

## PLATFORM TERMS OF SERVICE

**Last Updated 10/31/2018**

BaseCap Analytics Inc. (“**BaseCap**,” “**we**,” “**us**,” or “**our**”) welcomes you. We invite you to access and use our proprietary platform (“**Platform**”), which is made available to you through Azure Marketplace.

We provide Authorized Users (as defined below) with access to the Platform subject to the following Platform Terms of Service, which may be updated by us from time to time without notice to you. By clicking “I AGREE”, you acknowledge that you have read, understood, and agree to be legally bound by these Platform Terms of Service and our Privacy Policy, which is hereby incorporated by reference (collectively, this “**Agreement**”). If you do not agree to any of these terms, then please do not use the Platform.

**THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.**

If you accept these Platform Terms of Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Platform Terms of Service and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

We reserve the right, at our sole discretion, to modify, discontinue, or terminate the Platform, or to modify these Platform Terms of Service, at any time and without prior notice. If we modify these Platform Terms of Service, we will post the modification on the Platform. By continuing to access or use the Platform after we have posted a modification, you are indicating that you agree to be bound by the modified Platform Terms of Service. If the modified Platform Terms of Service is not acceptable to you, your only recourse is to cease using the Platform.

Capitalized terms not defined in these Platform Terms of Service shall have the meaning set forth in our Privacy Policy.

### **1. DESCRIPTION AND USE OF THE PLATFORM**

The Platform allows employees, contractors, or agents of our customer whom the customer authorizes to access and use the Platform (“**Authorized Users**”) to select and profile data, view data quality statistics, and automatically remediate instances of inaccurate data.

BaseCap is under no obligation to accept any individual as an Authorized User, and may accept or reject any registration in its sole and complete discretion. In addition, BaseCap may deactivate any account at any time, including, without limitation, if it determines that an Authorized User has violated these Terms of Service.

### **2. USE OF PERSONAL INFORMATION**

Your use of the Platform may involve the transmission to us of certain personal information. Our policies with respect to the collection and use of such personal information are governed according to our Platform Privacy Policy (located at

<https://bcadeployments.blob.core.windows.net/marketplace/BaseCap%20Analytics%20Platform%20-%20Azure%20Privacy%20Policy.pdf>), which is hereby incorporated by reference in its entirety.

### 3. COMMUNITY GUIDELINES

BaseCap's community, like any community, functions best when its users follow a few simple rules. By accessing and/or using the Platform, you agree to comply with these community guidelines (the "**Community Guidelines**") and that:

- You will comply with all applicable laws in your use of the Platform and will not use the Platform for any unlawful purpose;
- You will not upload, post, e-mail, transmit, or otherwise make available any content that:
  - infringes any copyright, trademark, right of publicity, or other proprietary rights of any person or entity; or
  - is defamatory, libelous, indecent, obscene, pornographic, sexually explicit, invasive of another's privacy, promotes violence, or contains hate speech (i.e., speech that attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and/or sexual orientation/gender identity; or
  - discloses any sensitive information about another person, including that person's e-mail address, postal address, phone number, credit card information, or any similar information.
- You will not "stalk," threaten, or otherwise harass another person;
- You will not spam or use the Platform to engage in any commercial activities;
- You will not access or use the Platform to collect any market research for a competing business;
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not interfere with or attempt to interrupt the proper operation of the Platform through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Platform through hacking, password or data mining, or any other means;
- You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features (e.g., report abuse button) on the Platform;
- You will not use any robot, spider, scraper, or other automated means to access the Platform for any purpose without our express written permission; provided, however, we grant the operators of public search engines permission to use spiders to copy materials from the public portions of the Platform for the sole purpose of and solely to the extent necessary for creating publicly-available searchable indices of the materials, but not caches or archives of such materials;
- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure; and
- You will let us know about inappropriate content of which you become aware. If you find something that violates our Community Guidelines, please let us know, and we'll review it.

We reserve the right, in our sole and absolute discretion, to deny you access to the Platform, or any portion of the Platform, without notice, and to remove any content that does not adhere to these Community Guidelines.

#### **4. RESTRICTIONS**

The Platform is only available for individuals aged 18 years or older. If you are under 18 years of age, please do not use the Platform.

#### **5. REGISTRATION**

If you would like to use the Platform as an Authorized User, you will be asked to provide your name, and email address and you will be asked to create a password for your account. You represent and warrant that all registration information you submit is truthful and accurate and you will maintain the accuracy of such information. You are responsible for the confidentiality of your account. You will promptly inform us of any need to deactivate a user name or password. We reserve the right to delete or change your user name and/or password at any time and for any reason.

#### **6. INTELLECTUAL PROPERTY**

The Platform contains materials, such as photographs, software, text, graphics, images, sound recordings, and other material provided by or on behalf of BaseCap (collectively referred to as the “**Content**”). The Content may be owned by us or third parties. The Content is protected under both United States and foreign laws. Unauthorized use of the Content may violate copyright, trademark, and other laws. You have no rights in or to the Content, and you will not use the Content except as permitted under this Agreement. No other use is permitted without prior written consent from us. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use or posting of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited.

If you violate any part of this Agreement, your permission to access and/or use the Content, and/or the Platform automatically terminates.

The trademarks, service marks, and logos of BaseCap (the “**BaseCap Trademarks**”) used and displayed on the Platform are registered and unregistered trademarks or service marks of BaseCap. Other company, product, and service names located on the Platform may be trademarks or service marks owned by others (the “**Third-Party Trademarks**,” and, collectively with BaseCap Trademarks, the “**Trademarks**”). Nothing on the Platform should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of BaseCap Trademarks inures to our benefit.

Elements of the Platform are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. None of the Content may be retransmitted without our express, written consent for each and every instance.

#### **7. COMMUNICATIONS WITH US**

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us, including, but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to

use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production, and marketing of products and Platform that incorporate such information without compensation or attribution to you.

## **8. NO WARRANTIES; LIMITATION OF LIABILITY**

THE PLATFORM AND ALL CONTENT, FUNCTIONS AND MATERIALS MADE AVAILABLE TO YOU THROUGH THE PLATFORM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

IN CONNECTION WITH ANY WARRANTY, CONTRACT OR COMMON LAW TORT CLAIMS: (I) NONE OF BASECAP, ITS AFFILIATES, SUBSIDIARIES, OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY THE “BASECAP PARTIES”) SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE PLATFORM OR THE CONTENT, EVEN IF A BASECAP PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE PLATFORM OR THE CONTENT SHALL BE LIMITED TO ONE HUNDRED DOLLARS (\$100). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU.

THE PLATFORM MAY CONTAIN TECHNICAL INACCURACIES, TYPOGRAPHICAL ERRORS, OR OMISSIONS. UNLESS REQUIRED BY APPLICABLE LAWS, WE ARE NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL, TECHNICAL, PRICING, OR OTHER ERRORS LISTED ON OR OMITTED FROM THE PLATFORM. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE PLATFORM AT ANY TIME WITHOUT NOTICE.

## **9. EXTERNAL SITES**

The Platform may contain links to third-party websites (“External Sites”). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

## **10. INDEMNIFICATION**

You agree to defend, indemnify, and hold the BaseCap Parties harmless from and against any damages, liabilities, losses, expenses, claims, actions, and/or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from: (i) your breach of this Agreement; (ii) your misuse of the Platform, and/or the Content; and/or (iii) your violation of any third-party rights, including without limitation any copyright, trademark, property, publicity, or privacy right. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or

proceeding. We reserve the right to assume the exclusive defense and control (at your expense) of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

## **11. COMPLIANCE WITH APPLICABLE LAWS**

The Platform is based in the United States. We make no claims concerning whether the Platform, and the Content may be viewed, or be appropriate for use outside of the United States. If you access the Platform, or the Content from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

## **12. TERMINATION OF THE AGREEMENT**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Platform, at any time and for any reason without prior notice or liability. You may terminate your account at any time by following the instructions in your account settings. We reserve the right to change, suspend, or discontinue all or any part of the Platform at any time without prior notice or liability.

## **13. CONTROLLING LAW**

This Agreement and any action related thereto will be governed by the laws of the State of New York without regard to its conflict of laws provisions.

## **14. BINDING ARBITRATION**

In the event of a dispute arising under or relating to this Agreement (each, a “Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY CHOOSES ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by the Judicial Arbitration and Mediation Platform (“JAMS”) pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website <http://www.jamsadr.com>. Each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. Nothing in this Agreement will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

## **15. CLASS ACTION WAIVER**

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

## **16. MISCELLANEOUS**

If this Agreement is terminated in accordance with the Termination provision above, such termination shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: “Intellectual Property,” “Communications with Us,” “No Warranties; Limitation of Liability,” “Indemnification,” “Termination of the Agreement,” “Controlling Law,” “Binding Arbitration,” “Class Action Waiver,” and “Miscellaneous.”

Our failure to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

You consent and agree that your clicking of the “I ACCEPT” button constitutes your electronic signature, acceptance, and agreement under the United States federal E-SIGN legislation and that such electronic signature will meet the requirements of an original signature as if actually signed by you in writing. Further, you agree that no certification authority or other third-party verification is necessary to the enforceability of your signature. At our request, any electronically signed document must be re-executed in original form by you. No party hereto may raise the use of an electronic signature as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Agreement.