

# Terms of Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY ACCEPTING THESE TERMS OF SERVICE, EITHER THROUGH EXECUTING AN ORDER FORM THAT REFERENCES THESE TERMS OF SERVICE OR CLICKING TO ACCEPT WHERE SUCH OPTION IS PRESENTED TO YOU, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, FULLY UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU ARE ENTERING INTO THESE TERMS OF SERVICE ON BEHALF OF A COMPANY OR OTHER ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR OTHER ENTITY TO THESE TERMS OF SERVICE.

These Terms of Service (the “**Terms of Service**”) are between you, or if accepting on behalf of an entity, such entity (“**Customer**”, “**you**”, or “**your**”) and the entity set forth in the Order Form (“**Treasure Data**”, “**we**”, or “**us**”). These Terms of Service and any Order Forms and Statements of Work that references them, and any other documents incorporated by reference in them shall be collectively referred to as the “**Agreement.**” The Agreement constitutes a legal agreement that governs your access to and use of our Service.

## 1. Service

**1.1 Provision of the Service.** Treasure Data shall make the Service available to Customer during the Subscription Term solely for Customer’s own internal business purposes as permitted by and subject to this Agreement.

Customer may permit its employees and contractors (collectively, “**Users**”) to use the Service solely on Customer’s behalf, provided that Customer shall ensure that all such Users comply with the terms of this Agreement. If Customer becomes aware of any breach of Customer’s obligations under the Agreement caused by a User, Customer will immediately suspend access to the Service and Collected Data by such Customer User. Customer will be fully liable for the acts, omissions, or violation of this Agreement by any and all Users as though they were Customer’s own.

Except for the express usage rights granted in this Section 1.1, no other usage rights or licenses are granted by Treasure Data hereunder, by implication, estoppel or otherwise, and all rights not expressly granted herein are reserved.

Customer understands that the Service may change over time as Treasure Data refines and adds more features. Treasure Data reserves the right to update and modify the Service at any time, with or without notice, in its sole discretion.

**1.2 Customer’s Account.** For each User, Customer must provide Treasure Data with Customer’s and the User’s full legal name, the User’s valid email address, and any other information requested during the account signup process (collectively, “**User Account Information**”) in order to obtain a Treasure Data account (“**Login Account**”) for such User. Customer will ensure that all User Account Information and other account

information of all Users remains complete and accurate. Accounts registered by “bots” or other automated methods are not permitted. Customer is solely responsible for protecting each Login Account, including a User’s username and password, and Customer will be liable for any unauthorized use thereof.

**1.3 Third Party Services.** Customer may use certain third party products or services in connection with the Service ("**Third Party Services**"). Customer understands and agrees that Customer’s use of those Third Party Services may be subject to additional terms, conditions, and policies that are specific to such Third Party Services, and that Customer shall be bound by such terms, conditions, and policies if Customer elects to use such Third Party Services. Treasure Data makes no representations or warranties with respect to any Third Party Services, whether express or implied, and shall have no liability whatsoever for the Collected Data while it is being transmitted from the Service to the Third Party Services. Customer is solely responsible for determining the suitability of any Third Party Services that Customer elects to use in connection with the Service. Any and all use of such Third Party Services shall be at Customer’s sole risk.

**1.4 Proof of Concept.** From time to time Treasure Data may offer access to the Service (or portions thereof) through a trial period, pilot, or proof of concept ("**Proof of Concept**"), as Treasure Data determine in its sole discretion, and as reflected in the Order Form. The obligations on the Customer as set forth in this Agreement applies equally to any Proof of Concept that Customer may be using. Customer understands and acknowledges that the Service provided under any Proof of Concept may be significantly limited in storage and concurrent processing capacity and as such shall not be used in a production or live environment. Any access or use of the Service under a Proof of Concept shall be at Customer’s sole risk and is provided to the Customer on an “as is” basis. Treasure Data reserves the right to suspend or terminate the Proof of Concept at any time and for any reason.

**1.5 Support.** Technical support is provided in accordance with Customer’s selected plan level and the terms and conditions set forth in the Order Form, as applicable.

**1.6 Professional Services.** Treasure Data may provide implementation, configuration, training, and other similar services related to the Service (collectively "**Professional Services**"). All Professional Services, including the applicable fees for such services, will be set out in either an Order Form or a statement of work executed by the parties ("**Statement of Work**") which will reference and be governed by this Agreement. Any materials produced by or with Treasure Data in the course of providing any support or Professional Services to Customer (the "**Service Materials**"), shall remain the exclusive property of Treasure Data. Service Materials include materials created for or in cooperation with Customer, but do not include any Collected Data, Customer’s Confidential Information or the Service. Customer shall reimburse Treasure Data for all reasonable, pre-approved (by Customer in writing) and appropriately documented travel

and related expenses incurred by Treasure Data in performing any support or Professional Services for Customer.

## **2. Use of the Service**

**2.1 Restrictions.** Customer shall not (and shall ensure that Users or other third parties do not):

- a. use the Service in any manner or for any purpose other than as expressly permitted by this Agreement;
- b. sell, resell, sublicense, distribute, rent or lease the Service, or include the Service in any service bureau or outsourcing operation;
- c. reproduce, misuse, modify, alter, tamper with, repair or otherwise create derivative works of the Service;
- d. remove, obscure or alter any proprietary right notice on or in connection with the Service;
- e. use the Service to store or transmit malicious code, files, scripts, agents, or programs, including without limitation viruses, worms, and Trojan Horses;
- f. use the Service to store or transmit Health Information, any data in violation of COPPA or PCI Data;
- g. interfere with or disrupt, compromise, or degrade the integrity or performance of the Service;
- h. interfere with or materially adversely affect other users' use of the Service or the networks or systems of other parties;
- i. use the Service to attempt to access, acquire or otherwise obtain data to which Customer is not legally entitled;
- j. access or use the Service in a way intended to avoid incurring fees or exceeding usage limits or quotas;
- k. use the Service in violation of applicable laws, rules, or regulations;
- l. use the Service to infringe the intellectual property rights, or otherwise violate the rights of others; or
- m. reverse engineer, decompile, or otherwise attempt to derive source code from the Service.

**2.2 Notification of Unauthorized Use and Security Incidents.** Customer shall immediately notify Treasure Data at [security@treasure-data.com](mailto:security@treasure-data.com) of any security breaches, incidents, threats, or vulnerabilities involving the Service that come to Customer's attention, including without limitation any compromise of User Account Information or unauthorized use of a Customer Login Account or the Service. In the event of any unauthorized use of a Login Account, Customer will take all steps necessary to terminate such unauthorized use. Additionally, Customer will provide Treasure Data with such cooperation and assistance related to investigation and remediation of any such breach, incident, threat, or vulnerability as Treasure Data may reasonably request. Treasure Data is not responsible for unauthorized access to Customer's Login Account.

### 3. Data

**3.1 Use of Collected Data.** Customer may use the Tools provided with the Service to generate Reports pertaining to the Collected Data. Customer represents and warrants that:

- a. Customer has the right to share with Treasure Data the User Account Information it provides under Section 1.2;
- b. Customer has the right to provide to Treasure Data the Collected Data and the Personal Information contained therein, upload Collected Data to the Service, and export the Collected Data using services and locations designated by Customer;
- c. Customer's use, transmission, and export of Collected Data is and will be in compliance with this Agreement, and all applicable laws, regulations, and ordinances, including relevant data privacy laws; and
- d. Customer has provided all necessary notices and obtained all necessary consents related to the collection, use, and transfer of Collected Data and User Account Information in the manner described in this Agreement. Treasure Data reserves the right to review and/or remove any Collected Data or User Account Information if Treasure Data suspects that such Collected Data or User Account Information is in violation of this Agreement and/or applicable laws.

Treasure Data reserves the right to review and/or remove any Collected Data or User Account Information if Treasure Data suspects that such Collected Data or User Account Information is in violation of this Agreement and/or applicable laws.

Treasure Data will only access and use the Collected Data to the extent it is necessary to provide the Service to Customer. Notwithstanding the foregoing, Treasure Data may retain and use the Collected Data and data related to use of the Service (such as the number of times a portion of the Service has been used) ("**Use Data**") for the purpose of supporting, generally maintaining, and improving the Service. Treasure Data may use the Collected Data and Use Data for developing and distributing general benchmarks or statistics pertaining to the Service, provided the Collected Data and Use Data is used in

the aggregate and is in anonymized form. For the avoidance of doubt, such aggregated and anonymized data does not contain information that identifies Customer's customers or any data subject and is not considered Customer Confidential Information.

**3.2 Privacy.** Treasure Data's privacy practices regarding any Personal Information stored in the Service are governed by Treasure Data's privacy policy posted at <https://www.treasuredata.com/privacy/>, as may be amended from time to time, and which is incorporated by reference herein.

**3.3 Security.** Treasure Data shall endeavor to implement reasonable security measures in connection with the Service; however, Customer acknowledges, that no data transmission over the Internet or data storage system can be guaranteed to be 100% secure and Treasure Data cannot guarantee the security of data transmitted to or stored by Treasure Data. Customer acknowledges that if it wishes to protect its transmission of Collected Data, it is Customer's responsibility to use a secure encrypted connection to communicate with the Service. At Customer's option, Customer may use Transport Layer Security (TLS)/Secure Socket Layer (SSL) encryption through the Treasure Agent (the software that runs as a background process on a device that collects logs from various data sources and uploads them to the Service) where Collected Data is collected to help protect its transmission using the Internet. Treasure Data shall not be liable to Customer for any liability arising from the operation of the Service over the Internet or other networks outside of its control.

**3.4 European Personal Information.** Treasure Data has certified compliance with the EU-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of European Personal Information transferred to the United States. If Customer stores, transmits, or otherwise processes European Personal Information using the Service, the terms of the Data Processing Addendum (Europe) at [https://www.treasuredata.com/wp-content/uploads/Data\\_Processing\\_TOS\\_Addendum.pdf](https://www.treasuredata.com/wp-content/uploads/Data_Processing_TOS_Addendum.pdf), as may be amended from time to time, shall apply to such processing, and the Data Processing Addendum (Europe) is incorporated by reference herein as if fully set forth.

**3.5 Japanese Personal Information.** If Customer stores, transmits, or otherwise processes Japanese Personal Information subject to the Act on the Protection of Personal Information of Japan (Act No. 57 of 2003, as amended) using the Service, the terms of the Data Processing Addendum (Japan) at [https://www.treasuredata.com/wp-content/uploads/Data\\_Processing\\_Addendum\\_to\\_TOS\\_Japan-1.pdf](https://www.treasuredata.com/wp-content/uploads/Data_Processing_Addendum_to_TOS_Japan-1.pdf), as may be amended from time to time, shall apply to such processing, and the Data Processing Addendum (Japan) is incorporated by reference herein as if fully set forth.

**3.6 Data Backups and Retention.** Customer understands and agrees that Customer is solely responsible for maintaining appropriate backups and archives of Customer's Collected Data. Treasure Data will have no responsibility (or related liability) for backing

up any Collected Data or other information that Customer provides to Treasure Data. Customer acknowledges that Treasure Data's obligation to retain Collected Data terminates under Section 10.4 after expiration or termination of this Agreement.

## 4. Payment Terms

**4.1 Invoicing and Payment Terms.** Customer will pay Treasure Data the fees for the Service ("**Service Fees**") in accordance with the Order Form as shown on Treasure Data's invoice to Customer based on Customer's usage of the Service.

Unless otherwise stated in the Order Form, at the beginning of each month of the Subscription Term, Treasure Data will invoice Customer for the Service Fees corresponding to Customer's then-current plan tier (as defined in the Order Form), and Customer shall pay such Service Fee. Customer's Service Fees will be calculated based on Customer's usage of the Service from the first to the last day of the calendar month.

Customer shall pay all Service Fees in the currency specified in the invoice within thirty (30) days after the billing date on the invoice. Except as expressly provided herein, all payment obligations are non-cancelable and all Service Fees and other amounts paid or payable are non-refundable and shall be made without setoff or counterclaim, and without any deduction or withholding. Treasure Data may charge Customer interest at the lesser of the rate of 1% per month and the maximum amount permitted by law on all late payments. Customer will reimburse Treasure Data for all costs Treasure Data incurs in connection with its effort to collect any past due amounts, including attorneys' fees and other related expenses. Treasure Data may suspend the Service or terminate this Agreement if Customer fails to pay the Service Fees in full and on time.

**4.2 Taxes.** All sums stated under the Agreement do not include taxes. All applicable taxes shall be payable by Customer in accordance with relevant legislation in force at the relevant tax point, including value added taxes, sales and use taxes or other similar taxes. Customer shall pay all amounts due under the Agreement in full without any deduction or withholding. Without limiting the foregoing, in the event that payment of any sums due to Treasure Data under the Agreement becomes subject to any deduction or withholding in respect of or on account of tax, Customer shall pay to Treasure Data such additional sum as may be required in order that the net amount actually received and retained by Treasure Data under the Agreement (after such deduction or withholding has been made) shall be equal to the full amount that would have been received and retained by Treasure Data had no such deduction or withholding been required to be made.

## 5. Proprietary Rights

**5.1 Ownership.** Treasure Data and its suppliers and Affiliates, as applicable, retain all right, title and interest, in and to the Service (including all of its software and technology components), the structure and format of any Reports, its trademarks, its Confidential Information, and the Feedback (as defined below), including all intellectual property rights therein. In no event will Customer contest or dispute Treasure Data's exclusive



ownership rights in the foregoing. Other trademarks, service marks, and trade names that may be used on or in connection with the Service are the property of their respective owners. Customer will retain all right, title and interest, in and to the Collected Data, the content of Reports related to such Collected Data, Customer's trademarks, and Customer's Confidential Information, including all intellectual property rights therein, subject to Treasure Data's rights in Section 3.1.

**5.2 Use of Software Tools.** Certain software Tools that are furnished to Customer in connection with the Service are provided by Treasure Data. Except as expressly provided herein, the Tools are distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED. See the relevant license accompanying such Tools for the specific language governing permissions and limitations under such license. Notwithstanding the foregoing, Customer understands that the Service is intended for use with the Tools. To the extent Customer modifies the Tools, Customer does so at its own risk, and Customer agrees to hold Treasure Data harmless from any damages, losses, and liability that may arise from Customer's modification of the Tools.

**5.3 Feedback.** Treasure Data welcomes Customer's suggestions or feedback on how to improve the Service or the Tools. If Customer provides any ideas, suggestions or recommendations (whether in oral or written form) to Treasure Data or its Affiliates regarding the Service ("**Feedback**"), Treasure Data may use that information without any obligation to Customer, and Customer hereby irrevocably assigns to Treasure Data all right, title, and interest in that Feedback. Customer shall do all things including signing all documents or other instruments necessary to confirm or vest in Treasure Data the rights hereby assigned.

## 6. Confidentiality

**6.1 Confidential Information.** "**Confidential Information**" means any and all confidential or proprietary non-public information and data of one party (the "**Disclosing Party**") disclosed to the other (the "**Receiving Party**") in connection with this Agreement, which is identified or should be reasonably understood to be confidential. Customer's Confidential Information includes the Collected Data and the resulting Reports. Treasure Data's Confidential Information includes the Service, Documentation, and all other applications, and technical information made available to Customer in connection with the Service. Confidential Information of each party includes any Order Forms and Statements of Work and all business and marketing plans, technology and technical information, product plans and designs, roadmaps, specifications, and other similar information disclosed by a party.

**6.2 Excepted Information.** Confidential Information does not include any information which:

- a. is in the public domain other than as a result of a disclosure by the Receiving Party in breach of this Agreement;

- b. was within the Receiving Party's possession prior to its disclosure to it by or on behalf of the Disclosing Party provided that such information is not already subject to any obligations of confidentiality;
- c. becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party that is not under obligation to keep such information confidential; or
- d. was developed independently by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party.

**6.3 Protection of Confidential Information.** The Receiving Party agrees to protect the Disclosing Party's Confidential Information using the same degree of care that it uses to protect its own Confidential Information of like kind, but in no event less than a reasonable degree of care, to prevent unauthorized disclosure and use of the Confidential Information; and not to use the Disclosing Party's Confidential Information for any purpose outside of this Agreement.

**6.4 Permitted Disclosures.** The Receiving Party may disclose the Disclosing Party's Confidential Information to its contractors and agents who have a need to know solely for the purposes of this Agreement and are bound by confidentiality obligations no less restrictive than those contained in this Agreement. The Receiving Party will be liable for any breach of its obligations under Section 6 that is caused by an act, error or omission of any such contractor or agent as if it was a breach by the Receiving Party.

Notwithstanding anything to the contrary herein, Treasure Data shall be permitted to disclose Customer's Confidential Information (except for Collected Data and resulting Reports) to Affiliates of Treasure Data subject to confidentiality provisions at least as restrictive as those contained in this Agreement.

The Receiving Party may disclose the Disclosing Party's Confidential Information in the following circumstances:

- a. disclosure to third parties to the extent that the Confidential Information is required to be disclosed pursuant to a court order or as otherwise required by law, provided that the party required to make the disclosure promptly notifies the other party upon learning of such requirement (unless restricted by law) and has given the other party a reasonable opportunity to contest or limit the scope of such required disclosure (including but not limited to making an application for a protective order);
- b. disclosure to nominated third parties under written authority from the original discloser of the Confidential Information; and



- c. disclosure to the Receiving Party's legal counsel, accountants or professional advisors to the extent necessary for them to advise upon the interpretation or enforcement of the Agreement.

## **7. Additional Warranties**

**7.1** Each party represents and warrants to the other party that it has all authority to enter into this Agreement.

**7.2** Treasure Data warrants that, during the Subscription Term, the Service will perform substantially in accordance with the applicable Documentation, under normal use and circumstances. Customer must timely and properly report any issues with the Service to Treasure Data, via support@treasure-data.com, so that Treasure Data may have the opportunity to research and resolve such issues. For any non-conformance of the above warranty, Treasure Data will use reasonable efforts to correct any such non-conformance or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of this Section 7.2 and shall not apply to the extent that any non-conformance is caused by use of the Service contrary to Treasure Data's instructions, or modifications or alterations of the Service by Customer or any third party other than Treasure Data.

**7.3 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN SECTION 7.2 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TREASURE DATA MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICE, TOOLS, DOCUMENTATION, REPORTS, AND ANY OTHER SOFTWARE OR MATERIALS THAT TREASURE DATA MAY MAKE AVAILABLE DURING THE SUBSCRIPTION TERM.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES AND AGREES THAT TREASURE DATA IS PROVIDING A SERVICE THAT IS INTENDED ONLY TO ASSIST CUSTOMER IN OPERATING CUSTOMER'S OWN BUSINESS AND THAT CUSTOMER IS SOLELY RESPONSIBLE FOR (AND TREASURE DATA ASSUMES NO RESPONSIBILITY AND WILL HAVE NO LIABILITY OF ANY KIND FOR) THE DECISIONS MADE BASED ON CUSTOMER'S USE OF THE SERVICE, TOOLS, REPORTS, OR RELATED DOCUMENTATION AND SERVICES, OR ANY EFFECTS ON BUSINESS THAT MAY RESULT FROM SUCH USE.

TREASURE DATA DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR UNINTERRUPTED. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE."

## **8. Limitation of Liability**

**8.1** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES OR LICENSORS BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY OR ITS OFFICERS, EMPLOYEES, AFFILIATES, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.2** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY, AND ITS AFFILIATES AND LICENSORS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICE, THE TOOLS, THE REPORTS, WHETHER UNDER CONTRACT, TORT, NEGLIGENCE, STATUTE, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNTS PAID OR OWING BY CUSTOMER TO TREASURE DATA IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

**8.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THIS SECTION 8 SHALL NOT APPLY TO CUSTOMER'S PAYMENT OBLIGATIONS OR CUSTOMER'S BREACH OF SECTION 2.1 (RESTRICTIONS), CUSTOMER'S BREACH OF A REPRESENTATION OR WARRANTY IN SECTION 3.1, OR AMOUNTS CUSTOMER MUST PAY UNDER SECTION 9 (INDEMNIFICATION), FOR WHICH LIABILITY SHALL BE UNLIMITED.

**8.4** NOTHING IN THIS AGREEMENT SHALL OPERATE TO EXCLUDE LIABILITY FOR: (i) DEATH OR BODILY INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (ii) FRAUD OR FRAUDULENT MISREPRESENTATION.

## **9. Indemnification**

- a. Subject to this Agreement, Treasure Data will defend and indemnify Customer against any suit or proceeding made or brought against Customer by a third party alleging that Customer's use of the unmodified Service and Reports (as made available by Treasure Data and used in accordance with this Agreement) infringes such third party's copyright rights, or misappropriate such third party's trade secrets, and Treasure Data will indemnify Customer from any damages, reasonable attorneys' fees and costs finally awarded against Customer or amounts paid by Customer in any final settlement in connection with any such claim, suit, or proceeding.
- b. Customer agrees to defend and indemnify Treasure Data and its Affiliates and licensors, and each of their respective employees, officers, directors, and representatives against any suit or proceeding made or brought against Treasure Data by a third party alleging that the Collected Data, User Account Data, or Customer's use of the Service infringes the rights of, or has caused harm to, such third party or violates any law and Customer will indemnify Treasure Data from any fines, damages,

reasonable attorneys' fees and costs finally awarded against Treasure Data or amounts paid by Treasure Data in any final settlement in connection with any such suit or proceeding.

- c. The party entitled to be indemnified under this Section 9 (the "Indemnified Party") will give prompt written notice to the other party (the "Indemnifying Party") of any claims as a condition of the Indemnifying Party's defense and indemnification obligations under this Section 9. The Indemnifying Party shall assume exclusive defense and control of any matter which is subject to indemnification under this Section 9, in which case the Indemnified Party agrees to cooperate with any reasonable requests to assist in the defense of such matter. The Indemnified Party may participate in the defense at its own cost and through its own counsel. Neither the Indemnifying Party nor the Indemnified Party will settle or dispose of any claim in any manner that would adversely affect the rights or interests of the other party without the prior written consent of the other party, which will not be unreasonably withheld or delayed.
- d. Should any component of the Service or Reports become, or in Treasure Data's opinion be likely to become, the subject of a claim for infringement for which Customer could seek indemnification under Section 9(a), Treasure Data shall, without any admission of liability, be entitled at its option to: (i) procure for Customer the right to continue to use such component, (ii) replace or modify such component to make such component non-infringing, or (iii) if neither (i) nor (ii) is possible, terminate the right to use such component and/or terminate this Agreement, provided that in the event of a termination of the entire Agreement, the Customer shall not be obligated to pay any further fees.
- e. Treasure Data shall have no liability under this Section 9 to the extent that it is based upon: (i) the combination, operation, or use of the Service, a Tool, or a Report with equipment, devices, Third Party Services, or software not supplied by Treasure Data if no infringement would have occurred absent such combination, operation, or use; or (ii) the alteration or modification of the Service, a Tool, or a Report that was not made by Treasure Data if no infringement would have occurred absent such alteration or modification.
- f. This Section 9 states the entire liability of Treasure Data with respect to infringement of any intellectual property rights by the Service, a Tool, or Report, and Treasure Data will have no additional liability with respect to any alleged or proven infringement.

## **10. Term, Termination, and Suspension**

**10.1 Term and Renewal.** This Agreement will commence on the Effective Date and, unless earlier terminated in accordance with this Agreement, and shall continue in effect until terminated in accordance with Sections 10.2 or 10.3 ("**Term**"). The Subscription Term for a given subscription shall be as set forth in the applicable Order Form. Except

with respect to a Proof of Concept and as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring Subscription Term, unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the Subscription Term.

**10.2 Termination for Convenience.** Either party will have the right to terminate an Order Form for convenience upon thirty (30) days' written notice subject to any minimum payment obligations set forth on the Order Form, and provided that any termination for convenience by Customer shall not relieve Customer of Customer's obligations to pay all Service Fees through the end of the Subscription Term of the outstanding Order Form(s).

**10.3 Termination for Cause.** Without prejudice to any other right or remedy which may be available to it, either party may terminate an Order Form and/or this Agreement immediately upon written notice to the other party, if:

- a. the other party materially breaches this Agreement which is capable of remedy and fails to cure such breach within thirty (30) days from the date of written notice of breach by the non-breaching party;
- b. the other party materially breaches the Agreement which is not capable of remedy;
- c. any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order;
- d. the other party makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order; or
- e. the other party has an order made against it, or passes a resolution, for its winding-up (except for the purposes of amalgamation or reconstruction) or has a receiver or similar officer appointed over all or substantially all of its property or assets.

Notwithstanding the foregoing, non-payment of any Service Fees or other fees due to Treasure Data will be considered a material breach.

#### **10.4 Effect of Termination/Expiry**

- a. Upon termination or expiration of this Agreement for any reason, all rights granted to Customer (and Customer's Users) hereunder will immediately terminate and Customer and Users will cease all use of the Service and Customer shall immediately destroy or, if instructed by Treasure Data, return all Treasure Data Confidential Information;

- b. Upon termination of an Order Form and/or this Agreement by Customer pursuant to Section 10.3 or by Treasure Data pursuant to Section 10.2 Treasure Data will refund the unused portion of any pre-paid Service Fees; and
- c. Upon termination of an Order Form and/or this Agreement by Treasure Data pursuant to Section 10.3 or by Customer pursuant to Section 10.2, Customer will pay any unpaid Service Fees for the remainder of the Subscription Term of each terminated Order Form.

**10.5 Export and Destruction of Collected Data.** Subject to Treasure Data's rights in Section 3.1 with respect to the right to remove any Collected Data or User Account Information if Treasure Data suspects that Collected Data or User Account Information is in violation of this Agreement and/or applicable laws, Customer shall have the ability to export or retrieve Collected Data from the Service at any time during the Term and within thirty (30) days after the effective date of expiration or termination of the Agreement. Following such period, Treasure Data will have no obligation to maintain or provide Collected Data and shall thereafter, unless legally prohibited, automatically delete all Collected Data in its systems or otherwise in its possession or under its control. Customer acknowledges that following such period and deletion of Collected Data, the Collected Data will be unrecoverable.

**10.6 Suspension.** Without limiting Treasure Data's rights or remedies hereunder, Treasure Data shall be entitled to suspend Customer's or any of its Users' use of the Service if Treasure Data determines, in its sole judgment that:

- a. Customer or a User is using the Service in a manner that: (i) poses a security or reputational risk to Treasure Data, the Service, or any third party; (ii) could adversely impact Treasure Data's systems, the Service, or the systems or data of a third-party cloud provider or any other Treasure Data customer; (iii) breaches Sections 2.1 or 3.1; (iv) could subject Treasure Data, its Affiliates, or any third party to liability, or (v) could be fraudulent;
- b. Customer, or a User, is in breach of the Agreement; or
- c. Customer has ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

Such suspension shall be for so long as Treasure Data believes is necessary to mitigate the risk of harm to the Service or other parties. Treasure Data will use commercially reasonable efforts to notify Customer in advance of such suspension and will provide notice promptly after any suspension. Suspension of use of the Service shall not release Customer from its obligations under this Agreement.

**10.7 Survival.** Sections 2.1 (Restrictions), 3.1 (Use of Collected Data), 3.6 (Data Backups and Retention), 4 (Payment Terms), 5 (Proprietary Rights), 6 (Confidentiality), 7.3 (Disclaimer), 8 (Limitation of Liability), 9 (Indemnification), 10 (Term and Termination), 11 (Governing Law), 12 (General), 13 (Changes to the Terms of Service), and 14 (Definitions) will survive the termination or expiration of this Agreement.

## **11. Governing Law; Venue**

**11.1** The validity, construction and performance of this Agreement shall be construed in accordance with and governed by the laws of the State of California without regard to conflict of laws principles. Any legal suit, action or proceeding arising out of or relating to this Agreement will be commenced in the federal and/or state courts, as applicable, in Santa Clara County, California.

**11.2** Notwithstanding Section 11.1, if Customer's address is in the United Kingdom, the European Economic Area, or Switzerland, the validity, construction and performance of this Agreement shall be governed by the laws of England. Except as expressly stated in this Agreement, no one other than a party to this Agreement shall have any right to enforce any of its terms. Any legal suit, action or proceeding arising out of or relating to this Agreement will be commenced in the courts of England and Wales.

**11.3** The parties consent to the jurisdiction of such courts listed in Section 11.1 or 11.2 and waive any defenses based on improper venue or lack of personal jurisdiction in any suit, action, or proceeding filed in such courts.

**11.4** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby expressly excluded.

## **12. General**

**12.1 Publicity.** Upon Customer's prior written consent, Treasure Data may identify Customer as a customer of Treasure Data, including but not limited to using Customer's company name and logo in its customer list, website, blog, social media pages, or any other marketing or promotional materials of any kind. If requested by Treasure Data, subject to each party's prior review and approval as to content, Customer agrees to issue a joint press release with Treasure Data within three (3) months of our request. Customer agrees that it shall not make any public communication, statement, announcement or press release with respect to this Agreement and/or Customer's use of the Service without Treasure Data's prior written approval. Other than as stated above in this Section 12.1, neither Customer nor Treasure Data shall use the name, crest, logo, trademark or registered image of the other or the other's group companies in promotional material or in connection with the use or provision of the Service without the prior written consent of the other party.



**12.2 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Treasure Data may assign this Agreement in its entirety (including all Order Forms) without consent of Customer in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by this Agreement. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the parties and their permitted successors or assigns.

**12.3 Independent Contractors.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise between the parties, and the parties will at all times be and remain independent contractors.

**12.4 Force Majeure.** Neither party will be liable under this Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of riots, fire, flood, tsunami, storm, earthquake, acts of God, hostilities, terrorism, Internet or other network delays or failures, power failures, unanticipated product development problems, or any other cause directly affecting such failure or delay and beyond such party's reasonable control.

**12.5 Severability.** If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provisions will be deemed to be severed and struck from this Agreement, while the remaining provision(s) of the Terms continue in full force and effect and are enforced to the extent possible, consistent with the stated intention of the parties.

**12.6 No Waivers.** The failure or delay by either party to enforce any provision of this Agreement shall not be deemed a waiver of any future enforcement of that or any other provision.

**12.7 Entire Agreement.** This Agreement (including all Order Forms and Statements of Work executed by both parties) constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter hereof. Except as expressly provided in this Agreement, including but not limited to Section 13 ("Changes to the Terms of Service"), no amendment, or modification of this Agreement will be effective unless in writing and signed by a duly authorized signatory of each party.

**12.8 Notice.** While the parties may communicate by any means in the performance of this Agreement and except where otherwise stated, any notice of termination or other legal notice to a party shall be in writing and sent to the address of such party above as set forth in an Order Form (or any successor address designated by a notice hereunder)

by nationally-known courier service that confirms delivery in writing. Such notices will be deemed to be given upon receipt.

**12.9 Counterparts.** An Order Form may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be handwritten signatures.

**12.10 Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

**12.11 Conflicting Terms.** If there is a conflict between the documents that make up the Agreement, the documents will control in the following order: Order Form, the Data Processing Addendum, these Terms of Service.

**12.12 U.S. Government Rights.** The Service provided under this Agreement consists solely of commercial items. Customer shall be responsible for ensuring that any access granted to the Service to the US Government is in accordance with the terms of this Agreement is provided with the rights and restrictions described elsewhere herein.

**12.13 Export Compliance.** The material provided by either party under this Agreement is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. The parties agree to comply fully with all export laws and regulations of the United States and other countries ("**Export Laws**") to assure that neither the material provided by either party, nor any direct products thereof are: (i) exported, directly or indirectly, in violation of Export Laws, either to any countries that are subject to U.S. export restrictions or to any end user who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government; or (ii) intended to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

## **13. Changes to The Terms of Service**

**13.1 Change Procedures.** Treasure Data is permitted to modify these Terms of Service from time to time by posting a revised version on the Treasure Data website or by otherwise notifying you in accordance with Section 12. Subject to 13.2, changes are effective upon posting or on the date stated in the notice. Your continued use of the Service after the effective date of any changes to the Terms of Service constitutes your agreement to be bound by the changes to the Terms of Service. It is your responsibility to check the Treasure Data website regularly for modifications to these Terms of Service.

**13.2 Material Changes.** "**Material Change**" means any change to the Terms of Service that would materially reduce Customer's rights or benefits, or materially increase

Customer's obligations or liability under the Terms of Service. Notwithstanding Section 13.1, any changes to the Terms of Service that include a Material Change will only be effective after thirty (30) days following posting on the Treasure Data website or receipt of the notice of the change (the "Notice Period"). Customer shall have the right to opt out of any Material Change by sending notice of its objection to legal@TreasureData.com within the Notice Period, in which case the Material Change shall not apply to Customer for the duration of the Subscription Term. However, if Customer sends Treasure Data such an objection notice, Treasure Data shall have the right to terminate the Agreement by giving Customer at least thirty (30) days' written notice of termination pursuant to Section 10.

## 14. Definitions

**"Affiliate"** means, with respect to Treasure Data, Arm Limited (whose registered office is situated at 110 Fulbourn Road, Cambridge CB1 9NJ, England) and any company the majority of whose voting shares is now or hereafter, owned or controlled, directly or indirectly, by Arm Limited.

**"Collected Data"** means electronic data and information submitted to, imported, or otherwise transferred by or for Customer to the Service.

**"Documentation"** means the online documentation that Treasure Data provides with the Service, as may be updated from time to time.

**"Effective Date"** means, with respect to this Agreement, the date on which the first Order Form is signed by both parties or the date on which the Customer clicks "I ACCEPT"; with respect to each Order Form, the effective date that is listed in such Order Form.

**"European Personal Information"** means Personal Information about a citizen of either a member state of the European Economic Area or of Switzerland.

**"Health Information"** has the meaning ascribed to it under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. § 1320(4), and regulations promulgated under HIPAA.

**"Order Form"** means a form executed by both parties setting out terms including the Service Fees and Subscription Term.

**"PCI Data"** means the following information relating to payment cards, which are defined in the Payment Card Industry (PCI) Data Security Standard:

- a. Primary Account Numbers (PAN), cardholder names, expiration dates, or service codes; or

- b. Full track data (magnetic-stripe data or equivalent on a chip), CAV2/CVC2/CVV2/CID, or PINs/PIN blocks.

**“Personal Information”** means:

- a. Any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, driver’s license number, date and place of birth, mother’s maiden name, or biometric records;
- b. Any other information that is linked or linkable to an individual, including without limitation medical, educational, financial, and employment information;
- c. Any other information relating to an identified or identifiable living natural person; or
- d. Any information defined as “personal information,” “personally identifiable information,” “personal data,” or similar expressions under applicable privacy laws or data security laws.

**“Reports”** means all reports produced by the Service relating to Collected Data containing: data metrics, results of queries run on td-command, and visualizations of Collected Data.

**“Service”** means the Treasure Data cloud-based managed service for data collection, storage, and analytics ordered by Customer under a Order Form, including any Proof of Concept, and made available by Treasure Data as described in the Documentation, but excluding any Third Party Services.

**“Subscription Term”** means the term stated on the applicable Order Form.

**“Tools”** means Treasure Data tools and utilities (excluding Third Party Services) that Treasure Data may make available to Customer for use in connection with the Service during the Subscription Term.