

## **NMODAL SOLUTIONS INC.**

### **SUBSCRIPTION LICENSE AGREEMENT**

This Agreement between you or the entity or company you represent ("You") and nModal Solutions Inc. ("nModal") governs your use of the Analytics Canvas software offered by nModal, which includes, any updates, revisions or new releases of any of the foregoing and any associated media, sample code, materials or documentation, in physical or electronic form (as hereinafter defined) (the "Application") when provided for use on your computers as well as when provided through nModal's hosted or cloud based solutions ("Hosted Services"). Certain terms and conditions apply only in the case of Hosted Services.

Subscription and use of this Application and the Hosted Services, and or payment for nModal services, is subject to the terms set forth below, including but not limited to fees, term of agreement, software license terms, terms of use, Subscriber representations and warranty statement. You should read all the terms of this Agreement carefully. You will be asked to review and either accept or not accept the terms of this Agreement. By indicating your acceptance to this Agreement you are committing to a cancellable subscription at the fees indicated. If you do not accept this Agreement, you will not be permitted to use the Application.

If you are a corporation, LLC, partnership or other non-individual entity, the person accepting this Agreement on behalf of that entity represents and warrants that they have all necessary authority to bind that entity. nModal reserves the right to change or modify any of the terms and conditions contained in this Agreement at any time in its sole discretion. If the Agreement is changed or modified, we will post on our website a notice that revisions to the Agreement have been made or we may notify you via email or other means. You shall be responsible for reviewing and becoming familiar with any such modifications. Use of the Application or Hosted Services by you following such notification constitutes your acceptance of the terms and conditions of this Agreement as modified. Should you have any questions concerning this Agreement, please contact nModal at support@nmodal.com. The Application is licensed not sold.

If you agree to be bound by all the terms of this Agreement, click the "I Agree" button. If you do not agree to be bound by all the terms of this Agreement click on the "Cancel" button and nModal will not permit your purchase of this subscription or use of the Application or Hosted Services via a subscription license.

## **TERMS AND CONDITIONS**

### **1. DEFINITIONS**

a. "Use" means use of the Application and the Hosted Services, which allows the extraction of data from various third party data sources via their application programming interfaces ("APIs"), as well as from other databases and files, and provides data transformation functionality on the extracted data, and the ability to create new data sets and subsequently store them and/or transmit them using third party APIs, nModal's APIs and platform and various other means that may be used by the Application.

b. "License" means the software license grant and general license terms set forth herein.

c. "Term of Agreement" means the term agreed to at the time of purchase, either:

- i) month to month
- ii) quarterly
- iii) annually

from the date this Agreement is accepted or a date as agreed upon by You and nModal.

d. "Subscriber" (sometimes referred to as "you") means the individual or entity who purchases the subscription under this Agreement.

e. "Customer" means any the individuals or entities whose data the Subscriber accesses using the Application.

f. "This Agreement" means this entire Subscription License Agreement.

## 2. SUBSCRIPTION TERMS

- a. As part of this subscription, Subscriber receives a License as described below. nModal will provide updates to the Application and the Hosted Services, such as correction of "bugs" and certain limited improvements to existing functionality of the Application as nModal may choose to provide.
- b. The subscription entitles Subscriber to receive limited support as posted at this web site at the time this Agreement becomes effective.
- c. nModal charges a monthly, quarterly, or annual fee to the Subscriber for the subscription plan selected at rates described on the website. If you are provided with a "trial" license for a period not exceeding 30 days there is no subscription fee from nModal during the trial period.

If you accept this Agreement and purchase the subscription, you are authorizing nModal to cause your credit card to be billed or receive an invoice for the monthly, quarterly, or annual subscription fee and any other fees that you have chosen to incur as a result of the use of the subscription. If for any reason any of our charges for these fees are rejected or refused by your credit card issuer after multiple billing attempts, or your check or money transfer is not accepted by our bank, this Agreement and your subscription and license to use the Application will terminate. It is your sole responsibility to ensure that payment is made and to notify nModal's billing agent, FastSpring of any changes in your payment details. If there is an issue with your credit card payments, FastSpring will notify you via email, and provide a link that will allow you to update your payment information. If there is an issue with your check or money transfer, you must notify nModal.

d. THIS SUBSCRIPTION CAN BE CANCELLED. ONCE YOU ACCEPT IT, IT WILL BE BINDING FOR THE ENTIRE TERM OF AGREEMENT, PROVIDED THAT if this Agreement is terminated by either you or nModal, nModal will discontinue billing after the term in which termination occurred. We will not pro-rate or refund any fees paid for the term in which termination occurred.

e. nModal may terminate the subscription and License immediately without prior notice for failure to comply with any terms of this Agreement. Immediately upon termination, Subscriber will no longer have any right to use the Application or the Hosted Services.

f. Subscriber may not assign or transfer this Agreement. Any such attempted assignment or transfer will be null and void. nModal may terminate this Agreement in the event of any such attempted assignment or transfer.

g. By accepting this Agreement and purchasing this subscription, Subscriber represents and warrants that, if a natural person, Subscriber is at least 18 years of age and or is otherwise legally able to enter into a binding contract. Additionally, Subscriber represents and warrants that Subscriber is not a citizen of Cuba, Iran, Libya, North Korea, Syria or Sudan or a citizen of any other country that is, or an entity that is restricted by the United States government from receiving certain types of software for use.

h. Unless prohibited by law or unless agreed upon by You, until cancelled by Subscriber or nModal, the subscription will continue on the anniversary of each term at the then prevailing rates established by nModal which may differ from those described herein, or on our websites, but such subscription will remain subject to all other terms of this Agreement. By purchasing a monthly recurring subscription using a credit card, you explicitly agree to a monthly renewal of the Term of this Agreement. Cancellation may be effected by following the procedures posted on our Web Site at the time you wish to cancel, by following the link to your account statement in the invoice emails from FastSpring, or by contacting nModal directly at [info@nmodal.com](mailto:info@nmodal.com).

i. nModal offers a number of plans, each one that defines the functionality of both the desktop and hosted services. These plans are outlined in detail on the Analytics Canvas website.

### Cloud Quota Packages

Once a plan is selected, if the included per-user quota is not sufficient additional quota can be added by purchasing a Cloud Quota Package. The details of the various quota metrics and costs are published on the Analytics Canvas website.

### Addition Users

For all subscriptions, additional users can be added, and will be charged at a per additional user monthly rate as defined on the Analytics Canvas website. The equivalent monthly fee will be applied for the remainder of the term, rounded to the nearest month.

j. You agree that because the Application is licensed based on metrics including but not limited to the number of Google Analytics Accounts queried, the number of machines used, the number of users, the number of jobs run, the amount of data processed and others, that a condition for license is agreeing to logging of this type information by nModal licensing servers. The monthly, quarterly, or annual subscription fee payable is calculated based on metering depending on the subscription plan involved. Each time the Application is run, or any operation in the Hosted Service runs, either due to direct user interaction or due to a scheduled job or task that a user or the Hosted Service has created, it reports the various metrics used for metering to the nModal licensing servers.

k. By accepting this Agreement you also accept and agree to our Privacy Policy as outlined in Schedule B, and our Website Terms and Conditions, as outlined in Schedule C.

### 3. Hosted Terms.

a. **Hosting Services.** nModal may make available its hardware and systems available to Subscribers to host data sets and data management tasks. ("Hosting Services"). If you elect to use Hosting Services, then the terms in this Agreement that are applicable to Hosting Services will apply. Subject to Your advance payment of any applicable fees and the terms and conditions of this Agreement, nModal hereby grants You a non-exclusive right to access and use the Hosted Services during the applicable subscription term identified in an order ("Subscription Term") and in accordance with this Agreement and any other documentation that defines the terms and conditions of use. nModal will provide You with use of Hosting Services solely for the purpose of integrating with the Application. Hosting Services are provided using multiple cloud platforms depending on the services used with shared network infrastructure, using SSL protocols.

b. **Hosting Service Levels.** nModal will use commercially reasonable efforts to make the Hosting Services available in accordance with prevailing hosting industry standards and the documentation, taking into account your computer's, the speed of your connection to nModal hardware and other variables outside of nModal's control.

c. **Data Processing Agreements.** For the purposes of compliance with the The European Parliament and the Council's Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, ("GDPR"), You agree to Schedule D, "Data Processor Agreement", or you agree to have a signed Data Processor Agreement in place, prior to your use of the Hosted Services. For the avoidance of doubt, You agree to comply with the GDPR when using the Hosted Services if you are bound by the GDPR.

### 4. LICENSE GRANT AND LIMITATIONS.

a. During the Term of Agreement, subject to continuing payment of monthly, quarterly, or annual fees as set forth herein and to compliance with the terms contained herein, Subscriber will have a limited, non-exclusive, non-transferable, non-sublicenseable user based license to use, display, store, load, install and execute the Application in accordance with the documentation provided by nModal. If Subscriber allows another individual to download or Use the Application, Subscriber will be liable for compliance with this Agreement, and for any violations by that user of this Agreement.

b. The Application is owned, patented and copyrighted by nModal or by third party suppliers. This License confers no title or ownership and is not a sale of any rights in the Application. Subscriber is granted only the right to use the Application without right of sublicense. Third party suppliers are intended beneficiaries under this Agreement and may protect their rights in the Application directly against the Subscriber in the event of any infringement.

c. You acknowledge and agree that the Computer System Requirements (as further defined in Schedule "A" hereto) are necessary to use the Application as described in the documentation, and that you must independently, at your own cost, purchase or appropriately acquire the Computer System Requirements.

d. You further agree that it is your responsibility to ensure that the Application has adequate internet network connectivity to function. In order to function correctly the Application must be able to connect to the nModal licensing servers to manage the monthly, quarterly, or annual licensing process, and implement the logging of Google Analytics Accounts accessed, which is the basis of certain subscription plans.

e. General Restrictions. Except as expressly provided in this Agreement, and except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, you may not: (i) copy the Application or any component of the Application; (ii) alter, translate, adapt, modify, reverse engineer, decompile or disassemble the Application or any component of the Application or create derivative works of the Application; (iii) decrypt, extract or otherwise attempt to discover any source code, trade secrets or confidential information contained in the Application or any component of the Application; or (iv) transfer, resell, sublicense, rent, lease, or lend the Application or the Hosting Services in whole or in part or use the Application for any timesharing, outsourcing, rental or third party service bureau purposes, commercial or otherwise. You acquire absolutely no rights or license to the Application or the Hosted Service other than the limited right to use the Application and the Hosted Service in accordance with the terms and conditions of this Agreement. nModal is not obligated to support or provide any updates, upgrades, revisions or new releases of the Application or any portion thereof. However, nModal, in its sole discretion, may update, upgrade, revise or provide new releases of any portion of the Application from time to time and such update, upgrade, revision or new release of the Application shall be governed by the terms and conditions of this Agreement. To continue to use the Application you are required to install such updates, upgrades, revisions or new releases of the Application. nModal has the right to discontinue or terminate your use of the Application for any reason or to terminate this Agreement if you are not using the most current update, upgrade, revision or new release of the Application. nModal has the right to determine, in its sole discretion, whether a use is a commercial or otherwise restricted use.

4. VIRUSES. nModal cannot and does not guarantee or warrant that its website the Application or the Hosted Services is compatible with your system or devices or that the Application or Hosted Services will be free of viruses, disabling devices or other code that manifests contaminating or destructive properties. You are responsible for implementing the safeguards to protect the security and integrity of your systems and devices. You are responsible for the costs of any service, repairs or connections which may be necessary to your systems and devices as a result of your use of the Application.

5. CONFORMANCE WITH LAW. You agree to use the Application and Hosted Services for lawful purposes only and in a manner consistent with all applicable local, provincial, state, national or international laws, rules and regulations.

6. CONFIDENTIALITY. The Application and Hosted Services embodies confidential information and valuable trade secrets of nModal and its licensors. You agree to maintain the confidentiality of all confidential and proprietary information of nModal and its business, including the Application and Hosted Services, and will not release, disclose or divulge any such proprietary confidential information. You will take all reasonable steps to ensure that confidential or proprietary information of nModal and its business is not disclosed or distributed in violation of the terms of this Agreement. The Subscriber will not be taken to have breached this Agreement if it discloses confidential information for the purposes of meeting its public accountability obligations, including, without limitation, disclosure to a government body as authorized or required by law.

7. OWNERSHIP. The Application and Hosted Services are proprietary to nModal and its licensors. The Application is protected by copyright and other intellectual property laws. All rights, title and interest, including all copyright and other intellectual property rights in and to the Application and Hosted Services are owned by nModal or its licensors. All rights not expressly granted in this Agreement are reserved to nModal. Nothing in this Agreement shall be construed as a license to use any trade-mark, trade-name, design mark, logo, emblem or other distinctive mark, whether registered or not, of nModal or its licensors (collectively, the "Marks") and you acknowledge that you acquire no right, title or interest in or to any of the Marks and you shall not in any manner represent that you have any ownership interest in the Marks or dispute or contest for any reason whatsoever, directly or indirectly, the validity of the ownership of the Marks, nor directly or indirectly attempt to dilute the value of the goodwill attached to the Marks, nor counsel anyone to do any of the foregoing during or after the termination of this Agreement. You will not remove or change any trade-mark, copyright or other intellectual property notices contained in the Application or any component of the Application.

#### 8. DISCLAIMER AND LIMITATION OF LIABILITY

NO WARRANTIES. THE APPLICATION AND HOSTED SERVICES ARE PROVIDED ON AN "AS IS WITH ALL FAULTS" BASIS WITHOUT WARRANTIES OF ANY KIND. NMODAL AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR COLLATERAL, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY OR THAT THE APPLICATION OR HOSTED SERVICES ARE FREE OF VIRUSES OR OTHER DISABLING DEVICES, ARE ACCURATE, OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED OR THAT THE APPLICATION OR HOSTED SERVICES WILL OPERATE WITHOUT INTERRUPTION. THE USE OR PERFORMANCE OF THE APPLICATION AND THE HOSTED SERVICES IS AT YOUR OWN RISK.

9. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NMODAL OR ITS LICENSORS BE LIABLE FOR: (i) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES; OR DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT, THE USE OF THE APPLICATION OR THE HOSTED SERVICES, THE ABILITY OR INABILITY OF THE APPLICATION OR THE HOSTED SERVICES TO

ACCESS OR BE USED TOGETHER OR WITH ANY OTHER APPLICATION, APPLICATION OR ANY ELECTRONIC DEVICE, THE PROVISION OF OR FAILURE TO PROVIDE THE APPLICATION OR THE HOSTED SERVICES, INCLUDING SUPPORT SERVICES FOR THE APPLICATION OR HOSTED SERVICES, EVEN IF NMODAL AND ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF NMODAL AND ITS LICENSORS ARISING IN ANY MANNER UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY THE SUBSCRIBER IN THE PAST 12 MONTHS. SOME JURISDICTIONS DO NOT ALLOW OR PLACE LIMITATIONS UPON THE EXCLUSION OR LIMITATION OF LIABILITY AND, ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10. SCOPE OF LIMITATION AND DISCLAIMER. THE FOREGOING LIMITATIONS AND DISCLAIMERS APPLY REGARDLESS OF THE CAUSES OR CIRCUMSTANCES GIVING RISE TO THE LOSS, DAMAGE, CLAIM OR LIABILITY, EVEN IF SUCH LOSS, DAMAGE, CLAIM OR LIABILITY IS BASED ON NEGLIGENCE OR OTHER TORTS, STRICT LIABILITY, BREACH OF CONTRACT INCLUDING, WITHOUT LIMITATION, FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM, PRODUCT LIABILITY OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADE-MARK OR OTHER INTELLECTUAL PROPERTY RIGHT.

11. INDEMNITY. You agree to indemnify and hold nModal and its affiliates and their respective directors, officers, employees and agents harmless from and against any claim, damage, liability, loss or demand, including reasonable attorneys' fees, due to or arising out of your use of the Application or the Hosted Services, any Data provided to the Hosted Services or the infringement by you, of any intellectual property or other right of any person or entity.

12. TERM AND TERMINATION. This Agreement is effective from the date you click "I accept" and shall continue in full force and effect unless terminated in accordance with this Agreement. This Agreement will terminate immediately if you fail to comply with any term or condition of this Agreement. Upon any termination of this Agreement, you may no longer access or use the Application. Termination of this Agreement will not prevent nModal from pursuing any other remedies available to it, including injunctive relief. Upon termination you agree to cease all use of the Application and immediately uninstall the Application. The provisions of Sections 3(a), 5, 6, 7, 8, 9, 10 and 11 of this Agreement will survive any termination of this Agreement.

13. OFFICIAL LANGUAGE. The official language of this Agreement is English. It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

14. API ACCESS AND TERMS OF SERVICE. The Application connects to the various third party API's including Google Analytics and in doing so, you agree to comply with the terms of service of those services. You acknowledge that the availability, accuracy and speed of access to third party data relies solely on those third parties. You also acknowledge that third party providers may remove access to their services, in particular if their API quota rules are exceeded, and it is your sole responsibility to manage how many API requests are made per day, and to limit use of the tool to comply with third party quota's.

15. EXPORT RESTRICTIONS. You agree that you will not, directly or indirectly, export or transmit the Application or related documentation and technical data to any country to which such export or transmission is restricted by any applicable law or regulation. You agree to indemnify, defend and hold harmless nModal, its affiliates, and their officers, directors and employees, from and against any losses, damages and expenses (including lawyers' fees) arising out of or relating to any claims that you have, directly or indirectly, exported or transmitted the Application in violation of any applicable export restrictions.

16. DATA OWNERSHIP. All data created or transmitted by you and stored on nModal's servers as part of the Hosting Services ("Data") shall at all times be owned by you and treated as Confidential Information under this Agreement. Upon termination or cancellation of this Agreement for any reason, nModal shall return all Data to You. As a convenience to you, your Data will be backed-up, but nModal shall in no event be liable to you or any third party for loss, destruction or corruption of Data.

17. PERSONALLY IDENTIFIABLE INFORMATION. You represent and warrant that Your Data will not contain: (i) a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data or attribute, such as a combination of the individual's name, address, or phone number with the individual's social security number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

18. SECURITY. nModal implements technical defenses and security procedures designed to protect Data from unauthorized access. However, You acknowledge that use of the Hosted Services necessarily involves transmission of Data over networks that are not owned, operated or controlled by nModal, and nModal is not responsible for any of Your Data that is lost, altered, intercepted or stored across such networks. nModal also cannot guarantee that our security procedures will be error-free, that transmissions of Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers. All access to the Hosting Services is controlled by user names and passwords. Each user name and password will be unique to each user that You designate with access to the Hosting Services. You are solely responsible for the security of the user names and passwords that You issue. Any access to the Hosting Services using such user names and passwords will be deemed access by You, except where access is the result of unauthorized disclosure of user names and passwords by the negligent or willful act of nModal.

19. U.S. GOVERNMENT RESTRICTED RIGHTS. If you are part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Application is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Application is a "commercial item," "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, any use of the Application by the Government shall be governed solely by the terms of this Agreement. All other use is prohibited. No rights other than those provided in the Agreement are conferred. The Application was developed fully at private expense.

20. MISCELLANEOUS. This Agreement constitutes the entire Agreement between nModal and you. The invalidity or unenforceability of any provision of this Agreement or any covenant contained in this Agreement will not affect the validity or enforceability of any other provision or covenant contained in this Agreement and any such invalid or unenforceable provision or covenant will be deemed to be severable. You may not assign this Agreement, and any assignment of this Agreement by you will be null and void. This Agreement will be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein, excluding the application of its conflicts of law rules. You consent to the exclusive jurisdiction and venue of the courts of Toronto, Ontario. You agree that this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

#### **Schedule "A"**

##### **NModal System and Hardware Requirements**

###### **Hardware:**

Memory: 8 Gb RAM or higher

Hard Drive Space: Minimum of 25 Gb free

###### **Software:**

Windows 7, Windows 8, Windows 10, Windows Server 2012, Windows Server 2016

#### **Schedule "B" - Privacy Policy**

The most up-to-date version of our Privacy Policy is hosted on our website at <http://analyticscanvas.com/privacy-policy>.

#### **Schedule "C" - Website Terms and Conditions**

The most up to date version of our Website Terms and Conditions can be found on our website at <http://analyticscanvas.com/tos.html>

## **Schedule “D” - Data Processing Agreement**

The most up to date version of our Data Processing Agreement can be found on our website at: <http://analyticscanvas.com/data-processing-agreement>