

BA ANALYSER TERMS AND CONDITIONS

These Terms and Conditions, together with any Schedules and other documents referred to within it and/or agreed between the parties from time to time, (together, the "Agreement") apply to the provision of all services and/or products provided by BrandAdvantage Ltd ("we" or "us") to you, the Customer, being an organization which has selected to trial or purchase the BA Analyser service.

The product: BA Analyser is a software tool that is built as a SaaS product that is designed to allow customers to manage the receiving evaluating and scoring, communications, reporting and selection of funding applications electronically. The service is used at the sole risk of the organisation purchasing the service.

1. **Services:** We will provide the Services in accordance with the Terms and Conditions including the Hosting and Support SLA's and the Software and Support Specifications during the Term, will set out the details of the Services to be provided, which may include:
 - (a) **Software Services**, which will permit you to access and use Our Software for the duration of the relevant Term;
 - (b) **Customisation Services**, as agreed between us from time to time; and/or
 - (c) **Support Services**, as defined in our Hosting and Support SLAs and Applicant Support Terms. The cost of support services in defines as defined in point 7 below.
2. **Access to Software Services:** Our Software may only be accessed (whether by you, Authorised Users or Applicants) from within the Territory, and in relation to the receiving and processing of funding applications in respect of the Territory only. You will not use, or promote, market or allow the use of, any of Our Software in respect of applications relating to, or submitted by Applicants located in, countries outside the Territory. We reserve the right to limit access to Our Software to the Territory only, including by the use of geo blocking technology by reference to users' IP addresses. You will be responsible for your Authorised Users' use of Our Software. You will not attempt to copy, decompile, disassemble or reverse engineer Our Software, or allow anyone other than an Authorised User to access or use it, and you will not use Our Software, or use or share with any third party any information obtained by you from us, to compete with us or any product or service offered by us from time to time.
3. **Fees Payment and Free Trials:** The customer shall pay the fees set out in the service plan that the customer accepts as provided by BrandAdvantage. Payment for the Monthly Service may be by a valid credit card is required for the service to continue after any free trial period, if a free trial is offered. The service is billed in advance on a monthly basis and is non-refundable. There will be no re-funds or credits for part months used, down grading accounts or for months unused. If a Free Trial is offered it is currently for 90 days but maybe altered. A free trial would be a one off offer for new registered user. Payment for the Annual Service, maybe by Credit Card or Automatic bank payment. Where the service is paid for yearly in advance and is Cancelled a refund of the unused months may be requested for an amount up to 3 months of the annual amount charged in year 1 and a maximum amount of 6 months of the annual amount charged in year two onwards based upon the month following the last month of service, including part months
4. **Term & Renewals:** Annually from the Effective Date, The Term will automatically renew for additional periods of twelve (12) months, unless BA provides written notice at least three (3) months prior to expiry of the then-current Term stating that the Term will not automatically renew or if the customer selects to discontinue the service by logging into the billing portal from the admin area Analyser system and cancel the service, or emailing cancellation to sales@brandadvantage.com.
5. **Annual Subscription Fees:** are payable in advance no less than 30 day before each anniversary of the Effective Date, to be invoiced to the customer 60 days before the due date.
6. **Details of Customisation Services:** As agreed by the Parties from time to time. Customer may request by specifying its requirements in a Customisation Request Form and submitting it to BAL for review and estimate. If the Customer approves the estimate in writing, payment shall be due in advance of work commencing
7. **Details of Support Services:** BAL shall provide Support Services to the Customer and Applicants in accordance with the Hosting and Support SLAs.
8. **Fees:** Fees for the Support Services provided will be free of charge for the first two (2) hours per months following the Effective Date, thereafter any additional hours in any month shall be at \$75/hour, to be invoiced monthly in arrears.
9. **Customer Responsibilities:**

- (a) The Customer Shall:
- Select the service plan they require from the website
 - Set up the email addresses of all Staff;
 - Complete the Organisation Evaluation and the rating of all questions;
 - Set the response times and alert times;
 - Select the relationship types they require
 - To accept or re-write the copy for all public facing communications
 - Include your branding, logos and brand colours
 - Ensure that your terms and conditions and privacy obligations are correctly expressed
 - Brief all staff; and
 - Manage the submission of applications using the BA Analyser software, including by approving and/or declining all applications and communications
- (b) You must be at least thirteen (13) years of age to use this Service. You must provide your current, accurate identification, contact, and other information that may be required as part of the registration process and/or continued use of the Service. You are responsible for maintaining the confidentiality of your Service password and account, and are responsible for all activities that occur there under. BA reserves the right to refuse service to anyone at any time without notice for any reason.
10. **Termination and Cancellation:**
- (a) You may cancel your account at any stage and you are solely responsible for doing so properly. To cancel be giving notice to analysersales@analyser.com
- (b) We may terminate this Agreement immediately upon written notice if:
- (i) You fail to make any payment when due, or breach any material term of this Agreement and fail to remedy it within 30 days of written notice to do so; or
 - (ii) You may terminate this Agreement if we breach any material term of this Agreement and fail to remedy it within 30 days of written notice to do so.
11. **Consequences of termination:** On termination or cancellation of the supply of the service for any reason:
- (a) we shall be entitled to automatically terminate provision of all or any Services (including access to Our Software by you, your Authorised Users and/or Applicants);
 - (b) you shall remain liable to pay any outstanding Fees due under this Agreement in respect of Services delivered up to the date of termination or expiry, including any additional development work requested by you and either partly of fully built.
 - (c) Should the reason for cancellation because by BA failure to address a system or service fault the Customer right to a refund as stated in clause 3 shall apply
12. **Taxes:** All amounts payable under this Agreement are exclusive of any goods and service, sales or value added tax, and all state federal or national taxes, are expressed in the currency set out in the BA Analyser website. If any tax is payable it will be payable at the time the amount itself is payable of which you shall be solely responsible for.
13. **IP Rights:** All IP Rights in:
- (a) Our Software, the Services and any other materials used in, or created in the course of, providing the Services shall remain vested in us (or our licensors);
 - (b) any materials or information supplied by you ("Customer Materials") shall remain vested in you; and
 - (c) any materials or information supplied by Applicants shall remain vested in the relevant Applicant (unless otherwise agreed between you and Applicants).
14. **Licence:** You grant to us a non-exclusive, royalty-free licence (including a right to sub-licence to any sub-contractors as necessary) to use the Customer Materials for the duration of the Term for the purpose of providing the Services. Neither party may use the other party's, name, trademarks, logo or service marks, except as expressly permitted in this Agreement or with the other party's prior written consent, not with standard the aforesaid; BA may include your name and logo in their website

- promotional material stating you are a user of BA Analyser.
15. **Use of Data, Privacy and Security:** We shall be permitted, during and after the Term, to use, collate, aggregate and distribute as general market data any data contained in any materials submitted by Applicants using Our Software, provided that any distribution or publication of such data is on an aggregated basis only, and does not contain any information which identifies any individual person or organisation, or any information which is confidential to you or to any Applicant. BA will not make available to any third party any of your information collected when you are registering to become a user of the service and that information shall remain confidential other than the conditions stated in clause 17 below. Analyser relies on third parties to develop our software, host our services and uses or engage with third party API's to deliver parts of our software and as such we can't guarantee security of data. Our user software is fully SSL encrypted
 16. **Warranties:**
 - (a) BA warrant that the Services will be performed using a reasonable level of skill and care and in accordance with generally accepted industry standards and practice.
 - (b) You warrant that you have been fully briefed on the capabilities of Our Software and that you have satisfied yourself that such capabilities are suitable for your requirements.
 - (c) All other warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
 17. **Liability:** Our maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the total Fees payable in respect of Software Services under this Agreement in a six (6) month period; PROVIDED that in no event will BA be liable under or in connection with these Terms and Conditions for loss of actual or anticipated income or profits, loss of goodwill or reputation, loss of data, loss of anticipated savings or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known. If you have any questions regarding the Terms and Conditions that you wish to discuss please contact BrandAdvantage analysersales@brandadvantage.com
 18. **Confidential Information:** Except as permitted by this clause 14, each party shall keep the other party's Confidential Information confidential and shall not disclose such Confidential Information to any person or use such Confidential Information for any purpose other than the purpose of this agreement; provided that either party may disclose any Confidential Information: (a) to its professional advisers, auditors or bankers on a need to know basis; or (b) if and to the extent disclosure is required by law or by the rules of any registered securities exchange upon which the party's securities are listed, provided that party gives the other party notice of the requirement as soon as practicable before such disclosure is made; or (c) if and to the extent the information is obtained or developed independently of the information disclosed by the disclosing party.
 19. **Force Majeure:** BA will not be liable for any failure or delay in performance of any obligation under these Term and Conditions or Service standards to the extent such failure or delay is due to an event which is beyond our reasonable control, inclusive of any third party product performance.
 20. **Representative:** your representative will have the authority to instruct and enter into binding commitments with us with regard to the service we are offering by completing the registration for the free trial or by purchasing a plan.
 21. **Entire Terms and Conditions and Severability:** These Terms and Conditions constitutes the entire undertakings of the parties and supersedes all prior Terms and Conditions, understandings and representations (whether oral or written) between the parties as to its subject matter. If any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable in any respect, it shall be severed and the remainder of these Terms and Conditions shall remain in full force and effect.
 22. **Survival:** Following cancellation or termination of these Terms and Conditions, clauses 4 to 8, 10, 12, 13 and 16, together with other provisions that are by their nature intended to survive, will remain in effect.
 23. **Governing law and jurisdiction:** These Terms and Conditions is governed by New Zealand Law. The parties irrevocably submit to the jurisdiction of the New Zealand courts in any relating proceedings.

24. **Definitions:** The following definitions apply in these Terms and Conditions:
- "**Applicant**" means any third party individual or organisation who/which accesses Our Software for the purposes of submitting an application for funding by you;
- "**Authorised Users**" means you, and any of your employees and/or contractors, who access/use Our Software;
- "**Business Day**" means any day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand;
- "**Confidential Information**" means information disclosed by a party under these Terms and Conditions that is marked as confidential or which might reasonably be expected to be confidential in nature
- "**Customer**" means the Organisation and its Representatives
- "**Customer Responsibilities**" means your obligations and responsibilities set out above;
- "**Fees**" means the amounts payable by you to us in respect of the Services, as set out on the BA Analyser website and selected by you, the Customer;
- "**IP Rights**" includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;
- "**Our Software**" means any and all software provided by us to you, for access by Authorised Users and Applicants, on a 'software as a service' basis;
- "**Services**" means any Software Services, Customisation Services and Support Services, or any other services, provided by us under these Terms and Conditions from time to time, that maybe agreed between the parties;
- "**Language**" is the language selection that you, the customer, choose from the BA Analyser website when selecting the Analyser service;
- "**Software as a Service**" is as defined in these Terms and Conditions;
- "**Customisation**" are the specific additional or amended series requested by the customer and agreed by BAL;
- "**Work Order**" means the separate document(s) agreed and signed by both of us setting out the details of Additional Services to be provided by us, that is specific to the customer;
- "**Term**" as stated above;
- "**Territory**" is New Zealand or the country of the officer your organisation is purchasing the BA Analyser service from, or if you are seeking a multi country licence for additional countries, use must email this request to analysersales@brandadvantage.com with the countries being sort and we will respond with a pricing plan;
- "**Effective Date**" the date commencing service, being the date of registering for the service on the BA Analyser website
- "**Representative**" for the IP and Software is: The Executive Director of BrandAdvantage Ltd and for the Customer the person registering the organisation for the service