

TERMS OF USE

Please read these terms of use ("TOU") carefully before purchasing, accessing and/or using any of Context-Based 4 casting (CB4) Ltd. (including its affiliates, "CB4") Services (as defined below), any other third party components that may be included with them, and any related documentation. By accessing and/or using, or allowing others access or use, the Services you and the legal entity you represent ("you") agree to be bound by these terms.

For the purpose of this document, the "**Services**" shall mean online data analytics and reporting services provided by CB4, either via a shared cloud base infrastructure or via a dedicated server installed in your environment (as shall be agreed by the parties), including: (a) all proprietary technology (software, hardware, processes, algorithms, user interfaces, know-how, techniques, templates, designs and other tangible or intangible technical material or information) of CB4, its licensors and service providers used by CB4 to provide the Services; (b) associated support and maintenance services, as may be applicable and (c) and documentation of CB4 pertaining to the Services.

CB4 agrees to grant you, under the terms and conditions set out in this Agreement, a limited right to access and use the Services. If you do not agree with these TOU, you may not access and use Services and to the extent you were provided with any copies and/or materials in connection with the Services, you must return them to CB4 or, in the event that you subscribed to the Services via CB4's authorized partner (the "**Partner**"), to such Partner. In the event you were provided with digital copies of materials pertaining to the Services, including software pertaining to the Services (e.g., a software installed on a server in your environment via which the Services are provided to you), you must delete and/or uninstall such materials and software and notify CB4 and/or the Partner (if applicable) in writing that you have deleted and uninstalled such materials. If you do not comply with this provision, you will be obligated to pay the agreed upon price for the Services, and be bound by these terms.

1. THE SERVICES.

- 1.1. In providing the Services, we obtain and rely on certain information from you, from third parties, and third parties' software and applications. We are not responsible for the accuracy or completeness of such data nor can we assume any responsibility for the analytical, historical and statistical information provided to you as part of, or by your use or access to, the Services.
- 1.2. The use of the Services is conditioned upon you providing an Internet connection of sufficient bandwidth and quality, and upon meeting such other site requirements as CB4 or Partner may specify.
- 1.3. You agree that the scope of the Services to be provided to you is as described in the applicable specific purchase order you enter into with CB4 ("**Quote**") and that access and use of any future functionalities may require, in CB4's sole discretion, additional fees.
- 1.4. You may access and use the Services only for your own use, and only so long as you are in compliance with all provisions of these TOU and make all payments relating to the Services as and when due.
- 1.5. CB4 will use commercially reasonable efforts to make the Services available at all times with minimal downtime, provided, however, that in the following circumstances the Services may not be available: (a) regularly scheduled downtime (with respect to which CB4 will endeavor to provide at least 48 hours advance notice); or (b) any unavailability caused by circumstances beyond CB4's reasonable control, including without limitation, force majeure events (as set forth in Section 10 below).
- 1.6. Subject to the terms and conditions of this Agreement, CB4 hereby grants you, for as long as you subscribe to the Services, a non-exclusive, non-transferable, non-assignable license to access and use the Services for your internal business purposes only and according to the limitations regarding the authorized users, content, software, hardware functionality or any other limitations, as may be specified in the Quote. Any license granted to you with respect to any CB4's products is only to be used in connection with the Services and such products may not be used as a standalone product or in any way that is not as part of the Services.

2. OTHER LIMITATIONS.

2.1. You shall not:

- (i) Modify, cause or permit de-compilation, disassembly, reverse compilation or reverse assembly of all or any portion of the Services or otherwise attempt to derive the source code for the Services.
- (ii) Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Services, or use the Services in any service bureau arrangement, facility management or third party training.
- (iii) Export, re-export, or otherwise transmit, directly or indirectly, any software, information, data, or other materials received under these TOU.
- (iv) Use the Services to promote, conduct, or contribute to fraudulent or illegal activities.
- (v) Infringe on intellectual property rights (including, without limitation, copyrights and trademark rights) relating to: (i) the Services and (ii) third party content or resources.
- (vi) Access or use, or attempt to access or use, any of CB4's systems, programs or data that you are not authorized to access or use, or bypass or attempt to bypass any registration or User ID authentication processes, or any other security mechanisms, included in or part of the Services.
- (vii) Disrupt, circumvent, self-customize, or interfere with any part of the Services; attempt to circumvent any protection mechanism in the Services, or any part or component thereof.
- (viii) Use the Services in any manner which is contrary to its intended purpose or which is not specifically authorized by CB4.

2.2. In connection with your use of the Services, you agree to abide by all applicable local, state, national and international laws and regulations and do not allow nor facilitate a third party to violate any rights, data or information of others or the operational or security mechanisms of the Services nor do you allow third parties to use or to exploit the Services in any manner whatsoever.

3. HARDWARE AND/OR THIRD PARTY SOFTWARE

Except in the event that the Services are provided to you via a cloud based platform, in which case the hardware and third party software of such platform (but excluding hardware or software required to access the Services from your environment and/or by your users for which you will be responsible) shall be delivered to you as part of the Services, CB4 will not be responsible for the purchase of any hardware and/or third party software required for the access and/or use of the Services, and you undertake that any such required hardware or third party software will be purchased (if at all) by you on your own account.

4. OWNERSHIP & CONFIDENTIALITY

4.1. Title.

4.1.1. Title to the Services and to all content included in or incorporated into the Services (including CB4's Proprietary Information as defined below) or that may be made available to you by CB4 is reserved to CB4 and/or its licensors. Title in the data you provide and is uploaded to the Services, including User's Proprietary Information (as defined below) is reserved to you. You acknowledge and agree that CB4 is and will remain the owner of the Services and the content thereof and intellectual property rights, including, without limitation, copyright embodied therein or of which it is comprised, as well as any and all copies, modifications, alterations and enhancements to the Services, including any derivative works resulting from the Services.

4.1.2. Title to certain elements of the Services and content included in or incorporated into the Services are licensed by CB4 from third parties, as set forth in [Exhibit A](#).

4.2. Proprietary Information.

- 4.2.1. You agree that the Services and all nonpublic computer codes, inventions, algorithms, and know-how embodied in or by the Services and all other business, technical and financial information you obtain from CB4, whether designated confidential or not (hereinafter referred to as "**Proprietary Information**") are the confidential and proprietary property of CB4 and may only be used by you for the purposes of using the Services. You also agree that any expression of CB4's analyses, conclusions, enhancements, opinions, recommendations, ideas, techniques, know-how, designs, programs, findings, software, and other technical information provided to you by CB4 (or the Partner on behalf of CB4) in the course of performing consulting, training, maintenance or other services related to the Services, are the Proprietary Information of CB4. CB4 understands that as part of the Services you may disclose certain User's Proprietary Information (as defined below) to CB4. CB4 will take reasonable measures to maintain all your User's Proprietary Information in confidence and not to disclose any User's Proprietary Information to any third party without your prior consent. For the purpose of this section "**User's Proprietary Information**" means your technical and non-technical proprietary information disclosed by you to CB4 which is designated in writing as "Confidential" or "Proprietary" at the time of disclosure or promptly thereafter. User's Proprietary Information shall not include any information that: (1) was in the public domain prior to the time of disclosure by you; (2) enters the public domain after disclosure by you through no action or inaction of CB4; (3) is already in the possession of CB4 free of any obligation of confidentiality at the time of disclosure by you; (4) is obtained by CB4 from a third party; (5) is independently developed by CB4 without use of or reference to your User's Proprietary Information; or (6) is required by law to be disclosed by CB4, provided that CB4 gives you a prompt written notice of such requirement prior to such disclosure and shall provide you with reasonable assistance in obtaining an order protecting the information from public disclosure.
- 4.2.2. **Non-Disclosure.** Each party agrees to keep the Proprietary Information of the other party in a secure place, under access and use restrictions designed to prevent disclosure of the Proprietary Information to unauthorized persons and to instruct its personnel to keep such Proprietary Information confidential.
- 4.2.3. **Breach.** Without derogating from the foregoing, you agree that any disclosure of the CB4 Proprietary Information to a third party other than in accordance with the terms of this Agreement constitutes a material breach of these TOU and will terminate the provision of the Services and the license(s) granted by these TOU hereunder.
- 4.2.4. **Injunctive Relief.** Each party further agrees that such wrongful disclosure may cause irreparable injury that cannot be compensated by monetary damages and that injunctive or other equitable relief may be appropriate.

5. MAINTENANCE & SUPPORT

- 5.1. CB4 will provide maintenance and support in connection with the Services accordance with the CB4's Maintenance and Support Policy ("**Support Policy**") which can be accessed at the following link: <http://www.cb4.com/maintenancesandsupport.pdf>.
- 5.2. CB4 shall have no obligation to provide support or maintenance services, including without limitation, updates or modifications or new releases, except when you have a valid subscription for the Services. The Support Policy shall be subject to the terms of these TOU and no maintenance or support obligation of CB4 shall survive termination of these TOU.

6. WARRANTIES, INDEMNIFICATION AND LIMITATIONS OF LIABILITY

- 6.1. **Limited Warranty.** CB4 warrants that the Services will be rendered at the service level set forth in the Support Policy.

6.2. **No Warranty.** EXCEPT AS SET FORTH IN SECTION 6.1, THE SERVICES ARE PROVIDED "AS IS" AND "ON AVAILABLE" BASIS. CB4 AND ITS SUPPLIERS DO NOT WARRANT THE PERFORMANCE OR RESULTS THAT YOU MAY OBTAIN BY USING THE SERVICES. STATEMENTS BY CB4 AND ITS EMPLOYEES OR REPRESENTATIVES (INCLUDING THE PARTNER) AND THE PRINTED MATERIALS AND ELECTRONIC DOCUMENTATION AND ANY SPECIFICATIONS OF THE SERVICES DO NOT CONSTITUTE A WARRANTY OR REPRESENTATION REGARDING THE USE, OR THE RESULTS OF USE, OF THE SERVICES OR DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SERVICES IS ASSUMED BY YOU. CB4 DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, THAT OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL SERVICES ERRORS WILL BE CORRECTED.

6.3. **Disclaimer.** CB4 EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT. THE WARRANTIES SET OUT IN SECTION 6.1 ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CB4, ITS EMPLOYEES, DISTRIBUTORS, DEALERS, PARTNERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES. CB4 IS NOT RESPONSIBLE FOR PROBLEMS CAUSED BY THIRD PARTY'S HARDWARE OR SYSTEMS NOR FOR PROBLEMS IN THE INTERACTION OF THE SERVICES WITH NON-CB4 PRODUCTS OR SERVICES. CB4 SHALL NOT BE HELD LIABLE FOR ANY DOWN TIME OR UNAVAILABILITY OF THE SERVICES DUE TO INTERNET DOWN TIME, INSUFFICIENT BANDWIDTH OR ANY ERRORS WHICH ARE BEYOND CB4'S REASONABLE CONTROL.

6.4. INDEMNIFICATION:

- (a) Indemnification by CB4. CB4 agrees to defend, indemnify and hold you harmless from and against all actions, suits, claims, litigation, demands, subpoenas and proceedings and any judgments, damages, losses, debts, liabilities, obligations, penalties, fines, costs and expenses (including reasonable attorneys' fees) arising therefrom or in connection therewith as awarded by final court decision ("Claims") made by a third party alleging that the Services violate any US copyright or patent, provided that the same are not caused by an unauthorized use of the Services and/or the combination of Services with other products or services not provide by CB4. If any Claim which CB4 is obligated to defend has occurred, or in CB4's determination is likely to occur, CB4 may, in its sole discretion and at its option and expense (i) obtain for you the right to use the allegedly infringing item, (ii) substitute a functionality equivalent, non-infringing replacement for such item, (iii) modify such item to make it non-infringing and functionally equivalent, or (iv) terminate this Agreement and refund to you any prepaid amounts attributable to the period of time between when you were not able to use the Services due to such Claim.
- (b) Indemnification by You. You agree to defend, indemnify and hold harmless CB4 and its affiliates from and against Claims made by a third party alleging that the data provided by you in connection with the use of the Services violates any proprietary information, non-disclosure, copyright, patent or other intellectual property or contractual rights.
- (c) Notice, Assistance. An indemnified party shall notify the indemnifying party promptly of the service of process or the receipt of actual notice of any Claim; provided that the failure of an indemnified party to give such notice shall not relieve the indemnifying party of its indemnification obligations under this Agreement, except to the extent that such failure prejudices the rights of the indemnifying party. The indemnifying party shall immediately assume control, and diligently proceed with the defense, with attorneys reasonably acceptable to the indemnified party, and all related settlement negotiations provided, however, that the indemnifying party shall not agree to any settlement with a non-monetary obligation imposed upon the indemnified party without obtaining the prior written consent of the indemnified party to such non-monetary

obligation. The indemnified party will, at the indemnifying party's expense, provide the indemnifying party with the assistance, information, and authority reasonably necessary to provide the above defense.

6.5. **Limitation of Liability.** YOU AGREE THAT YOUR EXCLUSIVE REMEDIES, AND CB4'S ENTIRE LIABILITY WITH RESPECT TO THE SERVICES RENDERED BY CB4, SHALL BE AS SET FORTH HEREIN. YOU FURTHER AGREE THAT CB4 WILL NOT BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS OR BUSINESS BENEFIT, LOSS OF DATA, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF THE USE, INABILITY TO USE AND/OR THE PERFORMANCE OF, THE SERVICES, EVEN IF CB4 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY ALTERNATIVE LIABILITY OBLIGATIONS IN ANY AGREEMENT, STATEMENT OF WORK, ORDER OR OTHER DOCUMENT, IN NO EVENT SHALL CB4'S LIABILITY ARISING OUT OF THIS AGREEMENT OR ANY OTHER CAUSE OF ACTION EXCEED THE AMOUNT PAID BY YOU FOR THE SERVICES DURING THE PERIOD OF 6 MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

7. FEES

You shall pay the fees set forth in the applicable Quote pursuant to the payment terms set forth therein. Amounts unpaid after the due date shall bear interest from the due date of the lesser of: (a) one and one-half percent (1.5%) per month, or (b) the highest rate permitted by law. Time is of the essence for all payments due under this TOU. The Services and any related license shall be deemed terminated if the accompanying undisputed fee is not fully paid within thirty days of the due date. All payments are irrevocable and nonrefundable, except where alternate terms and conditions, including payment terms may be set forth in any purchase order. All fees are exclusive all applicable taxes and you shall be responsible for all applicable taxes and fees assessed or imposed in connection with the Services, including any sales, use, excise, value-added, or comparable taxes, but excluding CB4's income or corporate taxes.

The fees paid by you are paid in consideration of the Services (and any related licenses) rendered granted under this Agreement. All rights granted to you are subject to full payment of all such fees. Any future orders by you to CB4 (or its authorized Partners) for additional or related services will be governed by these TOU unless they are governed by an additional agreement signed by authorized signatories of you and CB4 (or its authorized Partners).

8. TERM AND TERMINATION

- 8.1 Either party may terminate this Agreement if the other party commits a material breach of this Agreement and such breach is not cured within thirty (30) days of receipt of a written notice of such breach.
- 8.2 Upon termination or expiration of these TOU, you will immediately stop using the Services, destroy or return to CB4 all materials provide to you in connection with the Services and any Proprietary Information in your possession.
- 8.3 Survival. The following provisions of this Agreement shall survive any termination of this Agreement: Sections 4, 6, 8, 0, and 11.

9. GENERAL TERMS AND CONDITIONS

- 9.1 **Severability.** If any provision of these TOU is found by any court of competent jurisdiction to be invalid, then the remaining provisions shall nevertheless remain in full force and effect.
- 9.2 **Governing Law; Jurisdiction fee.** This Agreement is governed by the laws of the State of New York excepting its choice of law provisions. The parties hereby consent to the exclusive jurisdiction and venue of the courts in New York County, NY.
- 9.3 **Entire Agreement.** You acknowledge and agree that these TOU, CB4's currently applicable privacy policy (a copy of which may be found at [<http://www.cb4.com/privacypolicy.pdf> _____]) together with the applicable Quote

are the entire and exclusive statement of the mutual understanding between you and CB4 regarding the Services and that they supersede and cancel all previous written and oral agreements and communications relating to the subject matter of these TOU. You agree that CB4 may change or amend these TOU by posting a notice at <http://cb4.com/tou.pdf> or by sending you an email or mail, as CB4 may elect. Your continued use of the Services shall constitute your consent to any changes made. If you do not agree to the new or different terms, you should provide a written notice to CB4 to such extent, and these TOU shall immediately terminate on the date CB4 receives such notice. Any contradictory terms, modifications or additions in orders and other documents/agreements relating to the Services, will be binding upon CB4 only if they have been accepted in writing, evidenced by the signature of a CB4 authorized executive signatory. In absence of such written acceptance, execution of such orders, documents/agreements shall take place solely on the basis of these TOU.

- 9.4 **No Waiver.** Each party agrees that any failure or delay to exercise, or any partial exercise of any right, power, or privilege hereunder by the other party, shall not operate as a waiver.
- 9.5 **Export/Import Laws.** You shall comply with all the then current and applicable export/import laws and regulations which pertain to the Services.
- 9.6 **Assignment.** This Agreement may be assigned by CB4 to any entity, which assumes its obligations and acquires ownership of, or the right to use and license CB4's products and services.
- 9.7 **End-User Marks.** You hereby consent to the use, publication and disclosure of your name and logotype and marks by CB4 and association thereof as a customer of CB4 in its press releases, case studies, presentations, website, promotional, advertising and marketing materials, with your prior written approval.

10 Force Majeure

If the performance of these TOU, or any obligation hereunder except the making of any payment is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or acts of God; strikes or labor disputes involving third parties; inability to procure or obtain delivery of parts, supplies, power, equipment, services (including hosting services) or software from suppliers for reasons other than failure to pay such suppliers; war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

11 Construction.

The parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of these TOU.

EXHIBIT A

THIRD PARTY SOFTWARE

The following link includes third party software packages are licensed by CB4 under license from their respective copyright owners. For the copyright and licensing information for each license, consult the text files provided with these TOU.

<http://www.c-b4.com/licenses/TOU-Appendix-A.txt>