

DYNAMIC YIELD GENERAL TERMS & CONDITIONS

These Dynamic Yield General Terms and Conditions govern your license to use the Service (as defined below) and receive any professional service from DY, in connection thereof, all as set out in any duly executed Order Form and/or Statement of Work.

1. Definitions

1.1. **"Analytics Code"** means the DY code, which the Customer will be required to install on Customer's Website (As defined under the applicable Order Form attached to these Dynamic Yield General Terms and Conditions).

1.2. **"Software"** means DY's unified customer engagement SaaS platform which helps marketers increase revenue by automatically personalizing each customer interaction across the web, mobile web, mobile apps and email, which incorporates machine learning to build actionable customer segments in real time, enabling marketers to take instant action via personalization, product/content recommendations, automatic optimization & real-time messaging.

1.3. **"DY"** means the applicable Dynamic Yield entity which is a party to any applicable Order Form and/or Statement of Work (i.e. Dynamic Yield Ltd., Dynamic Yield, Inc. or Dynamic Yield UK Ltd.).

1.4. **"Customer"** means a DY customer entering into any Order Form and/or Statement of Work with DY which is subject to these Dynamic Yield General Terms and Conditions.

1.5. **"Effective Date"** means the date of any applicable Order Form duly entered into by and between DY and Customer.

1.6. **"Party"** and **"Parties"** means DY or Customer and DY jointly with Customer, respectively.

1.7. **"Service"** means the service described in each applicable Order Form, rendered via the integration of the Analytics Code and the use of the Software.

2. **Order Form and Statement of Work Requirement.** An executed Order Form and/or Statement of Work for Professional Services (as applicable and as defined below) by authorized representatives of the Parties, will be required prior to the commencement of any applicable Service by DY. Each Order Form and Statement of Work shall incorporate these Dynamic Yield General Terms and Conditions by reference. A separate Order Form and/or Statement of Work shall be required for all additional services performed by DY.

3. **Terms of Service.** Subject to these Dynamic Yield General Terms and Conditions, Customer, during the term of the applicable Order Form, shall have a non-transferable, non-sub-licensable, non-exclusive and limited right to (i) install, integrate and use the Analytics Code provided to it by DY for the use of the Software; (ii) use the Service, solely on Customer's Websites (as such term is defined in the applicable Order Form); and (iii) remotely access the Software to view and download the Output (as defined below) generated by the Software. The Customer acknowledges that (i) the Service will be provided on a software-as-a-service (i.e., SaaS) basis, (ii) the provisioning of the Service by DY is expressly conditioned upon Customer's timely payment of all fees and other remuneration and expense reimbursements, as set forth under the applicable Order Form and Statement of Work (iii) except as expressly provided in these Dynamic Yield General Terms and Conditions, no license and/or right, express or implied, is granted to Customer for any Intellectual Property (as defined below) of DY.

4. **Restrictions.** Customer will not (and will not allow any third party to) (i) copy, modify, adapt, translate or otherwise create derivative works of the Analytics Code and/or the Software and/or the Service; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Service and/or the Analytics Code and/or the Software and/or any other trade secrets associated with Analytics Code and/or the Software and/or the Service; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Service and/or the Analytics Code and/or the Software; or (iv) use, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service.

5. **Professional Services.** During the term of any applicable Order Form, DY may render to the Customer certain professional services related to the implementation and customization of the Service, to better suit the Customer's needs (the "**Professional Services**"). The terms and scope of the Professional Services, if applicable, shall be mutually agreed upon by the Parties under an applicable Statement of Work.
6. **Installation; Integration.** DY will provide reasonable information, documentation and assistance to enable Customer to install the Analytics Code on Customer's Websites and for the operation of the Software, available on DY's knowledge base to which Customer shall receive access. Subject to the foregoing, Customer will be responsible for the installation of the Analytics Code on Customer's Websites and the integration of the Software therein. All other assistance in respect hereof shall be detailed in an applicable Statement of Work.
7. **Mutual Representations.** Each Party represents and warrants to the other Party that (a) it has the full corporate right, power and authority to enter into the applicable Order Form and/or Statement of Work and to perform the acts required of it thereunder; (b) the execution of any applicable Order Form and/or Statement of Work by such Party and performance of its obligations hereunder do not and will not violate any agreement to which it is a party or by which it is bound; and (c) when executed and delivered, the applicable Order Form and/or Statement of Work (including, without limitation, these Dynamic Yield General Terms and Conditions) will constitute the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms.
8. **Consideration.** Consideration payable to DY in connection with the Service and/or Professional Services rendered shall be as set forth in any applicable Order Form and/or Statement of Work (the "**Consideration**"). Any Consideration required to be paid by Customer to DY shall be made free and clear and without deduction or withholding for or on account of, any present or future, stamp, or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any taxing authority. The Consideration, once paid, shall be deemed un-refundable. Any late payments shall incur a late payment fee equal to the lower of: (i) 1.5% per month; and (ii) the maximum amount permissible by applicable law. Any modifications agreed to by the Parties in respect of the Services, as well as the scope of any applicable Order Form and/or Statement of Work may result in additional fees being due to DY.
9. **Term and Termination.**

9.1. These Dynamic Yield General Terms and Conditions shall be in full force and effect until the termination of any applicable Order Form and/or Statement of Work as detailed therein.

9.2. Upon termination or expiration of the Services under any applicable Order Form: (a) all rights granted by DY to Customer herein shall immediately terminate, (b) Customer shall remove the Analytics Code from its Website(s), and shall discontinue its use of the Software and the Service, (c) each Party will promptly return or destroy (or, in the case of electronic embodiments, permanently erase) all tangible material embodying the other Party's Confidential Information in its possession or under its control and will provide a written certification that all such Confidential Information has been returned or destroyed, and (d) DY shall cease collecting information through its tags on Customer's website, including through the Analytics Code.

9.3. The provisions of Sections 9 (Term and Termination), 10 (Intellectual Property), 11 (Confidentiality), 12 (Disclaimers; Limited Liability), 13 (Data Privacy) and 16 (General Terms) will survive any termination or expiration of any applicable Order Form.

10. Intellectual Property.

10.1. DY owns and retains at all times all right, title and interest, including without limitation all patents, copyrights, trade secrets, trademarks, and other worldwide intellectual property and proprietary rights arising under statutory or common law, and whether or not perfected or registered (collectively, "**Intellectual Property**"), in and to the Software, the Analytics Code and the Service (or any part thereof), including any improvements, updates, upgrades, error-corrections or other modifications thereof, and any work products generated by the Service (other than the Output, as defined below) and/or through the Professional Services or otherwise related thereto. Other than as specifically stated hereunder, Customer is granted with no right therein.

10.2. Subject to Section 10.1 above, the Parties agree that all data and information collected by DY and output generated through, or produced by the Service, including any data, information, reports, notes, records, charts, statistics, conclusions, analyses, lists and recommendations, relating solely to Customer (collectively, the "**Output**"), shall be the sole and exclusive property of Customer and DY shall not have any right in connection therewith and upon termination of this Agreement and Customer written request, DY will return all such Output to Customer, or destroy it, if so instructed by Customer in writing.

Notwithstanding the foregoing, in the event Customer provides any feedback and/or comments to DY concerning the Software, the Analytics Code and /or the Service and/or the Professional Services, such feedback and/or comments shall be solely owned by DY.

11. Confidentiality.

11.1. Neither Party shall disclose to any third party any information provided to it by the other Party or any information related to the other Party and/or its business, services or products to which it was exposed in the course of the engagement under any applicable Order Form and/or Statement of Work ("**Confidential Information**") without the other Party's express written consent. Notwithstanding, Confidential Information shall not include any information which (a) is already in the public domain through no breach of this Agreement, (b) was, as between the Parties, lawfully in the receiving Party's possession prior to receipt from the disclosing Party, (c) is received by the receiving Party independently from a third party free to lawfully disclose such information to the receiving Party, or (d) is independently developed by the receiving Party without use of the Confidential Information.

11.2. Neither Party shall use Confidential Information except to perform its obligations under any applicable Order Form and/or Statement of Work. Each Party shall use the same degree of care and security precautions that it uses to protect its own Confidential Information of like importance, provided that such standard of care and precautions are at least reasonable. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law so long as such Party first provides the other Party as much notice as reasonably practicable under the circumstances and cooperates with the other Party's efforts to limit the extent of such disclosure, or (ii) on a "need-to-know" basis under an obligation of confidentiality to its authorized employees, subcontractors, and advisors.

11.3. Each Party acknowledges that its failure to comply with the provisions of this Section may cause irreparable harm to the other Party which cannot be adequately compensated for in damages, and accordingly agrees that the other Party will be entitled to seek, in addition to any other remedies available to it under any applicable law, interlocutory and permanent injunctive relief to restrain any anticipated, present or continuing breach of this Section.

12. Warranties; Disclaimers; Limited Liability.

12.1. The Service and/or the Professional Services are provided on an "as is" basis, without any warranties of any kind whatsoever, and all express, implied and/or statutory warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, and non-infringement, as well as any warranties regarding security, reliability, timeliness, accuracy, and performance of the Service and/or the Professional Services, are all expressly disclaimed to the fullest extent permitted by law. DY does not warrant that the Service will operate error free or without interruption or bugs. Without derogating from the generality of the above, DY makes no warranties, representations or other affirmation of fact, including but not limited to statements regarding suitability for use with third party products or performance of the Service. The foregoing disclaimers will apply even if any warranty provided under these Dynamic Yield General Terms and Conditions fails of its essential purpose.

12.2. Customer represents and warrants that: (i) it will comply with all international, national, provincial and local laws and regulations (including laws regarding privacy and protection of consumer information and the procurement of all mandatory permits and licenses) applicable to the performance of its obligations hereunder; (ii) it will avoid deceptive or misleading practices that could adversely affect the performance of DY's obligations under this Agreement or damage the reputation of the other party; (iii) it is not a Party to any agreement with a third party the performance of which is reasonably likely to affect adversely DY's performance of its obligations hereunder; (iv) it is not required to secure and maintain any form of licenses, releases, consents, approvals or immunities in order to use the Service; and (v) the performance of its obligations under these Dynamic Yield General Terms and Conditions will not violate any other agreement between Customer and any third party.

12.3. DY will not be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, but not limited to, internet failure, network or computer equipment failures, telecommunication equipment failure, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals or loss of or fluctuations in heat, light or air conditioning.

12.4. Except for willful misconduct, a breach by a Party of Section 10 (*Intellectual Property*), Section 11 (*Confidentiality*) and Section 13 (*Data Privacy*) (The "**Excluded Liability Categories**"), in no event will either Party be liable for consequential damages of any kind, including, without limitation, indirect,

incidental, punitive, exemplary or special damages (including loss of use, data, business or profits) arising out of or in connection with (I) any applicable Order Form and/or Statement of Work and/or these Dynamic Yield General Terms and Conditions (II) the use of or inability to use the Service or (III) any error or bug in the Service, whether such liability arises from a claim based upon contract, tort or otherwise, and whether or not either party has been advised of the possibility of such loss or damage.

12.5. Notwithstanding anything to the contrary under these Dynamic Yield General Terms and Conditions, except with respect to the Excluded Liability Categories, in no event shall either Party's liability in respect of any action or default relating to any applicable Order Form and/or Statement of Work and/or these Dynamic Yield General Terms and Conditions exceed the amounts actually paid by Customer hereunder to DY during the 6 months' period preceding the event leading to such liability.

12.6. Should any Services become, or in DY's opinion, be likely to become, subject of any a claim stating that any Services furnished by DY to Customer infringes a patent, copyright, or trademark ("**Infringement Claim**"), then Customer permits DY, at DY's option and expense, to either (i) procure for Customer the right to continue using such Software or (ii) replace or modify it so that it becomes non-infringing; or (iii) cease to provide the Services. This Section 12.6 states the entire liability of DY with respect to an Infringement Claim, and DY shall have no additional liability hereunder or otherwise with respect to any alleged or proven infringement.

13. **Data Privacy.**

13.1. For the purpose of providing Customer with the Service, DY may collect and use information and/or data relating to the Customer and its users, which are of a non-personal nature. DY will not collect any personally identifiable information ("**Personal Data**") without Customer's consent and Customer shall not pass any personally identifiable information to DY without DY's prior explicit consent. Any handling of Personal Data of any kind by either party shall be in accordance with applicable laws and regulations. DY makes no representation regarding its handling of Customer's Personal Data if such is passed to DY without its knowledge and/or consent thereof.

13.2. In case of receipt by DY of any Personal Data from Customer as shall be mutually agreed by the Parties, DY will not sell, rent, transfer and/or otherwise provide any Personal Data to any third party except (i) to DY's service providers and sub-contractors as shall be required for the purpose of rendering the Services; (ii) to any of DY's successor-in-interest in the event of any change of control to the Company or any of its affiliates; and (iii) to any DY's controlled affiliates. Notwithstanding, DY reserves the right to disclose Personal Data as required by law, when such as necessary for DY's delivery of its obligations hereunder and when DY believes that such disclosure is necessary to protect its rights, goodwill, DY's systems and technology and/or to comply with a judicial proceeding, court order, or legal process served in connection with the Service.

13.3. Customer warrants to DY that it has (and will have at all times during the Term of these Dynamic Yield General Terms and Conditions) the consent and authorizations of its end users and any and all other relevant third parties to operate the Services, and to collect and use the end user data resulting from its use of the Services.

14. **Marketing Terms.**

14.1. **Use of Customer's Name and Logo.** Customer hereby grants DY, during the term of these Dynamic Yield General Terms and Conditions, with a non-transferable, non-sub-licensable, non-exclusive, fully paid, worldwide and limited license to use and display Customer's names, logos and trademarks, solely for identifying Customer as a customer of DY (including, without limitation, on DY's website).

14.2. **Joint Activities.** During the term of these Dynamic Yield General Terms and Conditions, the Parties may mutually agree (but not obligated), from time to time, to engage in joint marketing activities which promote their products or services, including by way of seminars, press announcements, trade shows, user groups and/or other events. Such mutual agreements shall not bind the Parties, unless made in writing.

15. **Assignment.** These Dynamic Yield General Terms and Conditions are binding on each Party and its successors and assigns. Neither Party may assign or transfer these Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work, or assign any of its rights or delegate any of its duties thereunder, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign these Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work and/or any part thereof without the other Party's consent to, in case of DY, any of DY's controlled or controlling affiliates, or, with respect to both Parties, to any successor-in-interest pursuant to any merger, reorganization or

sale of such Party or all or a substantial part of its business that pertains to any applicable Order Form and/or Statement of Work. Any attempt by a Party to assign its rights or obligations under these Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work in breach of this Section shall be void and of no force or effect.

16. Choice of Law.

These Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work will be governed by and construed in accordance with the laws of the state of incorporation of the particular DY entity with which Customer has entered into an applicable Order Form and/or Statement of Work. Any dispute arising out of or related to these Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work will be brought solely in (i) the courts of Tel Aviv if DY is Dynamic Yield Ltd.; (ii) the courts of New York City if DY is Dynamic Yield, Inc.; or (iii) the courts of London if DY is Dynamic Yield UK Ltd.

17. General Terms.

17.1. The Parties expressly agree that they are independent contractors and do not intend for these Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work to be interpreted as an agency, joint venture or partnership relationship between the Parties.

17.2. Neither Party's waiver of the breach of any provision shall constitute a waiver of the provision in that or any other instance. These Dynamic Yield General Terms and Conditions and/or any applicable Order Form and/or Statement of Work contain the entire understanding of the Parties relating to the subject matter and supersede all prior agreements and understandings, both written and oral, regarding such subject matter, except for any signed NDA between the parties (if any).

17.3. In the event of a conflict between These Dynamic Yield General Terms and Conditions and any applicable Order Form and/or Statement of Work, the terms of these Dynamic Yield General Terms and Conditions shall prevail, unless the applicable Order Form and/or Statement of Work explicitly reference the contemplated issue in the Dynamic Yield General Terms and Conditions to be modified thereby.

17.4. If any term of these Dynamic Yield General Terms and Conditions is held invalid or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and the Parties shall substitute a valid provision with the same intent and economic effect.

17.5. Any change to these Dynamic Yield General Terms and Conditions shall be made solely in writing by both Parties.