

## Software-as-a-Service Terms of Use

These software-as-a-service terms (the “**Agreement**”) constitutes a binding contract between Celero Inc. (“**we**”, “**us**”, “**our**” or “**Celero**”), and the customer (“**Customer**”) identified in the Order Form (as defined below).

WHEREAS, Celero develops and operates a marketing tool platform providing insights on content consumption use in business development and lead generation (the “**Service**”); and

WHEREAS Customer is interested in using the Service.

NOW THEREFORE, in consideration of the mutual covenants hereinafter, by Customer signing an Insertion Order or enrolling online to the Service and assenting to this Agreement, the Parties agree as follows:

### **1. Definitions**

- 1.1. “Analytics Information”** means information about the data subject’s interaction with the Customer Content, including actions they’ve taken regarding such content and forms, links clicked, the content of forms that they completed, the IP address from which they access such content and forms, their device information, the time and date of access, type of browser used and language used.
- 1.2. “Customer Content”** means the content and the forms that the Customer makes available to End Users, including the content of forms that they completed.
- 1.3. “End Users”** means those data subjects whom are served with Customer Content and about whom Analytics Information is collected.
- 1.4. “Feedback”** means information or content concerning enhancements, changes or additions to the Service or other Celero offerings, that are requested, desired or suggested by the Customer or its Users.
- 1.5. “In-house Users”** means those employees, consultants and agents that Customer designates to use and deal with the Service on its behalf.
- 1.6. “Order Form”** means either the insertion order Customer has signed, or the enrollment plan Customer has selected and agreed to online, in each case specifying, among others, the Customer’s details, the fees applicable to this Agreement, the Service usage metrics and parameters and limitations for the Customer and the particulars of any support and maintenance scheme for the Service. Such Order Form is incorporated by reference to this Agreement, and constitutes an integral part of it.
- 1.7. “Term”** means the period of this Agreement as specified in Section 9 below.

### **2. Access to the Service**

2.1. Subject to the provisions this Agreement, Celero grants Customer access to use the Service during the Term, pursuant to the usage parameters, limits and metrics specified in the Order Form.

2.2. Customer must ensure that all its In-house Users fully comply with this Agreement. Customer shall be liable to Celero for all acts or omissions of those that use and deal with the Service on its behalf, as though Customer had performed those acts or omissions.

### **3. Restrictions**

Customer and its In-house Users shall not:

3.1. sublicense, transfer and/or assign the Service or any part thereof to any third party, or allow any third parties to use the Service, except In-house Users and End-Users, as contemplated by this Agreement;

3.2. remove, or in any manner alter, any product identification, proprietary, trademark, copyright or other notices contained in the Service;

3.3. work around any technical limitations of the Service or use any tool to enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the Service

3.4. breach the security of the Service, identify, probe or scan any security vulnerabilities in the Service;

3.5. use robots, crawlers and similar applications to scrape, harvest, collect or compile content from or through the Service.

3.6. enhance, supplement, modify, adapt, decompile, disseminate, disassemble, recreate, generate, reverse assemble, reverse compile, reverse engineer, or otherwise attempt to identify the underlying source code of the Service; or

3.7. use the Service in order to develop, or create, or permit others to develop or create, a product or service similar or competitive to the Service.

### **4. Intellectual Property**

4.1. The Service (excluding Customer Content) is a proprietary offering of Celero, protected under copyright laws and international copyright treaties, patent law, trade secret law and other intellectual property rights of general applicability. The Service is offered to Customer for use and access only in accordance with the terms of this Agreement and is not sold in any other way.

4.2. Customer may provide Celero with Feedback, including information pertaining to bugs, errors and malfunctions of the Service, performance of the Service, the Service's compatibility and interoperability, and information or content concerning enhancements, changes or additions to the Service that Customer requests, desires or suggests. Customer hereby assigns all right, title and interest in and to the

Feedback to Celero, including the right to make commercial use thereof, for any purpose Celero deems appropriate.

4.3. Except as provided herein with respect to Analytics Information and Customer's limited access to use the Service according to this Agreement, this Agreement does not grant or assigns to Customer, any other license, right, title, or interest in or to the Service or the intellectual property rights associated with them. All rights, title and interest, including copyrights, patents, trademarks, trade names, trade secrets and other intellectual property rights, and any goodwill associated therewith, in and to the Service or any part thereof, including computer code, graphic design, layout and the user interfaces of the Service, whether or not based on or resulting from Feedback, but excluding Customer Content, are and will remain at all times, owned by, or licensed, to Celero.

4.4. Subject to Customer's written consent, and notwithstanding anything to the contrary herein, Celero may identify Customer as a customer and indicate Customer as a user of the Service on its website and in other online or offline marketing materials and press releases. Customer hereby grants Celero a worldwide, non-exclusive, non-transferable, royalty-free and free of charge, license, to use Customer's name, logo, and website URL on its website and in other online or offline marketing materials relating to the Service. Celero will use this content strictly in accordance with any usage guidelines sent by Customer in advance.

## **5. Confidentiality**

**5.1. "Confidential Information"** shall mean any and all information disclosed by one party ("**Disclosing Party**") to the other ("**Receiving Party**") regarding past, present, or future marketing and business plans, customer lists, lists of prospective customers, technical, financial or other proprietary or confidential information of the Disclosing Party, formulae, concepts, discoveries, data, designs, ideas, inventions, methods, models, research plans, procedures, designs, formulations, processes, specifications and techniques, prototypes, samples, analyses, computer programs, trade secrets, data, methodologies, techniques, non-published patent applications and any other data or information, as well as improvements and know-how related thereto.

**5.2.** Analytics Information is considered Customer's Confidential Information. Celero may use the Analytics Information as specified in the [Celero Privacy Policy](#), and will not share Customer's Analytics Information with third parties other than service providers and contractors except in a form that is de-coupled from the Customer's identity.

**5.3.** Each Party herein must hold any Confidential Information in confidence using the same degree of care, but in no case less than a reasonable degree of care, that it uses to prevent the unauthorized dissemination or publication of its own confidential information. Receiving Party may use this Confidential Information only as permitted under this Agreement.

**5.4.** The obligations set forth in this section shall not apply to information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on Receiving Party's part; (ii) Receiving Party can demonstrate in its prior established records to have had rightfully in Receiving Party's possession prior to disclosure of the same by the Disclosing Party; (iii) Receiving Party can demonstrate by written records that it had rightfully obtained the same from a third party who has the right to transfer or disclose it, without default or breach of confidentiality obligations; (iv) Disclosing Party has provided its prior written approval for disclosure; or (v) Receiving Party are required to disclose pursuant to a binding order or request by court or other governmental authority, or a binding provision of applicable law, provided that, to the extent permissible, Receiving Party provide the Disclosing Party notice of the requested disclosure as soon as practicable, to allow the Disclosing Party, if it so chooses, to seek an appropriate protective or preventive order.

## **6. Data and Privacy**

6.1. The Service does not provide, and is not intended as, data back-up service. Celero may delete the Analytics Information from the Service upon termination of this Agreement. Customer is responsible for maintaining back-up copies of its data.

6.2. If, considering the nature and circumstances of the Customer, the Analytics Information is subject to the GDPR, then the Customer and Celero shall comply with the joint-controller addendum attached hereto as Exhibit A.

## **7. Technical Support**

Celero, either directly or with the assistance of third parties, will endeavor to provide Customer technical support for technical pursuant to the particulars specified in the Order Form. Celero will attempt to respond to Customer's technical questions, problems and inquiries as soon as practicably possible. However, Celero makes no warranties to the successful or satisfactory resolution of the question, problem or inquiry; and may decline to provide such support for matters that it deems, in its sole discretion, to require unreasonable time, effort, costs or expenses. For the purpose of the provision of technical support for Customer's technical questions, problems and inquiries, Customer will cooperate, and work closely with Celero, to reproduce malfunctions, including conducting diagnostic or troubleshooting activities, as Celero reasonably requests.

## **8. Payments**

- 8.1. In consideration for the Service, Customer will pay Celero the fees specified in the Order Form according to the payment schemes, payment terms and payment cycles specified therein. Fees quoted in the Order Form are exclusive of any sales tax and transaction charges. Customer shall bear such taxes and charges.
- 8.2. All Customer's payment obligations to Celero are non-cancelable and all amounts paid in connection with the Service are non-refundable. Customer is responsible for paying all fees applicable to its subscription to the Service, whether or not it actively used, accessed or otherwise benefited from the Service.
- 8.3. Unless set forth otherwise in the Order Form, amounts are due and payable to Celero within thirty (30) days of receipt of the applicable invoice.
- 8.4. Failure to settle any overdue fee within twenty one (21) calendar days of its original due date will constitute a material breach of this Agreement and, without limiting any remedies available to Celero, Celero may: (i) terminate this Agreement; or (ii) suspend performance of or access to the Service, until payment is made current. Late payments shall bear interest at the rate of nine percent (9%) per annum. Customer will reimburse Celero for all legal costs and attorney fees Celero incurs in the course of collecting Customer's overdue fees.
- 8.5. All fees are quoted in US Dollars and Customer shall pay Celero in US Dollars, unless stated differently in the Order Form. Fees are payable by the methods indicated in the Order Form.
- 8.6. Payment may be processed and handled through relevant third party payment processors. Any payments processed through third party payment processors are therefore subject not only to this Agreement, but also the terms and conditions of the applicable third party payment processor pursuant to Customer's agreement with them. Customer acknowledges that such third party payment processors may charge commission from the Customer. Celero is not responsible for such commission, which is strictly between Customer and the relevant payment processor. Fees that Celero is unable to charge through the payment method Customer provided is deemed an overdue fee.

## 9. Term and Termination

- 9.1. This agreement will be in effect for the period specified in the Order Form, and renewed in accordance with the renewal terms and cycles specified in the Order Form (the "**Term**").
- 9.2. Notwithstanding the above, either party may terminate this agreement:
  - 9.2.1. In the event of a breach of this Agreement by the other party, where the breach remains uncured for thirty (30) days following written notice thereof from the non-breaching party to the breaching party, but if a breach is of a nature that cannot be cured, then the non-breaching party may terminate the Agreement immediately upon notice to the other party;
  - 9.2.2. If the terminating party is required to do so by law;

9.2.3. If the other party becomes or is declared insolvent or bankrupt, is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which proceedings are not dismissed within sixty (60) days of their commencement, makes an assignment for the benefit of creditors, or takes or is subject to any such other comparable action in any relevant jurisdiction.

9.3. Immediately upon termination of this Agreement:

9.3.1. Celero may terminate Customers' account on the Service and delete the Analytics Information (if stored) in its systems;

9.3.2. Customer shall cease any and all use of the Service;

9.3.3. Celero will charge Customer for all then-outstanding Service fees (if any);

9.4. Sections in this Agreement that by their purpose of nature should survive termination of this Agreement, will so survive.

#### **10. No Warranty and Limitation on Liability**

10.1. Celero will endeavor to have the Service operate properly. However, as a service that relies on back-end software, infrastructure, servers, third party networks and continuous internet connectivity, it cannot guarantee that the Service will operate in an uninterrupted or error-free manner, or that it will always be available, free from errors, omissions or malfunctions.

10.2. If Celero becomes aware of any failure or malfunction, it shall attempt to regain the Service's availability as soon as practicable. However, such incidents will not be considered a breach of this Agreement.

10.3. THE SERVICE IS PROVIDED "AS IS". CELERO HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE AND THE OUTPUT DATA, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, NON-INFRINGEMENT, TITLE, SECURITY, COMPATIBILITY OR PERFORMANCE.

10.4. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT OR BREACH OF CELERO'S CONFIDENTIALITY OBLIGATIONS, CELERO, INCLUDING ITS EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON ITS BEHALF, WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, STATUTORY OR PUNITIVE DAMAGES, LOSSES (INCLUDING LOSS OF PROFIT, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES AND LOSS OF DATA), COSTS, EXPENSES AND PAYMENTS, EITHER IN TORT, CONTRACT, OR IN ANY OTHER FORM OR THEORY OF LIABILITY

(INCLUDING NEGLIGENCE), ARISING FROM, OR IN CONNECTION, WITH THIS AGREEMENT, ANY USE OF, OR THE INABILITY TO USE THE SERVICE, THE ANALYTICS INFORMATION, ANY RELIANCE UPON THE ANALYTICS INFORMATION OR ANY ERROR, INCOMPLETENESS, INCORRECTNESS OR INACCURACY OF THE SERVICE OR THE ANALYTICS INFORMATION.

**10.5.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT, OR BREACH OF CONFIDENTIALITY OBLIGATIONS, THE TOTAL AND AGGREGATE LIABILITY OF CELERO (INCLUDING ITS RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON ITS BEHALF), FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICE OR THE ANALYTICS INFORMATION, SHALL BE LIMITED TO THE FEES PAYABLE TO CELERO FOR THE SERVICE IN THE PRECEDING 12 MONTHS PRIOR TO THE EVENT PURPORTEDLY GIVING RISE TO THE CLAIM OCCURRED.

#### **11. Governing Law and Jurisdiction**

**11.1.** This Agreement and Customer's use of the Service and Subscription Reports will be exclusively governed by and construed in accordance with the laws of the State of New York. Subject to Section 11.2 below, if the parties are unable to resolve a dispute, it shall be referred to and finally resolved by binding arbitration under the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, which rules are deemed to be incorporated by reference into this clause. The venue of arbitration shall be New York County, New York, United States of America but the arbitration shall, to the greatest extent possible, be held by videoconference or teleconference, and by written submission. The language of the arbitration shall be English language and the number of arbitrators shall be one. The substantive law for arbitration shall be the laws of the State of New York.

**11.2.** Notwithstanding the foregoing, a party may also lodge a claim against the other party for interim, emergency or injunctive relief in any other court having general jurisdiction over the other party.

#### **12. Miscellaneous**

**12.1. Assignment.** Customer may not assign this Agreement without obtaining Celero's prior written consent. Any purported assignment without Celero's prior written consent is void. To the greatest extent permissible by law, Celero may assign these Terms in their entirety, including all right, duties, liabilities, performances and obligations herein, upon notice to Customer and without obtaining Customer's

further specific consent, to a third-party, upon a merger, acquisition, change of control or the sale of all or substantially all of Celero's equity or assets. By virtue of such assignment, the assignee assumes Celero's stead, including all right, duties, liabilities, performances and obligations hereunder, and Celero shall be released therefrom.

**12.2. Relationship of the Parties.** The relationship between the Parties hereto is strictly that of independent contractors, and neither Party is an agent, partner, joint venturer or employee of the other.

**12.3. Subcontracting.** Celero may subcontract or delegate the performance of its obligations under this Agreement, or the provision of the Service (or any part thereof), to any third party of its choosing, provided however, that it remains liable to Customer for the performance of its obligations under this Agreement.

**12.4. Complete Terms and Severability.** This Agreement constitutes the entire and complete agreement between the Parties concerning the subject matter herein and supersede all prior oral or written statements, understandings, negotiations and representations with respect to the subject matter herein. If any provision of this Agreement is held invalid or unenforceable, that provision shall be construed in a manner consistent with the applicable law to reflect, as nearly as possible, the original intentions of the Parties, and the remaining provisions will remain in full force and effect. This Agreement may be modified or amended only in writing, signed by the duly authorized representatives of both Parties.

**12.5. No Waiver.** Neither Party will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other Party, of any terms or provisions of these Terms. The waiver, by either Party, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

## Exhibit A – Joint Controller Addendum

WHEREAS, in order to account for the implications of the provision of the Service on the parties' interrelated activities on processing personal data pursuant to applicable data protection and privacy law, the Customer and Celero desire to introduce the following understandings and arrangements which determine the rights and obligations of the parties for the joint processing of personal data, in accordance with Art. 26 of the GDPR;

THEREFORE, the parties have agreed as follows:

1. **Definitions.** Capitalized terms not defined in this Addendum shall have the meaning ascribed to them in the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).
2. **Scope.** This Addendum applies to the parties' jointly-coordinated collection and initial Processing of Personal Data in the context of the Service. With respect to other areas of Processing the same or other Personal Data (such as those performed outside the scope of the Service or those subsequently performed by a party for its own independent purposes), where the parties do not jointly determine the purposes and means of data processing, each party is an independent controller pursuant to Article 4(7) of the GDPR.
3. **Nature of Controllershship**
  - 3.1. In context of joint controllership, the Customer influence the Processing of Personal Data due to: (a) its generation of web traffic which are the Data Subjects from which Personal Data is collected and Processed; and (b) the Customer Content, thereby generating the Personal Data to be collected and Processed.
  - 3.2. In context of joint controllership, Celero influences the Processing in its determination of which Personal Data is collected from Data Subjects and subsequently Processed through the Service and the method of that collection which is based on the use of cookies and other tracking technology. This Processing concerns the Analytics Information.
  - 3.3. The legal basis under EU law for collecting Personal Data through cookies and similar tracking technology is the explicit consent of the Data Subject. The legal basis under EU law for the Customer's Processing of Analytics Information is the legitimate interests of the Customer in its business development and lead development. The legal basis under EU law for Celero's Processing of Analytics Information is its legitimate interests in the development and enhancement of the Service and its business.
4. **Compliance.** Each party shall ensure compliance with the legal provisions of the GDPR, particularly in regard to the lawfulness of Processing under Joint-Controllershship. Both parties

shall ensure that only Personal Data which are necessary for the legitimate conduct of the Processing are collected and agree to observe the principle of data minimization within the meaning of Article 5(1)(c) of the GDPR.

5. **Notice to Data Subjects.** The parties acknowledge their obligation to provide the Data Subject with any information referred to in Articles 13 and 14 of the GDPR in a concise, transparent, intelligible, and easily accessible form, using clear and plain language. Celero shall provide that information concerning the Joint-Controller Processing described in this Addendum, to the Data subject, free of charge. That information shall include the essential content of this joint controllership Addendum.
6. **Data Subject Requests.** The parties shall take all necessary technical and organizational measures to ensure that the rights of Data Subjects, in particular those pursuant to Articles 12 to 22 GDPR, are guaranteed at all times within the statutory time limits. To this end:
  - 6.1. Celero shall store personal data in a structured, commonly used, and machine-readable format.
  - 6.2. Because the GDPR provides that the data subject may exercise their rights under Articles 15 to 22 GDPR against each of the parties, if one party receives a Data Subject request concerning the Joint-Controller Processing described in this Addendum, it shall communicate that request to the other party as soon as possible.
  - 6.3. Unless otherwise agreed by the parties in a particular case, Celero, in its administration of the Analytics Information database, shall be responsible to handle the Data Subject's request and to respond and communicate with the Data Subject regarding their request, insofar as it concerns the Joint-Controller Processing described in this Addendum. Celero shall also verify the Data Subject's identity before substantively addressing their request.
  - 6.4. If Personal Data are to be deleted at the request of a Data Subject, the parties shall inform each other in advance. A party may object to the deletion for a legitimate interest, for example, if there is a legal obligation to retain the data set for deletion.
  - 6.5. The parties shall cooperate and provide each other with the necessary information regarding their respective Processing activities to allow for the proper handling of Data Subject requests. Contact persons for the parties are as specified in the Order Form. Each party must promptly inform the other of any change of the contact person.

7. **Errors and Omissions.** The parties shall inform each other immediately if they become aware of any material errors or suspected issues regarding their data protection obligations concerning the Joint-Controller Processing described in this Addendum.
8. **Personal Data Breach.** Both parties are obliged to inform their applicable Supervisory Authority and the Data Subjects affected by a Personal Data Breach in accordance with Articles 33 and 34 of the GDPR concerning the Joint-Controller Processing described in this Addendum. The parties shall inform each other about any such notification to the Supervisory Authority without undue delay, and to the extent practicable, in advance thereof. The parties also agree to forward the information required for the notification to one another without undue delay.
9. **Data Protection Impact Assessment.** If a data protection impact assessment pursuant to Article 35 of the GDPR is required, the parties shall provide reasonable support to each other.
10. **Documents.**
  - 10.1. Documentations within the meaning of Article 5(2) of the GDPR, which serve as proof of proper Personal Data Processing, shall be archived by each party beyond the end of the contract in accordance with legal provisions and obligations.
  - 10.2. Each party shall include the Joint-Controller Processing described in this Addendum in the records of processing activities pursuant to Article 30(1) of the GDPR, in particular, with a comment on the nature of the Processing operation as one of joint responsibility.
11. **Confidentiality.** The parties shall ensure that all employees authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality in accordance with Articles 28(3), 29, and 32 of the GDPR for the duration of their employment, as well as after termination of their employment. The parties shall also ensure that they observe the confidentiality provisions prior to taking up their duties and are familiarized with the data protection legislation and rules relevant to them.
12. **Data Security.** The parties shall independently ensure that they are able to comply with all existing storage obligations with regard to the Personal Data for each of their storage activities. For this purpose, they must each implement appropriate technical and organizational measures (Article 32 et seq. of the GDPR).

13. **Data Protection By Design and By Default.** The implementation, default-setting, and operation of the systems shall be carried out in compliance with the requirements of the GDPR and other regulations. In particular, compliance with the principles of data protection by design and data protection by default will be achieved through the implementation of appropriate technological and organizational measures corresponding to the state of the art.
14. **Processors.**
- 14.1. The parties agree that Celero will store on Amazon Web Service the Personal Data which are processed on in the course of the Service.
- 14.2. Each party undertakes to conclude a contract pursuant to Article 28 of the GDPR with regard to its use of Processors in the Processing of the Personal Data for which the party administers.
- 14.3. The parties shall inform each other in a timely manner of any intended change with regard to the involvement or replacement of subcontracted Processors. The parties shall only commission Processors who meet the requirements of the GDPR and the provisions of this Addendum.
15. **Precedence.** In the event of any conflicting stipulations between this Addendum and the Agreement or any other agreement in place between the parties, this Addendum shall prevail but only to the extent the conflicting stipulations directly relate to the Customership Processing described in this Addendum.