

## TERMS OF SERVICE

These Terms of Service are between **Treasure Data, Inc.** and Customer and become effective on the Effective Date. Terms are defined in Section 11. Unless indicated otherwise, terms are defined in Section 11.

### 1. TREASURE DATA RESPONSIBILITIES

**1.1 Provision of the Service.** Treasure Data authorizes Customer to access and use the Service during the Subscription Term solely for Customer's own internal business purposes subject to the capacity limitations set forth in the Order Form and in accordance with the Documentation. Treasure Data reserves the right to update and modify the Service at any time in its sole discretion, provided that Treasure Data may not materially decrease the functionalities in the Service during the Subscription Term. Except for the express usage rights granted in this Section 1.1, no other rights or licenses are granted to Customer by Treasure Data in this Agreement, by implication, estoppel or otherwise.

**1.2 Use of Collected Data and Use Data.** (a) Customer authorizes Treasure Data to access and process the Collected Data to the extent it is necessary to provide the Service and Professional Services to Customer. (b) Treasure Data may retain and use the Use Data for (i) supporting, maintaining, and improving the Service; and (ii) developing and distributing general benchmarks or statistics pertaining to the Service, provided the Use Data are in an aggregated and anonymized format. For the avoidance of doubt, such aggregated and anonymized data will not contain information that identifies Customer or its customers or any data subject and is not considered Customer Confidential Information.

**1.3 Privacy.** Treasure Data and Customer will comply with the DPA, which shall apply to the extent Collected Data includes Personal Data (as defined in the DPA). Treasure Data may update the DPA; however, such updates will be effective only after the end of the applicable Subscription Term.

**1.4 CCPA Compliance.** With respect to any CCPA Personal Information, Treasure Data will act as Customer's service provider and will not retain, use or disclose CCPA Personal Information, other than: (a) for a business purpose under the CCPA on behalf of Customer and the specific purpose of performing the Service, or as otherwise permitted under the CCPA; or (b) as otherwise permitted for service providers or under a comparable exemption from "sale" in the CCPA, as reasonably determined by Treasure Data. This Section 1.4 is effective to the extent the CCPA applies. Customer shall comply with the CCPA in its use of the Service. The terms "business purpose", "personal information", "sale" and "service provider" as used in this Section 1.4 have the meanings given in the CCPA.

**1.5 Security.** During the Subscription Term, Treasure Data will maintain a written security program that includes policies, procedures and controls aligned to ISO27001, or a substantially equivalent standard, designed to protect the Service and Collected Data from accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access. Customer acknowledges that no data transmission over the Internet or data storage system can 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 will use a secure encrypted connection to communicate with the Service. Treasure Data offers secure communication protocols (Transport Layer Security/Secure Socket Layer, and https) in its web applications in 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 over 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 Treasure Data's control. Under no circumstances will Treasure Data be responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Service, Collected Data, or Customer's Login Account by any third party, provided that Treasure Data has not breached its obligations set forth in this Section. Treasure Data shall promptly, after discovery, without undue delay notify Customer of any security breaches, incidents, threats, or vulnerabilities involving the Collected Data or User Account Information.

**1.6 Customer Support and Service Availability.** Customer Support and Service Availability (terms as defined in the Customer Support and Service Availability Exhibit) are provided in accordance with Customer's purchased plan level identified on the Order Form and the Customer Support and Service Availability Exhibit. Treasure Data may update the terms therein; however, such updates will be effective only after the end of the applicable Subscription Term.

**1.7 Professional Services.** Treasure Data shall provide Professional Services purchased by Customer in accordance with the SOW which will be governed by these Terms of Service. Customer shall reimburse Treasure Data for all reasonable, pre-approved (by Customer in writing or email) and appropriately documented travel and related expenses incurred by Treasure Data in performing any support or Professional Services for Customer.

### 2. CUSTOMER RESPONSIBILITIES

**2.1 Customer's Account.** Pursuant to Section 1.1 (Provision of the Service), Customer may permit Users to use the Service solely on Customer's behalf, provided that Customer shall ensure that all Users comply with the terms of this Agreement. Treasure Data will set up Customer's initial Login Account and Customer must provide the User Account Information. Accounts

registered by “bots” or other automated methods are prohibited. Customer shall, and shall ensure that the Users, protect the confidentiality of each Login Account, including the User’s username and password. In the event of any unauthorized use of a Login Account, Customer will (1) take all steps necessary to terminate such unauthorized use; (2) promptly notify Treasure Data at [security@treasure-data.com](mailto:security@treasure-data.com); and (3) cooperate with Treasure Data and provide assistance in the investigation and remediation as Treasure Data may reasonably request.

**2.2 Third Party Services.** Customer may use certain Third-Party Services in connection with the Service. Customer’s use of those Third-Party Services is subject to terms and conditions that apply to such Third-Party Services, and those terms and conditions are between such third party and Customer, to which Treasure Data is not a party. 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 between the Service and the Third-Party Services or when it is stored in 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. If Treasure Data reasonably determines that such Third-Party Service causes a risk to the security, integrity or operation of the Service, Treasure Data will promptly notify Customer and Customer will cooperate with Treasure Data to remediate the risk or damage, including the removal of the connection between the Third-Party Service and the Service.

**2.3 Backup of Business Logic.** Customer is solely responsible for maintaining appropriate backups and archives of Collected Data. Treasure Data will have no responsibility for backing up any Collected Data or other information that Customer provides to Treasure Data. Business Logic is backed up daily and retained for a Backup Period between 8 days and 14 days after backup. Treasure Data’s backup process for Business Logic: (a) is designed to ensure a recovery time objective and recovery point objective of 24 hours and (b) is tested annually in accordance with standard industry practices. For the avoidance of doubt, Business Logic does not include the underlying Collected Data.

**2.4 Restrictions.** Customer shall not (and shall ensure that Users do not): (1) use the Service in any manner or for any purpose other than as expressly permitted by this Agreement; (2) sell, resell, sublicense, distribute, rent or lease the Service, or include the Service in any service bureau or outsourcing operation; (3) copy, modify, or otherwise create derivative works of the Service; (4) remove or modify any proprietary right notice in the Service; (5) use the Service to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs, or otherwise engage in a malicious act or disrupt its security, integrity or operation; (6) use the Service to store or transmit Health Information, any data in violation of COPPA or PCI Data; (7) interfere with, compromise or degrade the integrity or performance of the Service or materially adversely affect other users’ use of the Service or the networks or systems of other parties; (8) access or use the Service in a way intended to avoid incurring fees or exceeding usage limits; (9) use the Service in violation of applicable laws, rules, or regulations; (10) use the Service to infringe the intellectual property rights or otherwise violate the rights of others; or (11) reverse engineer, decompile or otherwise attempt to derive source code from the Service. If Customer discovers the occurrence of any of the foregoing violations, Customer will immediately suspend access to the Service by such User and promptly notify Treasure Data.

**2.5 Customer Warranties.** Customer shall comply with all applicable laws in using the Service. Customer warrants that: (1) Customer has the right to share with Treasure Data the User Account Information and Collected Data (including any Personal Information contained therein) it provides under Section 1.2; (2) Customer has the right to upload Collected Data to the Service and export the Collected Data to locations designated by Customer; (3) Customer’s use, transmission, and export of Collected Data are and will be in compliance with this Agreement, and all applicable laws, regulations, and ordinances, including relevant data privacy laws; and (4) 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 compliance with applicable data privacy laws.

### 3. ORDERING

**3.1 Payment.** Customer will pay Treasure Data Service Fees in full, without deduction of transaction fees or otherwise or withholding of any kind, in United States Dollars currency annually in advance, unless otherwise stated in the Order Form, within thirty (30) days after the invoice date. Except as expressly provided herein, all payment obligations are non-cancelable, and all Service Fees and other amounts paid or payable are non-refundable. Treasure Data may charge Customer interest at the lesser of the rate of 1.5% per month and the maximum amount permitted by law on all late and undisputed payments, if Customer fails to cure after a 10-day cure notice.

**3.2 Invoice.** (a) *Multiple Year Subscription Term.* If Customer is purchasing a multiple year Subscription Term, unless stated otherwise on the Order Form, Treasure Data will invoice the first year of Service on the Effective Date of the Order Form. Customer hereby authorizes Treasure Data to issue an invoice for the next year’s subscription in the Subscription Term on or prior to the expiration of the then current subscription year. (b) *One Year Subscription Term.* If Customer is purchasing a one-year Subscription Term, Treasure Data will invoice for the Service on the Effective Date of the Order Form. (c) *Automatic Renewal.* Unless terminated according with this Agreement or stated otherwise in the Order Form, Customer agrees that the ordered Service will automatically renew for a one-year Subscription Term and the per-unit pricing for any automatic renewal term may increase by no more than the per-unit pricing increase percentage stated on the applicable Order Form. For clarity, such increase will apply

to the subscription fee stated on the expiring Order Form. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Service has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing. Customer hereby authorizes Treasure Data to issue an invoice for each renewal Subscription Term on or prior to the expiration of the then current Subscription Term.

**3.3 Overage Service.** During the Subscription Term, Customer will be provided a usage dashboard that displays Customer's consumption of the Service, and it is Customer's responsibility to monitor and ensure that its consumption does not exceed purchased capacity. Without limiting the foregoing, Treasure Data may remotely review the scope of Customer's use of the Service, and on Treasure Data's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement with respect to access to and use of the Service. Treasure Data may notify Customer of any Overage Service and if requested by Customer will work with Customer to optimize its use of the Service and Customer will, within 30 days, either: (1) disable any Overage Service; or (2) purchase additional subscriptions commensurate with Customer's actual use in accordance with the overage pricing on the applicable Order Form. At the end of the 30-day cure period, Treasure Data may issue an invoice for the Overage Service. Alternatively, Customer may increase its subscription of the Service to cover the remainder of Subscription Term at the subscription fee rate as set forth in the then current Order Form, in which case both parties will sign an Order Form for the purchase.

**3.4 Taxes.** All payments under this Agreement are exclusive of Taxes. Customer is solely liable for and will pay all Taxes associated with its purchase of, payment for, access to, or use of, the ordered Service and Professional Services. For the avoidance of doubt, Taxes will not be deducted from payments to Treasure Data, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Treasure Data receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. When applicable, Customer will provide its VAT or GST identification number(s) on the Order Form. Customer will use the ordered Service and Professional Services for Customer's business use in accordance with the provided VAT or GST identification number(s) of its business establishment(s). Each party is responsible for its own income tax.

#### 4. PROPRIETARY RIGHTS

**4.1 Treasure Data Ownership.** Treasure Data and its suppliers and Affiliates, as applicable, will retain all right, title and interest, in and to the Treasure Data Technology, its trademarks and its Confidential Information.

**4.2 Customer Ownership.** Customer will retain all right, title and interest, in and to the Customer Technology, Collected Data, the content of Reports related to such Collected Data, Customer's trademarks, and Customer's Confidential Information. Customer grants Treasure Data a royalty-free, fully paid up, non-exclusive, non-transferrable (except under Section 10.3), worldwide right to use Collected Data and Customer Technology solely to provide and support the Service and Professional Services.

**4.3 Feedback.** If Customer provides Feedback to Treasure Data, Customer grants to Treasure Data a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 10.3), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback without restriction.

**4.4 Newly Created IP.** 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. Treasure Data assigns to Customer any Newly Created IP upon Customer's payment in full under the SOW that specifies the creation and ownership transfer of the Newly Created IP. If any Treasure Data Technology (with the exception of Service) is incorporated in a Newly Created IP, Treasure Data grants Customer a non-exclusive, royalty-free, non-transferable (except under Section 10.3), non-sublicensable worldwide license to use such Treasure Data Technology, solely in connection with Customer's use of the Service during the applicable Subscription Term.

#### 5. CONFIDENTIAL INFORMATION

**5.1 Obligations.** The Receiving Party agrees to protect the Confidential Information from the Disclosing Party 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 not to use the Disclosing Party's Confidential Information for any purpose outside of this Agreement.

**5.2 Permitted Disclosures.** The Receiving Party may disclose Disclosing Party's Confidential Information to its Affiliates, 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 under this Section 5 that is caused by an act or omission of any such Affiliate, contractor or agent. The Receiving Party may disclose the Disclosing Party's Confidential Information in the following circumstances: (1) 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; (2) disclosure to nominated third parties under written authority from the Disclosing Party of the Confidential Information; and (3) disclosure to the Receiving Party's legal counsel, accountants or professional advisors to the extent necessary for them to advise on the interpretation or enforcement of the Agreement.

## 6. WARRANTIES

**6.1 Treasure Data Warranties.** Treasure Data warrants that: (1) during the Subscription Term, the production environment of the Service will materially conform to Documentation; and (2) Professional Services will be performed in a competent and workmanlike manner, in accordance with generally accepted industry standards, and all material requirements in the applicable SOW. Customer must promptly report any failure of the Service or Professional Services to comply with this Section to Treasure Data at [legal@treasure-data.com](mailto:legal@treasure-data.com), citing breach of warranty and this Section. 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. If the non-conformity without a workaround lasts more than 30 days after Customer's notice, then Customer may terminate the affected Service or Professional Services immediately on written notice of termination, and as Customer's exclusive remedy, Treasure Data will refund Customer any prepaid fees covering the remainder of the Subscription Term after the date of termination for the non-conforming Service or unperformed Professional Services. The warranties in this Section do not apply to any non-conformance caused by use of the Service or Professional Services in breach of this Agreement, or modifications of the Service or Professional Services by Customer or any third party other than Treasure Data or at the direction of Treasure Data.

**6.2 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN SECTION 6.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TREASURE DATA DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE ABOVE, TREASURE DATA DOES NOT WARRANT THAT THE SERVICE OR PROFESSIONAL SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS.

## 7. LIMITATION OF LIABILITY

**7.1 Exclusions.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS (DIRECT OR INDIRECT), LOSS OF BUSINESS, REPUTATION, OR GOODWILL, LOSS OF USE OR 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 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE.

**7.2 Liability Limit.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS PROVIDED IN SECTION 7.3, (A) THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE GENERAL LIABILITY CAP; EXCEPT THAT EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER PARTY SHALL NOT EXCEED THE DATA PROTECTION LIABILITY CAP FOR DAMAGES THAT ARISE FROM A BREACH OF: (1) SECTION 1.3 (PRIVACY); (2) SECTION 1.5 (SECURITY); (3) SECTION 2.4 (RESTRICTIONS); (4) SECTION 2.5 (CUSTOMER WARRANTIES); OR (5) SECTION 5 (CONFIDENTIAL INFORMATION, WHERE SUCH BREACH RESULTS IN THE UNAUTHORIZED DISCLOSURE OF COLLECTED DATA).

**7.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THIS SECTION 7 SHALL NOT APPLY TO: (1) CUSTOMER'S OBLIGATIONS TO PAY FOR SERVICES OR TAXES; (2) INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (3) DEATH OR BODILY INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (4) FRAUD OR FRAUDULENT MISREPRESENTATION.

**7.4** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA PROTECTION LIABILITY CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF A PARTY HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE DATA PROTECTION LIABILITY CAP. THE APPLICABLE MONETARY CAPS SET FORTH IN THIS SECTION 7 SHALL APPLY ACROSS THIS AGREEMENT AND ANY AND ALL SEPARATE AGREEMENT(S) ON AN AGGREGATED BASIS.

## 8. INDEMNIFICATION

**8.1 By Treasure Data.** Subject to this Section 8, Treasure Data will defend and indemnify Customer against any Claim alleging that Customer's use of the unmodified Service infringes such third party's intellectual property rights, 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.

**8.1.1 Mitigation.** In connection with the Claim, Treasure Data may: (i) procure for Customer the right to continue to use the applicable Service, (ii) modify or replace the applicable Service with substantially similar functionality that avoids the Claim, or (iii) if neither (i) nor (ii) is possible, terminate the right to use the affected Service and refund any prepaid subscription fees covering that part of the applicable Subscription Term for such Service remaining after the effective date of termination.

**8.1.2 Limitations.** Notwithstanding the above, Treasure Data shall have no liability under this Section 8 to the extent that the Claim is based upon: (i) the combination, operation, or use of the Service with equipment, devices, or software not supplied by Treasure Data if no infringement would have occurred absent such combination, operation, or use; or (ii) the alteration of the Service that was not made by Treasure Data if no infringement would have occurred absent such alteration; or (iii) the failure of Customer to use or implement the replacement or modification provided by Treasure Data pursuant to Section 8.1.1 above.

**8.2 By Customer.** Subject to this Section 8, Customer will defend and indemnify Treasure Data against any Claim made or brought against Treasure Data based on Customer's breach of Section 2.4 (Restrictions) or Section 2.5 (Customer Warranties), 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 Claim.

**8.3 Process.** The Indemnified Party will give prompt written notice to the Indemnifying Party of any Claims as a condition of the Indemnifying Party's defense and indemnification obligations under this Section 8. The Indemnifying Party shall assume exclusive defense and control of any matter which is subject to indemnification under this Section 8, 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. **This Section 8 states the entire liability of the Indemnifying Party with respect to a Claim under Section 8.1 or Section 8.2, and Indemnifying Party will have no additional liability with respect to any alleged or proven infringement or violation.**

## 9. TERM AND TERMINATION

**9.1 Term and Renewal.** This Agreement will commence on the Effective Date and continue until there are no Order Forms in effect. The Subscription Term for a given subscription shall be set forth in the applicable Order Form. This Agreement shall be automatically renewed for consecutive one (1) year terms unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the then-current term. Any notice of non-renewal to Treasure Data pursuant to this Section 9.1 may be sent to [legal@treasure-data.com](mailto:legal@treasure-data.com).

**9.2 Termination for Convenience.** Customer may terminate an Order Form for convenience upon thirty (30) days' written notice, provided that Customer shall pay all Service Fees through the end of the Subscription Term of any outstanding Order Form(s). Any notice of termination for convenience to Treasure Data pursuant to this Section 9.2 may be sent via email to [legal@treasure-data.com](mailto:legal@treasure-data.com).

**9.3 Termination for Cause.** Either party may terminate an Order Form and/or this Agreement immediately upon written notice to the other party, if: (1) 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; (2) the other party materially breaches the Agreement which is not capable of remedy; or (3) the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors. Notwithstanding the foregoing, non-payment of any Service Fees or other fees due to Treasure Data will be considered a material breach.

**9.4 Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all rights granted to Customer hereunder will immediately terminate and Customer will cease all use of the Service. The Receiving Party shall promptly destroy or, if instructed by Disclosing Party, return or delete all Disclosing Party's Confidential Information. Upon termination of an Order Form and/or this Agreement by Customer for Treasure Data's breach pursuant to Section 9.3, Treasure Data will refund the unused portion of any pre-paid Service Fees covering that part of the applicable Subscription Term for such Service remaining after the effective date of termination. Upon termination of an Order Form and/or this Agreement by Treasure Data for Customer's breach pursuant to Section 9.3 or by Customer for its convenience pursuant to Section 9.2, Customer will pay any unpaid Service Fees for the remainder of the Subscription Term of each terminated Order Form pursuant to Section 3.1 regardless of the payment schedule in the Order Form.

**9.5 Export and Destruction of Collected Data.** Customer shall have the ability to export Collected Data from the Service at any time during the Subscription Term and within thirty (30) days after the 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. Customer acknowledges that following such deletion of Collected Data, the Collected Data will be unrecoverable.

**9.6 Suspension.** Without limiting Treasure Data's rights or remedies hereunder, Treasure Data shall be entitled to suspend Customer's or its Users' use of the Service (a) if Treasure Data reasonably determines supported by observable evidence that Customer or a User is using the Service in a manner that: (i) poses a security 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; or (iii) breaches Sections 2.4 (Restrictions) or 2.5 (Customer Warranties); or (b) as required by law or at the request of governmental entities. If feasible, Treasure Data will use commercially reasonable efforts to notify Customer in advance of such suspension, upon which Customer shall cooperate with Treasure Data to remediate the violation. If Customer fails to cure within 30 days of notice, Treasure Data may terminate this Agreement and Order Forms for Customer's material breach pursuant to Section 9.3.

**9.7 Survival.** Sections 3.1 (Payment), 4 (Proprietary Rights), 5 (Confidential Information), 6.2 (Disclaimer), 7 (Limitation of Liability), 8 (Indemnification), 9 (Term and Termination), 10 (General), and 11 (Definitions) will survive the termination or expiration of this Agreement.

## 10. GENERAL

**10.1 Governing Law; Venue.** (1) If Customer's address is in a location not covered by (2) or (3), the validity, construction and performance of this Agreement shall be construed in accordance with and governed by the laws of the State of California. 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. (2) 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. Any legal suit, action or proceeding arising out of or relating to this Agreement will be commenced in the courts of England and Wales. (3) If Customer's address is in Asia, the validity, construction and performance of this Agreement shall be governed by the laws of Singapore. Any legal suit, action or proceeding arising out of or relating to this Agreement will be commenced in the courts of Singapore. The conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and are hereby expressly excluded. Notwithstanding the foregoing, either party to this Agreement may, at any time, and without waiving any other rights under this Agreement, seek appropriate legal or equitable relief, including but not limited to, emergency interim and/or injunctive relief, in any court of competent jurisdiction to protect its intellectual property rights. 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.

**10.2 Export Compliance.** Customer agrees to comply with Export Laws that apply to Customer's use of the Service. Without limiting the foregoing, Customer agrees it will not: (1) export, re-export, transfer, or otherwise use the Service in any country subject to an embargo or other sanctions by the U.S. (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region of Ukraine); (2) export, re-export, or transfer, either directly or indirectly, to a person or entity barred by the applicable Export Laws from participating in export activities; and (3) use the Service for any purpose prohibited by Export Laws.

**10.3 Assignment.** Neither party may assign or transfer 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, conditioned or delayed). Notwithstanding the foregoing, either party may assign the Agreement in its entirety, without the other party's consent (a) to its Affiliate or (b) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets; provided, however, that the assigning party must notify the other party as soon as reasonably possible after the completion of any such change in control. Within 30 days of such notice, the non-assigning party shall have the ability to terminate the Agreement by providing written notice with immediate effect should that non-assigning party determine that the change in control was to: (i) a direct competitor or (ii) an Affiliate of a direct competitor of the non-assigning party. This Agreement shall be binding upon, and inure to the benefit of, the parties and their permitted successors or assigns.

**10.4 Notice.** Except as otherwise provided in this Agreement, any legal notice under this Agreement shall be in writing and sent to the following addresses or as subsequently updated in writing: (i) to Customer: to the Customer's address on the Order Form; and (ii) to Treasure Data: to Treasure Data's address on the Order Form, with a copy to [legal@treasure-data.com](mailto:legal@treasure-data.com). All notices will be in writing and deemed given on: (a) personal delivery; (b) when received by the addressee if sent by a recognized overnight courier (receipt requested); (c) the third business day after mailing; or (d) the first business day after sending by email with confirmation of receipt. All communications and notices to be made or given pursuant to this Agreement must be in the English language.

**10.5 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.

**10.6 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, criminal acts, government action, fire, pandemic, natural disaster, extreme adverse weather, acts of God, terrorism, Internet connectivity or backbone or other telecommunications failures outside of Treasure Data's local network, power failures, or any other cause directly affecting such failure or causing such delay and beyond such party's reasonable control. The party affected by such events will provide prompt notice to the other party and will use reasonable efforts to mitigate the effects thereof.

**10.7 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 provisions continue in full force and effect and are enforced to the extent possible, consistent with the stated intention of the parties.

**10.8 Waiver; Amendment.** Failure by a party to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Only written waivers signed by an authorized representative of the waiving party are effective. Except as otherwise provided in this Agreement, any modification of this Agreement must be in writing and signed by authorized representatives of both parties.

**10.9 Entire Agreement; Execution.** 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, including any non-disclosure agreement executed prior to this Agreement. Customer's purchase order terms, trade, custom, practice or course of dealing are expressly excluded from the terms of this Agreement. This Agreement and any Order Form and SOW 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. Customer has not relied on any statement, promise, or representation not expressly included in this Agreement, including related to any possible future functionality that Treasure Data may provide or offer.

## 11. DEFINITIONS

**11.1 "Affiliate"** means any person or entity directly or indirectly Controlling, Controlled by, or under common Control with a party, where **"Control"** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause direction of the general management of a legal entity.

**11.2 "Agreement"** means these Terms of Service and any Order Forms and/or Statements of Work that reference these Terms of Service. Any documents that are expressly referenced herein or that reference these Terms of Service shall be incorporated herein by reference.

**11.3 "Backup Period"** means the period of time when Business Logic is backed up.

**11.4 "Business Logic"** means the definitions that Customer creates in the process of using the Service when building a set of search criteria and parameters to view the Collected Data. Business Logic includes without limitations job and query definitions, data connector input and output definitions, segment definitions, database and table definitions, and workflow definitions.

**11.5 "CCPA"** means the California Consumer Privacy Act of 2018 and its implementing regulations, as amended or superseded from time to time.

**11.6 "CCPA Personal Information"** means the Personal Information under the CCPA.

**11.7 "Claim"** means any suit or proceeding made or brought against Customer or Treasure Data by a third party.

**11.8 "Collected Data"** means electronic data and information submitted to, imported, or otherwise transferred by or on behalf of Customer to the Service. Collected Data does not include User Account Information.

**11.9 "Confidential Information"** means (1) Treasure Data Technology (which is Treasure Data's Confidential Information); (2) Collected Data, the content of the Reports and Customer Technology (which are Customer's Confidential Information); (3) any of a party's information, due to the nature of the information or circumstances of disclosure, the Receiving Party should reasonably understand it to be confidential; and (4) any Order Forms, Statements of Work, this Agreement and any amendment thereof (which are both parties' Confidential Information). Confidential Information excludes any information (i) that is in the public domain other than as a result of a disclosure by the Receiving Party in breach of this Agreement; (ii) that was within the Receiving Party's possession prior to the disclosure to it by or on behalf of the Disclosing Party provided that such information is not already subject to any obligations of confidentiality; (iii) that 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 (iv) that

was developed independently by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party.

**11.10 “Customer”** means the customer entity who is purchasing the Service and Professional Services as set forth on the Order Form.

**11.11 “Customer Support and Service Availability Exhibit”** means the Customer Support and Service Availability Exhibit made available at <https://www.treasuredata.com/terms/>.

**11.12 “Customer Technology”** means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by or for Customer (but not by or for Treasure Data) for use with the Service, excluding Treasure Data Technology.

**11.13 “Data Protection Liability Cap”** means the liability limit that is two times (2x) the General Liability Cap.

**11.14 “Disclosing Party”** means the party who discloses the Confidential Information.

**11.15 “Documentation”** means the then current documentation for the Service, including user manuals, operating instructions, and release notes, made available by Treasure Data at <https://docs.treasuredata.com/>.

**11.16 “DPA”** means the Data Processing Addendum available at <https://www.treasuredata.com/terms/>.

**11.17 “Effective Date”** (a) for this Agreement, means the last signature date on the first Order Form, and (b) for each Order Form, the last signature date on the Order Form.

**11.18 “Export Laws”** means the U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Service.

**11.19 “Feedback”** means suggestions, recommendations or other feedback regarding improvements to the Service.

**11.20 “General Liability Cap”** means the total amounts paid or owing by Customer to Treasure Data in the twelve (12) months immediately preceding the first event giving rise to such liability.

**11.21 “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.

**11.22 “Indemnified Party”** means the party being indemnified under Section 8.

**11.23 “Indemnifying Party”** means the party offering the indemnity under Section 8.

**11.24 “Login Account”** means the user account to access the Service.

**11.25 “Newly Created IP”** means any intellectual property rights in works of authorship newly created by Treasure Data specifically for Customer, based on Customer Confidential Information or Customer proprietary rights and expressly identified for Customer to own in an SOW. No Treasure Data Technology or anything not newly created in the course of performance of the SOW may be construed to be Newly Created IP.

**11.26 “Order Form”** means a form executed by both parties setting out terms for the Professional Services and subscription of the Service, including the Service Fees and Subscription Term.

**11.27 “Overage Service”** means the Service consumed by Customer that exceeds its purchased capacity.

**11.28 “PCI Data”** means the cardholder data as defined in the Payment Card Industry Data Security Standard.

**11.29 “Personal Information”** means: (1) any information that can be used to distinguish or trace an individual’s identity; (2) any other information that is linked or linkable to an individual; (3) any other information relating to an identified or identifiable living natural person; or (4) any information defined as “personal information,” “personally identifiable information,” “personal data,” or similar expressions under applicable privacy laws or data security laws.

**11.30 “Professional Services”** means the implementation, configuration, training and other similar service to help Customer optimize its use of the Service.

**11.31 “Receiving Party”** means the party who receives the Confidential Information.

**11.32 “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.

**11.33 “Service”** means the Treasure Data cloud-based service ordered by Customer under an Order Form and made available by Treasure Data as described in the Documentation and excludes any Third-Party Services.



11.34 “**Service Fees**” means the fees for the Service and Professional Services.

11.35 “**Service Materials**” means any materials produced by or with Treasure Data in the course of providing any support or Professional Services to Customer.

11.36 “**Statement of Work**” or “**SOW**” means the statement of work executed by the parties subject to these Terms of Service that sets forth the scope, timeline, responsibilities of the parties, fees and any other applicable terms.

11.37 “**Subscription End Date**” means the end date of the Service as stated on the Order Form.

11.38 “**Subscription Start Date**” means the start date of the Service as stated on the Order Form.

11.39 “**Subscription Term**” means the period of time covering the Subscription Start Date to the Subscription End Date that Customer may use the Service as stated on the applicable Order Form.

11.40 “**Taxes**” means all taxes, duties, levies, imposts, fines, or similar governmental assessments, including sales and use taxes, value-added taxes (“**VAT**”), goods and services taxes (“**GST**”), excise, business, service, and similar transactional taxes, including interest and penalties, imposed by any jurisdiction.

11.41 “**Third-Party Services**” means any third-party products or services not provided by Treasure Data.

11.42 “**Treasure Data Technology**” means the (1) the Service, Service Materials, Documentation, and Treasure Data’s pre-existing programs, software, tools, content, designs, applications, concepts, technologies or methodologies created by or for, or licensed to, Treasure Data; (2) templates, format, and structure of Reports provided to Customer in connection the Service or Professional Services; (3) any intellectual property rights created outside the scope of this Agreement; and (4) updates, upgrades, improvements, configurations, extensions, and derivative works for the foregoing.

11.43 “**Use Data**” means that data that is collected by the Treasure Data systems that are related to the use of the Service (such as the number of times a portion of the Service has been used). Use Data does not include Collected Data.

11.44 “**Users**” means the employees or contractors permitted by Customer to use the Service.

11.45 “**User Account Information**” means User’s full legal name, email address, and any other information requested during the account signup process.