



## Othot Terms & Conditions

### 1. Services and Support

- a. Othot hereby grants to Client, and Client hereby accepts from Othot, a non-exclusive and nontransferable license to, during any Term, (a) access and use the Othot Dashboard and/or SaaS-based analytics ("Service") on the platform via the Internet, and (b) use the then current, guides and manuals published by Othot and made generally available by Othot for the Service ("Documentation"). Client agrees that its purchase of license(s) for the Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Othot with respect to future functionality or features.
- b. Subject to the terms hereof, Othot will provide Client with reasonable technical support services.

### 2. Restrictions and Responsibilities

- a. Client will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Othot or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.
- b. Further, Client may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227 7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.
- c. Client represents, covenants, and warrants that Client will use the Services only in compliance with this Agreement and all applicable laws and regulations. Client hereby agrees to indemnify and hold harmless Othot against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Client's use of Services. Although Othot has no obligation to monitor Client's use of the Services, Othot may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

- d. Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Client shall also be responsible for maintaining the security of the Equipment, Client account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Client account or the Equipment with or without Client's knowledge or consent.

Client will ensure and agrees that: (i) data provided by Client ("Client Data") are in proper format as specified by the Documentation or the Statement of Work for Services; (ii) its personnel are familiar with the use and operation of the Service; (iii) no other software, data or equipment having an adverse impact on the Service shall be introduced and (iv) it will not use or permit to be used on the System or Portal any of the following information (i) social security number; (ii) passport number; (iii) driver's license number or state ID number, (iv) bank account number, (v) credit or debit card number (or bank information), (vi) personal characteristics, including photographic image, fingerprints, handwriting or other unique biometric data, (vii) any information under applicable State, Federal or local law that is impermissible to transfer because the information relates to a minor (viii) National identification number or (ix) other information that would permit access to a person's financial account or resources ("Financially Related Personally Identified Information"). Following any initial implementation assistance by Othot, Client will load the Client Data and configure the Service, any updates and its internal processes as needed to operate the Service and any updates in Client's computing environment. Client will use its reasonable commercial efforts to provide the Client Data required for the platform.

- e. Client understands, agrees and confirms that Othot's policy is that it does not accept Financially Related Personally Identified Information either as a Othot or on the platform, Portal or as part of the Service and that such information should not be used or placed on the platform or Service. Othot will reject or remove any Client Data (or other information) that contains Financially Related Personal Identified Information and notwithstanding anything else contained herein Othot will have no liability and will not be responsible for any Financially Related Personally Identified Information that (i) is provided to it by Client (ii) that is on the Portal or System and/or (iii) relates to any breach or loss of such Financially Related Personally Identified Information. The use of Financially Related Personally Identified Information on the Service or Portal is prohibited by this Agreement.

### 3. Confidentiality; Proprietary Rights

- a. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Othot includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Client includes Client Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was

independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

- b. All right, title, and interest in and to the Service, including predictive analytics systems and processes, processes of developing any predictive analytics system and process, any predictive analytic model and any additions or modifications, updates or error corrections thereto, all media and documentation relating to such additions or modifications that are part of the Service or process, and all intellectual property rights associated therewith (including, without limitation, rights to copyrights, trade secrets, know-how, inventions, patents, improvements and research relating to the Service), as well as all content of whatever nature created by Othot or otherwise provided by Othot to Client other than Client provided content, including, without limitation, the Service and all non-public components thereof, including, without limitation, the source code thereto and Documentation, including, without limitation, all modifications, enhancements and intellectual property rights thereto and information/data that no longer reflects or references an identifiable individual (“Non-personally identifiable information”), shall belong solely to Othot and/or its applicable suppliers and licensors, without Client reserving or otherwise having any rights therein whatsoever. Othot shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service or Other Services any suggestions, enhancement requests, recommendations or other feedback provided by Client relating to the Service or Other Services. Notwithstanding anything else contained herein, Othot may access and analyze Client provided content for the purpose of determining how the Service and the Other Services are being utilized by Client and Users, including how Client and Users interact with elements of the Service and/or Other Services, in order to make technological enhancements to the Service and/or Other Services.
- c. All right, title, and interest in and to the Client Content, including, without limitation, all modifications, enhancements and intellectual property rights thereto, shall belong solely to Client. Othot shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any Client Content to the extent necessary to provide the Service and Other Services to Client. Notwithstanding the foregoing, Othot may freely use any matter otherwise constituting Client Content if Othot obtains such matter from a third party which was not under any restriction from disclosing same. Client, not Othot, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Content, and Othot shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data unless such is caused by Othot in breach of this Agreement or is caused by a failure of the Service to operate in accordance with the Documentation. In the event this Agreement is terminated Othot shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.
- d. Notwithstanding anything to the contrary herein or otherwise, Othot shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Content and data derived therefrom), and Othot will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development,

diagnostic and corrective purposes in connection with the Services and other Othot offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

- e. Othot will make available to Client a file of the Client Data within 10 days of termination such that Othot will provide Client with all of Client's predictive data currently in the platform on execution of the request. This data will be in csv format and contain descriptive headers in the way of schema definitions on a secure FTP site stored on encrypted disks. Following Client receipt of such file, upon the request of Client after verifying the completeness of such file, Othot will delete all Client Data from its systems. Upon termination, Client's right to input, access or store Client Data in the Service ceases. At all times that Client Data is stored on Othot's systems, it shall be stored in such a manner that it is logically isolated from the data of other Clients and is fully encrypted. Othot will not, in the normal course of its operation, access the Client Data. Should Othot require access to this data it shall, whenever reasonably possible, give Client advance notice. If such advanced notice is not possible Othot shall promptly provide to Client the date and purpose of such access.
- f. Client shall use the Service for lawful purposes only and shall be solely responsible that its use of the Service and Other Services, as described herein, will conform to and comply with the requirements of all laws, ordinances and regulations in Client's home jurisdiction and all jurisdictions in which Client is doing business or in which Client's Users reside. Client shall not upload or otherwise transmit through the Service, nor ask Othot to upload or transmit through the Service on Client's behalf, any material which violates or infringes in any way upon the rights of others, which is unlawful, which encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates any law. Client shall be solely responsible for the Client Content. Client ensures that the provision of any Client Content by Client will comply with all applicable laws, including, The Family Education Rights and Privacy Act (20 U.S.C § 1232g), and similar state laws. Any conduct by Client that in Othot's discretion restricts or inhibits any other Othot Client from using or enjoying the Service is expressly prohibited. Client will be solely responsible for maintaining the security of User passwords provided to Client by Othot and for preventing unauthorized access to, or use of, the Service by its Users or employees or contractors of Client, and shall notify Othot promptly (and in any event no later than 24 hours following it becoming aware of any such unauthorized access) of any such unauthorized access or use. In addition to all of its other rights and remedies in the event of such unauthorized access, Client shall be solely responsible for all costs incurred by Othot to restore the Service and to rectify any issues caused by the unauthorized access. Client shall be solely responsible for obtaining and maintaining all telephone, computer hardware and other equipment and internet access needed for access to and use of the Service and all charges related thereto.

#### **4. Warranty and Disclaimer**

Othot shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Othot or by third-party providers, or because of other causes beyond Othot's reasonable control, but Othot shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. **HOWEVER, OTHOT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR**

FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND EXHIBIT B,, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND OTHOT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## 5. Indemnity

- a. Othot shall defend, indemnify and hold Client harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Client by a third party alleging that the use of the Service or Other Services as contemplated hereunder infringes the intellectual property rights of a third party; provided, that Client (a) promptly gives written notice of the Claim to Othot; (b) gives Othot sole control of the defense and settlement of the Claim (provided that Othot may not settle or defend any Claim unless it unconditionally releases Client of all liability); and (c) provides to Othot, at Othot cost, all reasonable assistance. This Section 5.1 states Othot's entire liability and Client's exclusive remedy for any claim of infringement.
- b. Client shall defend, indemnify and hold Othot, its officers, directors, shareholders, employees and agents, harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Othot by a third party alleging that the Client Content, a breach by Client of its representations or warranties pursuant to this Agreement or Client's or its Users' use of the Service in violation of this Agreement infringes the intellectual property rights of, or has otherwise harmed, a third party or has otherwise constituted a violation of any law, regulation or ordinance; provided, that Othot (a) promptly gives written notice of the Claim to Client; (b) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle or defend any Claim unless it unconditionally releases Othot of all liability); and (c) provides to Client, at Client's cost, all reasonable assistance.

## 6. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, OTHOT AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND OTHOT'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CLIENT TO OTHOT FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT OTHOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 7. Data Security

Othot shall maintain and enforce reasonable technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of the Client Data and Client Confidential Information that are at least equal to industry standards for applications similar to the Service.

## 8. Miscellaneous

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Client except with Othot's prior written consent. Othot may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Client does not have any authority of any kind to bind Othot in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions.