order multiple Name User License, You must be able to identify and count each individual designated as a Named User. Sharing of a Named User License with more than one individual is expressly prohibited. Named User License is Named Users are strictly prohibited from sharing with other Individuals a Named User License. Named User Licenses are assigned to a single Deployment and may not be shared among different Deployments. A Named User License is required by Names User for both direct and indirect (pooled) access to the Product, excluding output files generated by the Product and stored externally to the Yellowfin repository. A Named User does not have to be logged on to the Product to be counted as a Named User. A Named User License may be transferred from one individual to another individual provided that the original designated individual as a Named User no longer has access to use the Product. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.9 of this Agreement.

Processor or CPU License: When the Product is licensed under a Processor License, the aggregate number of central processing units ("Processors") running any Product components(s) may not exceed the number of Processors licensed. A multi-core chip Processor with N processor cores shall be counted as N Processors. Additional CPU License(s) are required for each CPU that runs the Product.

Concurrent User License: When the Product is licensed on a Concurrent User License, each individual user need not be specifically identified as the holder of a license. Sharing the license by one or more users is permitted, provided that the number of users accessing or using the Product at any one time does not exceed the number of Concurrent User Licenses under the Order. Concurrent User Licenses are assigned to a single Deployment and may not be shared among different Deployments. A Concurrent User License is required by users for both direct and indirect (pooled) access to the Product, excluding output files generated by the Product and stored externally to the Yellowfin repository.

Restricted License: If You acquired the Product bundled or otherwise provided in combination with or for use with a third party product ("OEM Application"), You have acquired a Restricted License. Your permitted use of the Product will be restricted to the host application or service and its data structures, and you may not use the Product: (i) apart from the host application; or (ii) service or on a stand-alone basis; or (iii) in connection with other software applications or services. If the OEM Application requires the use of a data mart or data warehouse, you may use the Product with the data mart or data warehouse only to access data created or processed by the OEM Application.

Server CPU License: When the Product is licensed under a Server CPU License it is licensed on a processor core basis. The Product may be loaded onto a single computer with up to eight (8) Processors or CPUs. A multi-core chip processor with N processor cores shall be counted as N Processor cores.

Developer License: A Developer License limits your access and use of the Product to internal application development and support purposes only. If the Developer License is for components of the Product only, then such right is limited to those components. A Developer License may not be sold, transferred, and may not be used in a production environment, as part of a backup environment or as a failover environment.

Evaluation License: An Evaluation License may be used for the sole purpose of Product demonstration or evaluation and may not be used for or in conjunction with the development of the Product. Under an Evaluation License, the Product is provided on an "as is" basis and without any warranty whatsoever except those that cannot be excluded by law. Insofar as an Evaluation License is used with another license model, You are also subject to the license terms of the appropriate license model for the Product set forth in this Exhibit A. An Evaluation License may not be transferred, and may be terminated by Yellowfin at any time.

Subscription License: When the Product is licensed on a Subscription License, You are granted a non-exclusive and non-transferable license to use the Product for a term, the length of which is set forth in the Order (the



“Subscription Term”). Unless terminated earlier as provided in this Agreement, the Subscription Term may not be terminated and all subscription fees are non-refundable. The Subscription Term may be renewed annually at Yellowfin’s then current published list price or such other term as mutually agreed in writing by the parties. You may only use the Product through the date for which you have paid all applicable fees. Any rights you may have to use the Product cease immediately when payments are no longer current, and you agree, at such time, to immediately stop all use of the Product, and return all copies of the Product and any Documentation to Yellowfin, and Yellowfin will have no further obligation to you. As long as applicable fees are current, Yellowfin will provide you with updates and upgrades which are generally commercially available, and will use commercially reasonable efforts to provide support and maintenance to you consistent with Yellowfin’s then current support and maintenance policies which are listed at www.yellowfinbi.com.