

## END USER TERMS OF SERVICE

These End User Terms of Service (“**Terms of Service**”) are between **Treasure Data, Inc.** and End User and become effective on the Effective Date. Unless otherwise indicated, terms are defined in Section 11.

Treasure Data is providing the Service to End User in accordance with these Terms of Service through End User’s execution of the End User-Reseller Order Form and Treasure Data’s execution of the Reseller-Treasure Data Order Form. Both Treasure Data and End User acknowledge and agree that (a) Reseller is authorized to resell the Service and Professional Services to End User; (b) such services are governed by these Terms of Service; and (c) Treasure Data’s obligations to End User are limited to those set forth herein and Treasure Data is not party to any agreement between Reseller and End User. Reseller is not authorized to make any promises, representations, or commitments on behalf of Treasure Data.

### 1. TREASURE DATA RESPONSIBILITIES

**1.1 Provision of the Service.** Treasure Data authorizes End User to access and use the Service during the Subscription Term solely for End User’s own internal business purposes subject to the capacity limitations set forth in the End User-Reseller 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 End User by Treasure Data in this Agreement, by implication, estoppel or otherwise.

**1.2 Use of Collected Data and Use Data.** (a) End User authorizes Treasure Data to access and process the Collected Data to the extent it is necessary to provide the Service and Professional Services to End User. (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 End User or its customers or any data subject and is not considered End User Confidential Information.

**1.3 Privacy.** Treasure Data and End User will comply with the DPA, which shall apply to the extent Collected Data includes Personal Data (as defined in the DPA).

**1.4 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. End User 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. Treasure Data recommends that End User use a secure encrypted connection to communicate with the Service. Treasure Data shall not be liable to End User 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 End User’s Login Account by any third party, provided that Treasure Data has not breached its obligations set forth in this Section. Treasure Data shall, after discovery, without undue delay notify End User of any security breaches, incidents, threats, or vulnerabilities involving the Collected Data or User Account Information.

**1.5 Customer Support and Service Availability.** Customer Support and Service Availability (as defined in the Customer Support and Service Availability Exhibit) are provided in accordance with End User’s purchased plan level identified on the Reseller-Treasure Data Order Form and the Customer Support and Service Availability Exhibit.

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

## 2. END USER RESPONSIBILITIES

**2.1 End User's Account.** Pursuant to Section 1.1 (Provision of the Service), End User may permit Users to use the Service solely on End User's behalf, provided that End User shall ensure that all Users comply with the terms of this Agreement. Treasure Data will set up End User's initial Login Account and End User must provide the User Account Information. Accounts registered by "bots" or other automated methods are prohibited. End User 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, End User 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.** End User may use certain Third-Party Services in connection with the Service. End User'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 End User, 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. End User is solely responsible for determining the suitability of any Third-Party Services that End User elects to use in connection with the Service. Any and all use of such Third-Party Services shall be at End User'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 End User and End User 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 Collected Data.** End User 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 End User provides to Treasure Data.

**2.4 Restrictions.** End User 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) 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; (7) access or use the Service in a way intended to avoid incurring fees or exceeding usage limits; (8) use the Service in violation of applicable laws, rules, or regulations, including, without limitation, for collecting or otherwise processing data in violation of the US Children's Online Privacy Protection Rule (COPPA) or other similar foreign legislation; (9) use the Service to infringe the intellectual property rights or otherwise violate the rights of others; (10) reverse engineer, decompile or otherwise attempt to derive source code from the Service; or (11) use the Service to store, transmit or otherwise process Sensitive Data. End User acknowledges that the Service is not intended to meet any legal obligations for its use with Sensitive Data. If End User discovers the occurrence of any violation of this Section 2.4, End User will immediately suspend access to the Service by such User and promptly notify Treasure Data.

**2.5** End User Warranties. End User shall comply with all applicable laws in using the Service. End User warrants that: (1) End User 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) End User has the right to upload Collected Data to the Service and export the Collected Data to locations designated by End User; (3) End User'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) End User 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. End User will pay Reseller the Service Fees in the End User-Reseller Order Form, but End User acknowledges that Treasure Data may suspend the Service if Treasure Data does not receive the corresponding payment from Reseller. Notwithstanding the foregoing, (i) non-payment of any Service Fees or other fees due by End User to Reseller and (ii) non-receipt of the corresponding payment by Treasure Data from Reseller will each be considered a material breach. End User will pay Reseller Service Fees in full, without offsets, deduction of transaction fees or otherwise or withholding of any kind, in the currency set forth in the Order Form, annually in advance, unless otherwise stated in the End User-Reseller Order Form. Invoices are due within thirty (30) days after the invoice date. Except as expressly provided herein, all payment obligations are committed for the applicable Subscription Term, and are non-cancelable, and all Service Fees and other amounts paid or payable are non-refundable. Reseller may charge End User 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 End User fails to cure after a 10-day cure notice.

**3.2** Invoice. Reseller will invoice the first year of Service on the Effective Date of the End User-Reseller Order Form, and for any subsequent year, if End User is purchasing a multiple year Subscription Term, on or prior to the expiration of the then-current subscription year. 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 End User-Reseller Order Form. For clarity, such increase will apply to the subscription fee stated on the expiring End User-Reseller 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.

**3.3** Overage Service. During the Subscription Term, End User will be provided a usage dashboard that displays End User's consumption of the Service, and it is End User'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 End User's use of the Service, and on Treasure Data's written request, End User will provide reasonable assistance to verify End User's compliance with the Agreement with respect to access to and use of the Service. Treasure Data may notify End User and Reseller of any Overage Service and if requested by End User will work with End User to optimize its use of the Service and End User will, within 30 days, either: (1) reduce its usage; or (2) enter into a new End User-Reseller Order Form to purchase additional subscriptions or capacity, commensurate with End User's actual use in accordance with the overage pricing on the applicable End User-Reseller Order Form. If End User fails to cure within the 30-day cure period, Reseller may issue an invoice for the Overage Service.

**3.4** Taxes. All payments under this Agreement are exclusive of Taxes. End User 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 Reseller, except as required by applicable law, in which case End User will increase the amount payable as necessary so that, after making all required deductions and withholdings, Reseller 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, End User will provide its VAT or GST identification number(s) on the End User-Reseller Order Form. End User will use the ordered Service and Professional Services for End User'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 End User Ownership.** End User will retain all right, title and interest, in and to the End User Technology, Collected Data, the content of Reports related to such Collected Data, End User's trademarks, and End User's Confidential Information. End User 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 End User Technology solely to provide and support the Service and Professional Services.

**4.3 Feedback.** If End User provides Feedback to Treasure Data, End User 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 End User, but do not include any Collected Data, End User's Confidential Information or the Service. If a SOW expressly provides for the creation and ownership transfer of Newly Created IP to End User, Treasure Data assigns to End User such Newly Created IP upon Reseller's payment in full under the Reseller-Treasure Data SOW. If any Treasure Data Technology (with the exception of Service) is incorporated in a Newly Created IP, Treasure Data grants End User 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 End User'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 Reseller-Treasure Data SOW. End User must promptly report any failure of the Service or Professional Services to comply with this Section to Reseller and 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 End User with an alternative means of accomplishing the desired performance. If the non-conformity without a workaround lasts more than 30 days after End User's notice,

then End User may terminate the affected Service or Professional Services immediately on written notice of termination, and as End User's exclusive remedy, Treasure Data will require Reseller to refund End User 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 End User 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 AND RESELLER DISCLAIM 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 AND RESELLER DO NOT WARRANT THAT THE SERVICE OR PROFESSIONAL SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR WILL MEET THE REQUIREMENTS OF END USER 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. ADDITIONALLY, TREASURE DATA AND RESELLER SHALL HAVE NO LIABILITY RELATED TO END USER'S USE OF THE SERVICE IN VIOLATION OF SECTION 2.4.

**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 1.4 (SECURITY); (3) SECTION 2.4 (RESTRICTIONS); (4) SECTION 2.5 (END USER 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) END USER'S OBLIGATIONS TO PAY FOR SERVICES OR TAXES TO RESELLER; (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 End User against any Claim alleging that End User's use of the unmodified Service infringes such third party's intellectual property rights, and Treasure Data will indemnify End User from any damages, reasonable attorneys' fees and costs finally awarded against End User or amounts paid by End User 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 End User 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 require Reseller to 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 End User to use or implement the replacement or modification provided by Treasure Data pursuant to Section 8.1.1 above.

**8.2** By End User. Subject to this Section 8, End User will defend and indemnify Treasure Data against any Claim made or brought against Treasure Data based on End User's breach of Section 2.4 (Restrictions) or Section 2.5 (End User Warranties), and End User 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 Reseller-Treasure Data Order Forms in effect. The Subscription Term for a given subscription shall be set forth in the applicable Reseller-Treasure Data Order Form. Unless otherwise stated in the applicable Reseller-Treasure Data Order Form, or the applicable agreement between Reseller and Treasure Data, the ordered Service will automatically renew for successive one (1) year Subscription Terms, unless End User provides notice to Reseller, Reseller provides notice to Treasure Data, or Treasure Data provides notice to Reseller and End User, of its intent not to renew at least thirty (30) days prior to the end of the then-current Subscription Term. Notice of intent not to renew may be provided to Treasure Data by emailing [legal@treasure-data.com](mailto:legal@treasure-data.com).

**9.2** Termination for Cause. End User may terminate the End User-Reseller Order Form, Treasure Data may terminate the Reseller-Treasure Data Order Form and either party may terminate 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 Reseller by End User or to Treasure Data by Reseller will be considered a material breach.

**9.3** Effect of Termination. Upon termination or expiration of this Agreement for any reason, all rights granted to End User hereunder will immediately terminate and End User 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 End User-Reseller Order Form and/or this Agreement by End User for Treasure Data's breach pursuant to Section 9.2, Treasure Data will refund to Reseller the unused portion of any pre-paid Service Fees stated in the Reseller-Treasure Data Order Form covering that part of the applicable Subscription Term for such Service remaining after the effective date of termination. Upon termination of a Reseller-Treasure Data Order Form and/or this Agreement by Treasure Data for End User's breach pursuant to Section 9.2, End User will pay any unpaid Service Fees for the remainder of the Subscription Term of each terminated End User-Reseller Order Form pursuant to Section 3.1 regardless of the payment schedule in the End User-Reseller Order Form.

**9.4** Export and Destruction of Collected Data. End User shall have the ability to export Collected Data from the Service at any time during the Subscription Term and for 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. End User acknowledges that following such deletion of Collected Data, the Collected Data will be unrecoverable.

**9.5** Suspension. Without limiting Treasure Data's rights or remedies hereunder, Treasure Data shall be entitled to suspend End User's or its Users' use of the Service (a) if Treasure Data reasonably determines supported by observable evidence that End User 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 (End User 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 End User in advance of such suspension, upon which End User shall cooperate with Treasure Data to remediate the violation. If End User fails to cure within 30 days of notice, Treasure Data may terminate this Agreement and Reseller-Treasure Data Order Forms for End User's material breach pursuant to Section 9.3.

**9.6** 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 End User'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 End User'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 End User'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.** End User agrees to comply with Export Laws that apply to End User's use of the Service. Without limiting the foregoing, End User 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, Syria, and the Crimea, Donetsk and Luhansk Regions 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 End User: to the End User's address on the Reseller-Treasure Data Order Form; and (ii) to Treasure Data: to Treasure Data's address on the End User-Reseller 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. Treasure Data reserves the right to update these Terms of Service, the DPA and the Customer Support and Service Availability Exhibit at any time, provided however, that such updates will be effective only after the end of the applicable Subscription Term. Any modification to any Order Forms or SOWs governed hereby must be in writing and signed by authorized representatives of the parties thereto.



**10.9 Entire Agreement; Execution.** This Agreement 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. End User's purchase order terms, trade, custom, practice or course of dealing are expressly excluded from the terms of this Agreement. This Agreement 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. End User 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 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 "Claim"** means any suit or proceeding made or brought against End User or Treasure Data by a third party.

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

**11.5 "Confidential Information"** means (1) Treasure Data Technology (which is Treasure Data's Confidential Information); (2) Collected Data, the content of the Reports and End User Technology (which are End User'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 Reseller-Treasure Data Order Forms, Reseller-Treasure Data 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.

**11.6 "Customer Support and Service Availability Exhibit"** means the Customer Support and Service Availability Exhibit made available at <https://www.treasuredata.com/terms/>. The term "Customer" in the Exhibit refers to End User.

**11.7 "Data Protection Liability Cap"** means the liability limit that is two times (2x) the General Liability Cap.

**11.8 "Disclosing Party"** means the party who discloses the Confidential Information.

**11.9 "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/>.

**11.10 "DPA"** means the Data Processing Addendum available at <https://www.treasuredata.com/terms/>.

**11.11 "Effective Date"** (a) for this Agreement, means the last signature date on the first Reseller-Treasure Data Order Form, and (b) for each Reseller-Treasure Data Order Form, the last signature date on the Reseller-Treasure Data Order Form.

11.12 “**End User**” means the customer entity who is purchasing the Service and Professional Services as set forth on the Reseller-Treasure Data Order Form.

11.13 “**End User-Reseller Order Form**” means the order form executed by End User and Reseller setting out the Professional Services and subscription of the Service, including the Service Fees that End User will pay Reseller and Subscription Term, provided that Treasure Data has entered or will soon enter into a Reseller-Treasure Data Order Form for the benefit of End User.

11.14 “**End User-Reseller Statement of Work**” or “**End User-Reseller SOW**” means the statement of work executed by End User and Reseller subject to these Terms of Service that sets forth the scope, timeline, responsibilities of the parties, fees and any other applicable terms, provided that Treasure Data has entered or will soon enter into an SOW with Reseller (“**Reseller-Treasure Data SOW**”) that set forth Reseller’s purchase of Professional Services from Treasure Data for the benefit of End User.

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

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

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

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

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

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

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

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

11.23 “**Overage Service**” means the Service consumed by End User that exceeds the purchased capacity.

11.24 “**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.

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

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

11.27 “**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.

11.28 “**Reseller**” means the entity that has contracted directly with Treasure Data to resell Service and/or Professional Services to End User subject to these Terms of Service.

**11.29 “Reseller-Treasure Data Order Form”** means a order form executed by Reseller and Treasure Data setting out End User’s name and contact information, terms for the Professional Services and subscription of the Service, including the Service Fees that Reseller will pay Treasure Data and Subscription Term.

**11.30 “Sensitive Data”** means: (1) health or medical information or other patient information protected by the Health Insurance Portability and Accountability Act or related regulations; (2) any information revealing an individual’s racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; (3) an individual’s social security number, driver’s license number, or government-issued ID number; (4) card holder data or other information covered by the Payment Card Industry Data Security Standard (5) any information concerning an individual’s sex life or sexual orientation; (6) genetic or biometric data, where used for identification purposes; or, (7) data similar to that listed above which is granted enhanced protection under applicable laws or regulations.

**11.31 “Service”** means the Treasure Data cloud-based service ordered by End User under an End User-Reseller Order Form and made available by Treasure Data pursuant to a Reseller-Treasure Data Order form as described in the Documentation and excludes any Third-Party Services.

**11.32 “Service Fees”** means the fees for the Service and Professional Services in the End User-Reseller Order Form owed by End User to Reseller or in the Reseller-Treasure Data Order Form owed by Reseller to Treasure Data, as appropriate.

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

**11.34 “Subscription End Date”** means the end date of the Service as stated on the End User-Reseller Order Form or Reseller-Treasure Data Order Form.

**11.35 “Subscription Start Date”** means the start date of the Service as stated on the End User-Reseller Order Form or Reseller-Treasure Data Order Form.

**11.36 “Subscription Term”** means the period of time covering the Subscription Start Date to the Subscription End Date that End User may use the Service as stated on the applicable End User-Reseller Order Form or the Reseller-Treasure Data Order Form.

**11.37 “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.

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

**11.39 “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 End User 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.

**11.40 “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.

**11.41 “Users”** means the employees or contractors permitted by End User to use the Service.

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