USAGEAI, INC.

Terms of Service

Last Updated: 3/27/2024

This Terms of Service ("**Agreement**") is a legally binding contract between you and UsageAI, Inc. ("**UsageAI,**" "**us,**" "**we**," or "**our**") regarding your use of the Service (as defined below). References to "**Customer**", "**you**", and "**your**" refer to the individual, company, or other entity that accepts the Agreement by executing an ordering document provided to you by us, placing an Order using online functionality UsageAI makes available like clicking a box, creating an Account (as defined below), or otherwise affirmatively accepting this Agreement through other means UsageAI offers you. If the Service is being used on behalf of a company or other entity by an individual authorized to accept this Agreement on its behalf, then all references to "Customer," "you," or "your" refer to such company or other entity. If you are a company or other entity, the individual accepting this Agreement on your behalf represents and warrants that they have authority to bind you to this Agreement. If you are accepting this Agreement on behalf of a company or other entity and an authorized representative of the entity has already accepted this Agreement on behalf of the entity or entered into a separate agreement regarding the use of the Service ("**Separate Agreement**") prior to the date upon which you accept this Agreement ("**Effective Date**"), this Agreement will not apply to you and your and the entity's rights and obligations with respect to the Service will at all times be governed by, and subject to, the Separate Agreement. If you are not eligible, or do not agree to the terms and conditions of the Agreement, then you do not have our permission to use the Service. Your use of and our provision of the Service to you, constitutes an Agreement by UsageAI and by you to be bound by this Agreement.

YOU AGREE TO RECEIVE TEXTS/CALLS FROM OR ON BEHALF OF USAGEAI AT THE PHONE NUMBER YOU PROVIDE TO USAGEAI. THESE TEXTS/CALLS MAY INCLUDE OPERATIONAL MESSAGES ABOUT YOUR USE OF THE SERVICE. YOU UNDERSTAND AND AGREE THAT THESE TEXTS/CALLS MAY BE CONSIDERED TELEMARKETING UNDER LAW, THEY MAY BE SENT USING AN AUTOMATIC TELEPHONE DIALING SYSTEM OR OTHER AUTOMATED TECHNOLOGY, AND YOUR CONSENT IS NOT A CONDITION OF ANY PURCHASE.

If Customer purchases the Service from an authorized reseller or other authorized channel partner of UsageAI ("**Reseller**"), Customer's use of the Service will be governed by this Agreement, subject to Section 5 (Reseller Orders) below.

1. Defined Terms. Certain capitalized terms used in this Agreement are defined in Section 16 (Definitions) and others are defined contextually in this Agreement.

2. Overview. UsageAI provides, through its online platform, certain features and functionalities in connection with analyzing a customer's use of, and costs for, its Cloud Resource(s).

3. The Service.

3.1. Permitted Use. Subject to the terms and conditions of this Agreement and each Order (if applicable), UsageAI will, during the Subscription Term, provide the Service to Customer and, if Customer is a company or entity, to Customer's Authorized Users. Customer may only use the Service for its internal business purposes.

3.2. Access. To access the Service, Customer and its Authorized Users must register for an account ("**Account**") and, in doing so, may be required to provide UsageAI with information (such name, email

address, or other contact information). Customer will not allow access to the Service by any person other than its Authorized Users. Customer agrees that the information it provides to UsageAI is accurate, complete, and not misleading and that it will keep it accurate and up to date at all times. Only Authorized Users, using the mechanisms designated by UsageAI ("**Log-in Credentials**"), may access and use the Service. Each Account created by an Authorized User is personal to that specific individual and may not be transferred, sold or otherwise assigned to or shared with any other individual or entity. Each Authorized User must keep its Log-in Credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users' compliance with this Agreement and all actions taken through their Log-in Credentials (excluding misuse of the Log-in Credentials caused by UsageAI's breach of this Agreement). Customer will promptly notify UsageAI if it becomes aware of, or has a reasonable belief of, any compromise or potential compromise of any Log-in Credentials. UsageAI may Process Log-in Credentials in connection with UsageAI's provision of the Service or for UsageAI's internal business purposes. Customer represents and warrants to UsageAI that: (a) it has not previously been suspended or removed from the Service; and (b) its registration and use of the Service is in compliance with all Laws. Customer acknowledges and agrees that it is responsible and liable for the acts and omissions of its Authorized Users in connection with the Service and any such acts or omissions are hereby deemed to be those of Customer. Customer will notify UsageAI if Customer wishes to add Authorized Users, and UsageAI may accept or deny such request in its sole discretion.

3.3. Restrictions. Customer will not (and will not permit its Authorized Users or anyone else to) do any of the following: (a) provide access to, transfer, distribute, sell, lease, license, or sublicense the Service to a third party (other than Authorized Users); (b) allow access to or use of the Service on behalf of, or to provide any product or service to, third parties (other than Authorized Users), or otherwise use the Service of a service bureau basis; (c) use the Service to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public application programming interfaces to the Service, in whole or in part, except to the extent expressly permitted by Law (and then only with prior notice to UsageAI); (e) modify or create derivative works of the Service or copy any element of the Service, UsageAI Confidential Information, or any other software program based upon the Service; (f) remove or obscure any proprietary notices in the Service; (g) publish benchmarks or performance information about the Service; (h) interfere with the operation of the Service, circumvent any access restrictions, or conduct any security or vulnerability test of the Service; (i) transmit any viruses or other harmful materials to the Service; (j) take any action that risks harm to others or to the security, availability, or integrity of the Service; (k) access or use the Service in a manner that violates any Law; or (l) upload Prohibited Data to the Service or use the Service for High Risk Activities. Customer acknowledges that the Service is not intended to meet any legal obligations for these uses, including HIPAA requirements, and that UsageAI is not a Business Associate (as defined under HIPAA). Notwithstanding anything else in this Agreement, UsageAI has no liability for Prohibited Data or use of the Service for High Risk Activities.

3.4. Support. Please contact us at support@usage.ai if you experience any issue with respect to the Service. We will use commercially reasonable efforts to respond to and attempt to resolve issues reported to us (but we are under no obligation to respond to or to resolve all or any issue or to provide any updates, upgrades, or other technical or maintenance support with respect to the Service unless otherwise agreed to in writing by UsageAI in an Order).

3.5. Privacy Policy. To the extent Personal Data (as defined in UsageAI's Privacy Policy at https://usage.ai/policy.html) is uploaded, transmitted, submitted, provided, or processed in connection with Customer's use of the Service, UsageAI will comply with the Privacy Policy.

3.6. Analytical Data. UsageAI may Process Analytical Data for internal business purposes to: (a) track use of Service for billing purposes; (b) provide support for Service; (c) monitor the performance and stability of the Service; (d) prevent or address technical issues with the Service; (e) to improve Service, its other products and services, and to develop new products and services; and (f) for all other lawful business practices, such as analytics, benchmarking, and reports. Customer will not interfere with the collection of Analytical Data.

3.7. Customer Obligations. Customer will comply with Laws when using the Service. Customer represents and warrants that it has provided all notices to and obtained all necessary and sufficient rights, permissions, capacity, consents, and authority to fully comply with its obligations under this Agreement without violating Laws, infringing, misappropriating, or otherwise diluting any third-party rights (including intellectual property, publicity, privacy, or other proprietary rights), or breaching any terms or conditions in any agreement or privacy policies with a third party.

3.8. Suspension. UsageAI may immediately suspend Customer's and its Authorized Users' access to the Service if: (a) Customer breaches Section 3.3 (Restrictions) or Section 3.7 (Customer Obligations); (b) Customer's Account is 30 days or more overdue; (c) changes to Laws or new Laws require that UsageAI suspend the Service or otherwise may impose additional liability on us; or (d) Customer or its Authorized Users actions risk harm to any of UsageAI's other customers or the security, availability, or integrity of the Service. Where practicable, UsageAI will use reasonable efforts to provide Customer with prior notice of the suspension. If the issue that led to the suspension is resolved, UsageAI will use reasonable efforts to restore your access to the Service.

3.9. Modifications to the Service. UsageAI may modify or discontinue all or any part of the Service at any time (including by limiting or discontinuing certain features or functionality of the Service), temporarily or permanently, without notifying Customer (except that UsageAI will use commercially reasonable efforts provide Customer with 30 days' prior notice in the event of any material deprecation of any material feature or functionality of the Service). UsageAI will have no liability for any change or modification to the Service or any suspension or termination of access to or use of the Service as a result thereof. Notwithstanding the foregoing, any such change or modification will only apply on a going-forward basis after UsageAI's implementation thereof.

3.10. Customer Systems. Customer will provide and maintain any hardware, software, other technology, and infrastructure that Customer require to access and use the Service (as described in the Documentation).

3.11. No Customer Data. Customer hereby acknowledges and agrees that: (a) the Service does not Process any data, content, or information residing on its Cloud Resources; (b) the Service only collects general metadata relating to Customer's use and operation of the Service and its Cloud Resources (including CPU utilization, instance metadata tags, reservation information, and information relating to Customer's compute savings plans); and (c) Customer will at all times be solely responsible and liable for the security, collection, import, and export of any and all data, content, or information residing on its Cloud Resources.

3.12. Third-Party Platforms. Use of Third-Party Platforms are subject to Customer's agreements with the relevant provider and not this Agreement. UsageAI does not control and have no liability for Third-Party Platforms, including their security, functionality, operation, availability, or interoperability with the Service.

4. Commercial Terms.

4.1. Subscription Term Renewal. Each Subscription Term will automatically renew for successive terms equal in length to the Subscription Term. Customer may cancel the Service by following the cancellation

procedures through your Account or emailing UsageAI at support@usage.ai. **YOUR CANCELLATION MUST BE RECEIVED AT LEAST THIRTY (30) DAYS BEFORE THE EXPIRATION OF THE THEN-CURRENT SUBSCRIPTION TERM IN ORDER TO AVOID BEING CHARGED FOR THE NEXT SUBSCRIPTION PERIOD.**

4.2. Fees. Use of the Service may require you to pay fees ("**Fees**"). Fees to be paid by you are set forth in an Order or will otherwise be communicated to you by UsageAI, and you will have an opportunity to review and accept the Fees before they are charged to you. Certain Fees may be charged based on the cost savings for your Cloud Resource(s) that are achieved through the Service or the costs of your Cloud Resource(s) that are managed through the Service. For more information on our pricing models, please visit our pricing page available at https://usage.ai/pricing. All Fees for the Service will be paid in US dollars unless otherwise agreed in writing (including via an Order). Fees are invoiced or charged as described on our pricing page available at https://usage.ai/pricing. Unless the parties otherwise agree in writing (including via an Order), all Fees are due within 30 days of the invoice date. Your Account will be charged a service charge of 1.5% per month or the maximum amount allowed by Law, whichever is less and Customer will also be responsible for Fees or charges that are incidental to any chargeback or collection of any the unpaid amount including any collection Fees. All Fees and other expenses are non-refundable. Customer is responsible for any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than UsageAI's income tax ("**Taxes**"). Fees are exclusive of all Taxes.

4.3. Authorization. You authorize UsageAI and our third-party payment processor to charge all sums for the orders that you make and any level of Service you select as described in this Agreement or published by UsageAI, including all applicable Taxes, to the payment method specified in your Account. If you pay any Fees with a credit card, then UsageAI or its third-party payment processor may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. You agree that UsageAI or its third-party payment processor may seek pre-authorization of the credit card account Customer provided to UsageAI for payment prior to any purchase to verify that the credit card is valid and has the necessary funds or credit available to cover such purchase. If your payment method is no longer valid at the time a renewal Fee is due, then UsageAI reserves the right to delete your Account and any information associated with your Account without any liability to you.

4.4. Pricing. UsageAI reserves the right to determine pricing for the Service. We will use reasonable efforts to keep pricing information with respect to the Service that is published on UsageAI's pricing page available at https://usage.ai/pricing up to date, and UsageAI encourages Customers to check it regularly for current pricing information. Unless UsageAI and Customer otherwise agree in writing (including via an Order), UsageAI may change the Fees for the Service (including any feature or functionality of the Service) and UsageAI will notify Customer of any such changes before they apply. UsageAI may make promotional offers with different features and different pricing to any of UsageAI's other customers. These promotional offers, unless made to Customer, will not apply to your Order or this Agreement.

4.5. Renewal Fees. Fees for renewal Subscription Terms are at UsageAI's then-current Fees at the time of such renewal regardless of any previously discounted pricing or promotional offers previously extended to Customer.

5. Reseller Orders. This Section applies to any access to or use of the Service purchased by Customer through a Reseller.

5.1. Commercial Terms. Instead of paying UsageAI, Customer will pay applicable amounts to the Reseller as agreed upon between Customer and the Reseller. Customer's order details (e.g., scope of use,

Subscription Term, and Fees) will be as stated in the Order placed by Reseller with UsageAI on Customer's behalf. The Reseller is responsible for the accuracy of such Order. UsageAI may suspend or terminate Customer's rights to access and use the Service if it does not receive the corresponding payment from the Reseller. If Customer is entitled to a refund under this Agreement, UsageAI will refund any applicable Fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to Customer, unless otherwise specified.

5.2. Relationship with UsageAI. This Agreement is directly between UsageAI and Customer and governs all use of the Service by Customer and its Authorized Users. Resellers are not authorized to modify this Agreement or make any promises, representations, warranties, or commitments on UsageAI's behalf, and UsageAI is not bound by any obligations to Customer other than as set forth in this Agreement. UsageAI is not party to (or responsible under) any separate agreement between Customer and Reseller and is not responsible for the Reseller's acts, omissions, products, or services. The amount paid or payable by the Reseller to UsageAI for Customer's use of the applicable Service under this Agreement will be deemed the amount paid or payable by Customer to UsageAI under this Agreement for purposes of Section 9 (Limitations of Liability).

6. Warranty Disclaimer.

6.1. Mutual. Each party represents and warrants to the other party that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of its obligations under this Agreement; and (c) it will comply with all Laws.

6.2. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, USAGEAI, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS, MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. WE DO NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. USAGEAI IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE USAGEAI'S CONTROL. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE PERFORMANCE TO THE SHORTEST LEGALLY PERMITTED PERIOD. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. UsageAI does not disclaim any warranty or other right that it is prohibited from disclaiming under Law.

7. Term and Termination.

7.1. Term. This Agreement starts on the Effective Date and continues until expiration or termination of all Subscription Terms (the "**Term**").

7.2. Termination. Either party may terminate this Agreement (including any or all Orders, if applicable) if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay Fees) within 30 days after notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. If Customer violates any provision of this Agreement, then UsageAI may immediately terminate this Agreement and your authorization to access the Service automatically terminates. In addition, UsageAI may, in its sole

discretion, terminate this Agreement or Customer's Account on the Service, or suspend or terminate Customer's access to the Service, at any time for any reason or no reason, with or without notice, and without any liability to Customer (except as otherwise set forth herein). You may terminate your Account and this Agreement at any time by notifying UsageAI in accordance with Section 15.4 (Notices).

7.3. Effect of Termination. Upon expiration or termination of an Order or this Agreement, Customer's access to and UsageAI's obligations to provide the Service will cease and Customer will pay UsageAI any Fees or other amounts that accrued prior to the effective date of the termination or expiration. At the Discloser's (defined below) request or upon expiration or termination of this Agreement, the Recipient (defined below) will delete all of the Discloser's Confidential Information. Copies of Discloser's Confidential Information may be retained in the Recipient's standard electronic backups after deletion but will remain subject to this Agreement's confidentiality restrictions and such backups copies may only be used for the sole purpose of ensuring compliance with this Agreement. The Recipient will not acquire any express or implied rights of ownership in or control of the Discloser's Confidential Information other than the limited right to retain an electronic copy pursuant to this Section.

7.4. Survival. All rights to payment and the following Sections will survive expiration or termination of this Agreement: 3.3 (Restrictions), 3.6 (Analytical Data), 3.7 (Customer Obligations), 4.2 (Fees), 4.3 (Authorization), 6.2 (Disclaimer), 7.3 (Effect of Termination), 7.4 (Survival), 8 (Ownership), 9 (Limitations of Liability), 10 (Indemnification), 11 (Confidentiality), 15 (Miscellaneous), and 16 (Definitions). Except where an exclusive remedy is provided in this Agreement, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.

8. Ownership. Neither party grants the other any rights or licenses not expressly set out in this Agreement. Except for Customer's use rights in this Agreement, UsageAI and its licensors retain all intellectual property rights and other rights in the Service, Documentation, Analytical Data, and UsageAI's technology, templates, formats, and dashboards, including any modifications or improvements to these items made by us. Customer hereby assigns to UsageAI all of its right, title, and interest in and to the Analytical Data, including all intellectual property rights therein. To the extent any of the right, title and interest in and to Analytical Data cannot be assigned by Customer to UsageAI, Customer hereby grants to UsageAI an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title and interest. If Customer provides UsageAI with feedback or suggestions regarding the Service or its other offerings, UsageAI may use the feedback or suggestions or any derivative thereof without restriction or obligation, including without any remuneration, compensation, or attribution to Customer or its Authorized Users.

9. Limitations of Liability. Except for breaches of Sections 3.1 (Permitted Use), 3.3 (Restrictions) and 11 (Confidentiality), neither UsageAI's, Customer's or their respective suppliers or licensors will have liability arising out of or related to this Agreement for any loss of use, lost data, lost profits, failure of security mechanisms, interruption of business, or any indirect, special, incidental, reliance, or consequential damages of any kind, even if informed of their possibility in advance. Except for breaches of Sections 3.1 (Permitted Use), 3.3 (Restrictions) and 11 (Confidentiality) and liability arising out of Section 10 (Indemnification), neither UsageAI's, Customer's or their respective suppliers or licensors liability arising out of or related to this Agreement will exceed in the aggregate the amounts paid or payable by Customer to UsageAI pursuant to this Agreement during the 12 months prior to the date on which the applicable claim giving rise to the liability arose under this Agreement. The provisions of this Section 9 allocate risks under this Agreement between Customer and UsageAI. UsageAI's pricing of the Service reflects this allocation of risks and limitation of liability. The waivers and limitations in this Section 9 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and

apply even if any limited remedy in this Agreement fails of its essential purpose. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

10. Indemnification.

10.1. Indemnity by UsageAI. UsageAI shall, at its expense, defend or settle any claim, action or allegation brought against Customer alleging that the Service infringes any copyright or trade secret of any third party and shall pay any final judgments awarded or settlements entered into. UsageAI will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and UsageAI may not settle or compromise such claim, action or allegation, except with prior written consent of Customer. In the event any such infringement, claim, action, or allegation is brought or threatened, UsageAI may, at its sole option and expense, use commercially reasonable efforts to: (a) procure for Customer the right to continue use of the Service; (b) modify, amend, or replace the allegedly infringing part of the Service with a non-infringing functional equivalent; or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and refund to Customer a pro rata portion, if any, of any pre-paid Fees for the terminated portion of the Service. UsageAI shall have no liability hereunder if the actual or alleged infringement results from (i) Customer's or its Authorized Users' breach of this Agreement; (ii) any modification, alteration, or addition made to the Service or any use thereof, including any combination of the Service with software or other materials not provided by UsageAI; (iii) Customer's or its Authorized Users' failure to use any corrections or modifications made available by UsageAI that would not result in any material loss of functionality; (iv) use of the Service in a manner or in connection with a product or data not contemplated by this Agreement; or (v) any settlements entered into by Customer or costs incurred by Customer for such claim that are not pre-approved by UsageAI in writing. THIS SECTION 10.1 STATES THE SOLE AND EXCLUSIVE OBLIGATION OF USAGEAI AND THE SOLE AND EXCLUSIVE REMEDY FOR CUSTOMER WITH RESPECT TO INFRINGEMENT BY THE SERVICE OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL OR PROPRIETARY RIGHT.

10.2. Indemnity By Customer. Customer will defend UsageAI from and against any third-party claim to the extent resulting from: (a) a violation of applicable Law by Customer or its Authorized Users, (b) any materials or information (including any documents, data, specifications, software, content, or technology) provided or otherwise disclosed to UsageAI by or on behalf of Customer or any Authorized User; (c) allegation of facts that, if true, would constitute Customer's or its Authorized Users' breach of any of the representations, warranties, covenants, or obligations under this Agreement; (d) a breach or other conflict with any other agreement to which Customer is a party or by which it is bound; (e) the gross negligence or willful misconduct of Customer or any of its Authorized Users; or (f) Customer's breach or alleged breach of Section 3.7 (Customer Obligations). Customer will indemnify and hold UsageAI harmless against any damages and costs awarded against UsageAI (including reasonable attorneys' fees) or agreed in a settlement by Customer resulting from any such claim.

10.3. Procedure. Any claim subject to indemnification under this Section 10 will be subject to the following provisions: (a) the indemnifying party will be given prompt written notice of the claim by the indemnified party, provided that any delay in providing notice will not relieve the indemnifying party of its indemnity obligations under this Agreement unless, and only to the extent, the indemnifying party was prejudiced by the delay; (b) the indemnifying party will have the right to control the defense and all negotiations relative to the settlement of any such claim, provided that no settlement admitting liability on the part of the indemnified party may be made without the express written consent of the indemnified party; and (c) the indemnified party will reasonably cooperate with the indemnifying party and its counsel at the indemnifying party's cost and expense.

11. Confidentiality.

11.1. Definition. "Confidential Information" means information disclosed to the receiving party ("**Recipient**") under this Agreement that is marked by the disclosing party ("**Discloser**") as proprietary or confidential or, if disclosed orally, is designated as proprietary or confidential at the time of disclosure. Our Confidential Information includes the terms and conditions of this Agreement and any technical or performance information about the Service.

11.2. Obligations. As Recipient, each party will: (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement; and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. At Discloser's request, Recipient will delete all Confidential Information, except, in the case where UsageAI is the Recipient, UsageAI may retain the Customer's Confidential Information to the extent required to continue to provide the Services. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know, provided it remains responsible for their compliance with this Section 11 and they are bound to confidentiality obligations no less protective than this Section 11.

11.3. Exclusions. These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under this Agreement; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.

11.4. Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 11.

11.5. Required Disclosures. Nothing in this Agreement prohibits either party from making disclosures, including Confidential Information, if required by Law, subpoena, or court order, provided (if permitted by Law) it notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

12. Communications.

12.1. Text Messaging & Phone Calls. You agree that UsageAI and those acting on our behalf may call and send you text (SMS) messages at the phone number you provide us. These calls and messages may include operational calls or messages about your use of the Service, as well as marketing calls or messages. Calls and text messages may be made or sent using an automatic telephone dialing system. Standard data and message rates may apply whenever you send or receive such calls or messages, as specified by your carrier. IF YOU WISH TO OPT OUT OF MARKETING CALLS AND TEXT MESSAGES FROM USAGEAI, YOU CAN EMAIL support@usage.ai OR TEXT THE WORD "STOP" TO THE NUMBER FROM WHICH YOU ARE RECEIVING THE MESSAGES. IF YOU WISH TO OPT OUT OF ALL CALLS AND TEXT MESSAGES FROM USAGEAI, YOU CAN EMAIL support@usage.ai OR TEXT THE WORD "STOPALL" TO THE NUMBER FROM WHICH YOU ARE RECEIVING THE MESSAGES, HOWEVER YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL MESSAGES MAY IMPACT YOUR USE OF THE SERVICE. You may continue to receive calls and text messages for a short period while we process your request, including a message confirming the receipt of your opt-out request. Your agreement to receive marketing calls and texts is not a condition of any purchase on or use of the Service.

12.2. Emails. We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

13. Trials and Betas. If Customer or its Authorized Users receive access to or use of Services or features thereof on a free or trial basis or as an alpha, beta, or early access offering ("**Trials and Betas**"), such access to or use is permitted only for Customer's internal evaluation and testing purposes during the period designated by UsageAI (not to exceed thirty 30 days unless otherwise agreed upon by the parties in writing). These Trials and Betas will be considered part of the Service and, subject to the remainder of this Section 13, all provisions of this Agreement relating to the Service will apply to these Trials and Betas. Trials and Betas are optional and either party may terminate Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete, or include features that UsageAI may never release, and their features and performance information are deemed to be UsageAI's Confidential Information. UsageAI may suspend Customer's and its Authorized Users' access to the Trials and Betas at any time. Customer's and its Authorized Users' use of Trials and Betas is at their own risk. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, USAGEAI PROVIDES NO WARRANTY, INDEMNITY, OR SUPPORT FOR TRIALS AND BETAS, AND OUR LIABILITY FOR TRIALS AND BETAS WILL NOT EXCEED US $50.00**.

14. Modifications. UsageAI may modify this Agreement from time to time with notice to Customer in accordance with Section 15.4 (Notices). Modifications take effect at Customer's next Subscription Term unless UsageAI indicates an earlier effective date. If UsageAI requires modifications with an earlier effective date and Customer objects, Customer's exclusive remedy is to terminate this Agreement with notice to UsageAI, in which case UsageAI will provide Customer a refund of any pre-paid Fees for the terminated portion of the current Subscription Term. To exercise this termination right, Customer must notify UsageAI of its objections within 30 days after UsageAI's notice of the modified Agreement. Once the modified Agreement takes effect Customer's continued use of the Service constitutes its acceptance of the modifications. UsageAI may require Customer to click to accept the modified Agreement. Except as set forth in this Section 14, this Agreement may not be amended, except by a writing signed by both parties.

15. Miscellaneous.

15.1. General Provisions. This Agreement, including the Privacy Policy and any other agreements expressly incorporated by reference into this Agreement, are the entire and exclusive understanding and agreement between Customer and UsageAI regarding your use of the Service and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No employee, agent, representative or affiliate of UsageAI has authority to bind UsageAI to any oral representations or warranty concerning the Service. Any written representation or warranty not expressly contained in this Agreement will not be enforceable. The failure to require performance of any provision will not affect UsageAI's right to require performance at any other time after that, nor will a waiver by UsageAI of any breach or default of this Agreement, or any provision of this Agreement, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in this Agreement is for convenience only and will not have any impact on the interpretation of any provision. Throughout this Agreement the use of the word "including" means "including but not limited to." If any part of this Agreement is held to be invalid or unenforceable, then the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect, and the offending provision shall be reformed without further action by the parties to the extent strictly necessary to render such provision valid and enforceable when applied to such particular facts or circumstances. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

15.2. Force Majeure. UsageAI is not liable for any delay or failure to perform any of its obligation under this Agreement due to events beyond its reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, Internet or utility failures, refusal of government license or natural disaster.

15.3. Publicity. Neither party may make any public announcement relating to this Agreement except with the other party's prior written consent or as required by Laws. UsageAI may reference Customer's name and include Customer's trademarks, logos, and other branding elements ("Marketing Materials") in UsageAI's customer lists, promotional materials, and in connection with its marketing, advertising, promotional, or sales practices or activities; provided that Customer may require that UsageAI cease further use of Marketing Materials upon written notice to UsageAI (except that UsageAI will not be obligated to cease its use of any tangible materials containing, embodying, or including Marketing Materials that are in existence at the time of UsageAI's receipt of such notice from Customer).

15.4. Notices. By using the Service, Customer consents to receiving certain electronic communications from UsageAI as further described in the Privacy Policy. Please read the Privacy Policy to learn more about our electronic communications practices. Customer hereby agrees that any notices, agreements, disclosures, or other communications that UsageAI may send to Customer electronically will satisfy any legal communication requirements, including that those communications be in writing. Any notice to, or consent required of, UsageAI under this Agreement must be in writing and will be deemed given: (a) upon receipt if by personal delivery, (b) upon receipt if by certified or registered U.S. mail (return receipt requested), or (c) one day after dispatch if by a commercial overnight delivery service. Notices to UsageAI must be provided to 725 5th Ave, New York, New York, 10022 or to such other address as UsageAI may specify in writing.

15.5. Limitation on Claims. No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

15.6. Purchase Orders. No terms, provisions, or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the acquisition of the Service will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of UsageAI to object to such terms, provisions or conditions.

15.7. Governing Law. This Agreement is governed by the laws of the State of New York and the United States without regard to conflicts of laws provisions that would result in the application of the laws of another jurisdiction and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to this Agreement will be the state and United States federal courts located in New York County and both parties submit to the personal jurisdiction of those courts.

15.8. Assignment. Customer may not assign or transfer this Agreement or your rights under this Agreement, in whole or in part, by operation of law or otherwise, without UsageAI's prior written consent. UsageAI may assign this Agreement and all rights granted under this Agreement at any time without notice or consent. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of this Section shall be null and void.

15.9. Additional Terms. Customer's use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that UsageAI may post on or link to

from the Service ("**Additional Terms**"). All Additional Terms are incorporated by this reference into, and made a part of, this Agreement.

15.10. Contact Information. The Service is offered by UsageAI, located at 725 5th Ave, New York, New York, 10022. Customer may contact UsageAI by sending correspondence to that address or by emailing UsageAI at support@usage.ai.

15.11. Notice to California Residents. If Customer are a California resident, then under California Civil Code Section 1789.3, Customer may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.

15.12. Export. Customer acknowledges that the Service may contain features subject to United States and local country laws governing import, export, distribution and use. Customer is responsible for compliance by the Customer and its Authorized Users with United States and local country laws and regulations and shall not export, use or transmit the Service (a) in violation of any export control laws of the United States or any other country, or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Order.

15.13. U.S. Government Restricted Rights. If the Service is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that UsageAI provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with UsageAI to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

15.14. Flex Commitment Program. Subject to Customer's compliance with the terms and conditions of this Agreement (including, without limitation, the payment of all Fees due thereunder), Customer may apply for, and participate in, the Flex Commitment Program. Customer's acceptance and participation in this program will, at all times, be subject to UsageAI's approval and Customer's compliance with the terms and conditions for applicable program, which may be updated by UsageAI from time to time in its sole discretion. The Flex Commitment Program Terms and Conditions are available at usage.ai/UsageAI-Flex-Commitment-Program-TC.pdf

16. Definitions.

"**Aggregated Data**" means Usage Data that has been deidentified or aggregated with other data such that the resulting data no longer reasonably identifies Customer or a specific individual.

"**Analytical Data**" means, collectively, Usage Data and Aggregated Data.

"**Authorized User(s)**" means Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to this Agreement and who create an Account with UsageAI in accordance with Section 3.2 (Access).

"**Cloud Resource(s)"** means the Customer's third-party cloud service account(s), savings plan(s), and environment(s), which may include Amazon Web Service or Google Cloud Service account(s).

"**Customer Systems**" means Customer's hardware, software, other technology, and infrastructure that Customer is required to provide and maintain in order for Customer to access and use the Service.

"**Documentation**" means the then-current version of UsageAI usage guidelines and standard technical documentation for the Service that UsageAI makes generally available to its customers.

"**High Risk Activities**" means activities where use or failure of the Service could lead to death, personal injury, or environmental damage, including life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control.

"**Laws**" means all applicable relevant local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications, and export of data.

"**Order**" means an order that is executed by the parties or a process Customer completes through the online order flow provided by UsageAI, each of which references this Agreement.

"**Privacy Policy**" means the Privacy Policy at https://usage.ai/policy.html.

"**Process**" means to collect, access, use, disclose, transfer, transmit, store, host, or otherwise process.

"**Prohibited Data**" means any: (a) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (b) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"); (c) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards; (d) other information subject to regulation or protection under specific Laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations); (e) social security numbers, driver's license numbers, or other government ID numbers; or (f) any data similar to the above protected Laws.

"**Service**" means the features and functionalities made available through UsageAI's online platform in connection with analyzing Customer's usage of its Cloud Resource(s) that are available for purchase from UsageAI.

"**Subscription Term**" means the period during UsageAI provides Service to Customer.

"**Third-Party Platform**" means any third-party platform, add-on, service, or product not provided by UsageAI that Customer elects to integrate or enable for use with the Service.

"**Usage Data**" means information generated from the use of the Service, which data does not identify Authorized Users, any other natural human persons, or Customer, such as technical logs, data, and learnings about Customer's use of the Service.