

# SUBSET DATA TERMS OF SERVICE

**Last Updated: November 6th, 2023**

This Subset Data Terms of Service combines with an executed order form (“Subset Data Order Form”) to form a binding contract (the “Agreement”) for software and services between you (“Customer” or “you”) and Subset Data, Inc. (“Subset Data” or “Company”). The Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations. Please contact Subset Data at [legal@subsetdata.com](mailto:legal@subsetdata.com) with any issues or notices related to the Agreement.

## 1. SERVICES, SUPPORT, AND DEFINITIONS

**1.1. Services** Subject to Customer’s compliance with the Agreement, Subset Data will provide the Subset Data services (the “Services”) specified in a Subset Data Order Form for the duration of the Agreement (the “Term”) between the parties as set forth on the Order Form. The Services include a non-exclusive license to the Software, fully subject to the terms of this Agreement. Subset Data may modify the Software and Services in a manner that does not materially diminish the Services at its sole discretion at any time.

**1.2. Customer Support** Subset Data will use commercially reasonable efforts to provide support in connection with the Services during standard business hours through electronic mail, online resources or otherwise in accordance with its standard practices. Email support (“Customer Support”) will be available Monday-Friday during Standard Support hours, 8:00 am to 5:00 pm PST (California, United States). Customer support concerns can be communicated via email to [support@subsetdata.com](mailto:support@subsetdata.com).

### 1.3. Important Definitions

“**Customer Data**” includes any data provided by or on behalf of a Customer and any users to access the Services.

“**Confidential Information**” means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information which (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

“**Equipment**” means all equipment and ancillary services needed to be compatible with, connect to, access or otherwise use the Service, including, without limitation, hardware, servers, software, operating systems, networks, and other services.

“**Software**” means all software, including without limitation, any integrations and user interfaces, relating to the Services or otherwise made available by Subset Data.

## 2. PROGRAMS

### 2.1 Free Trials/Beta Services

If customer registers for or is provided access to the Subset Data Services as part of: (a) a free trial, or (b) “alpha,” “beta” or other “early-stage” Subset Data services, products, integrations, functionality or features (collectively, “Beta Services”), then such Subset Data Services will be available to Customer on a no-cost basis for the period of time set forth in the documentation associated with the free trial or Beta Services (if applicable), unless terminated sooner as set out in these Terms.

## 3. CUSTOMER ACCESS TO SERVICES, CONTENT, USE AND RESTRICTIONS

**3.1. Customer Access to Services** Subject to these Terms, Subset Data hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable, non-assignable right to access and use the Subset Data Services for Customer’s internal business purposes only. Subset Data may suspend Customer’s access to the Services: (i) for scheduled or emergency maintenance, (ii) due to unavailability of services (including network and hosting services) provided by a third party service provider, or (iii) in the event Customer is in material breach of this agreement, including failure to pay any amounts due to Subset Data.

**3.2. Customer Data** As between the parties, Customer owns Customer Data and Customer assumes sole responsibility for all Customer’s activity in connection with the Services. Subset Data will process Customer Data under a license in connection with this Agreement only to perform its obligations under this Agreement (including providing Services to Customer). Subset Data may use aggregated information that does not constitute personal information under any applicable data privacy law to improve the Services.

**3.3. Customer Use of Services** Customer shall use the Services in compliance with all applicable laws and regulations, including without limitation those related to data privacy, international communications, export and the transmission of technical or personal data, consumer and child protection, obscenity or defamation.

**3.4. Customer Use Restrictions** Customer agrees that it shall not (and shall not knowingly permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Services; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services; (iv) use the Services for the benefit of an unauthorized third party; (v) remove or otherwise alter any proprietary notices or labels from the Services, or any portion thereof; or (vi) use the Services to build an application, product or service that is competitive with any Subset Data product or service.

Customer agrees that it shall not (and shall not knowingly permit any third party to) take any action (including uploading, downloading, posting, submitting or otherwise distributing or facilitating distribution of any material through the Services) that: (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (iv) contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of Subset Data or any third party; or (v) impersonates any person or entity, including any employee or representative of Subset Data.

Customer agrees that it shall not: (i) interfere or attempt to interfere with the proper working of the Services or any activities conducted in connection with the Services; or (ii) bypass any measures Subset Data may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services).

#### **4. SECURITY AND CONFIDENTIALITY**

**4.1. Security Practices** Throughout the term of the Agreement and at all times while Customer Confidential Information is in the possession or under the control of Subset Data, Subset Data shall establish and maintain a comprehensive written data security program that includes administrative, technical and physical policies, procedures and safeguards for the protection of Customer Confidential Information. Subset Data's data security program shall be designed specifically to (1) ensure the security, integrity, availability and confidentiality of Customers Confidential Information, (2) protect against any anticipated threats or hazards to the security or integrity of Customer's Confidential Information, and (3) protect against the destruction, loss, unauthorized access to or alteration of Customer's Confidential Information.

**4.2. Customer Security Responsibilities** Customer is responsible for (i) obtaining and maintaining any Equipment, (ii) maintaining the confidentiality and security of their Equipment, account login and password, API key, and any other credentials ("Security Credentials"), and (iii) all activities that occur using their Security Credentials unless due to the negligence or willful misconduct of Subset Data or its personnel. Customer may not disclose their Security Credentials to any third party except as expressly authorized in writing by Subset Data. Customer agrees to promptly notify Subset Data of any unauthorized use of its Security Credentials, account or any other breach of security. Subset Data reserves the right to access a Customer account in order to respond to requests for technical support. Subset Data shall comply with the security obligations of Section 3.1 while performing technical support obligations.

**4.3. Confidentiality** Each party (a "Receiving Party") may receive Confidential Information from the other party (a "Disclosing Party") in connection with this Agreement. Confidential Information includes, without limitation, Software as well as Customer Data to the extent not de-identified in accordance with any relevant data privacy laws. Neither

party will disclose Confidential Information to any third party, other than to its employees or contractors with a need to know such information for a party to fulfill its obligations under this Agreement, without the express written consent of the other party, nor will a party make use of any Confidential Information other than in the performance of rights or obligations under this Agreement. Each party will use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information.

## 5. INTELLECTUAL PROPERTY RIGHTS

As between the parties, Subset Data retains all intellectual property rights relating to the Services or the Software and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services or the Software.

## 6. FEES AND TERMINATION

**6.1. Fees** Customer will pay any fees set forth in an executed Subset Data Order Form (and corresponding purchase order, if applicable). If Customer pays any fees through a third-party payment processor, it also agrees to any terms set forth by that payment processor. Undisputed unpaid invoices are subject to a finance charge of 1% per month on any outstanding balance.

**6.2. Termination** Subset Data may terminate or suspend Customer's access to Services if any invoice is not paid within 30 days. Customer may terminate this Agreement by canceling the Services in writing to [billing@subsetdata.com](mailto:billing@subsetdata.com) and such termination will take effect at the end of the then-current billing cycle. Either party may terminate this Agreement upon fifteen (15) day notice if the other party materially breaches any warranties under this Agreement. Regardless of how the Agreement is terminated, Customer agrees to pay any outstanding balances that are due and payable (including any minimum commitments established by the Subset Data Order Form) and under no circumstances will Subset Data issue a refund for prepaid Services. In any case, all sections of this Services Agreement which by their nature should survive termination will survive termination.

**6.3. Return of Customer Data** Upon termination, Subset Data will provide Customer an opportunity to retrieve applicable Customer Data via a mutually agreeable format. Subset Data will destroy Customer Data within 30 days of request.

## 7. WARRANTY AND DISCLAIMER

**7.1.** Each party represents and warrants to the other that: (a) it has full power and authority to grant rights or undertake obligations related to this Agreement, (b) it has no outstanding obligations that conflict with this Agreement, and (c) this Agreement, when signed by its duly authorized representative, constitutes a valid and legally binding obligation on that party that is enforceable in accordance with the terms of this Agreement.

- 7.2.** Subset Data represents and warrants to Customer that the Software and Services do not infringe or misappropriate any U.S. patents, copyrights, trade secrets or any other proprietary right of any third party
- 7.3.** Subset Data represents and warrants that it will not knowingly include, in any Subset Data software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If Subset Data fails to materially comply with the warranty in this Section 7.3, Customer may promptly notify Subset Data in writing of any such noncompliance and Subset Data will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer's sole and exclusive remedy for such noncompliance is termination of this Agreement.
- 7.4.** EXCEPT FOR ANY WARRANTIES EXPLICITLY GRANTED IN THIS SECTION 7, SUBSET DATA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SOFTWARE AND SERVICES INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SUBSET DATA DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. SUBSET DATA PROVIDES THE SOFTWARE AND SERVICES "AS IS" AND ON AN "AS AVAILABLE" BASIS.

## **8. INDEMNIFICATION**

- 8.1.** Subset Data agrees, at its own expense, to indemnify, defend and hold Customer harmless against any suit, claim, or proceeding brought against Customer alleging that the use of Software and Services in accordance with this Agreement infringes any third party intellectual property right set forth in Section 7.2, provided that Customer (i) promptly notifies Subset Data in writing of any such suit, claim or proceeding, (ii) allows Subset Data, at Subset Data's own expense, to direct the defense of such suit, claim or proceeding, (iii) gives Subset Data all information and assistance necessary to defend such suit, claim or proceeding, and (iv) does not enter into any settlement of any such suit, claim or proceeding without Subset Data's written consent. The foregoing obligations do not apply with respect to the Services or portions or components thereof (i) not supplied by Subset Data, (ii) made in whole or in part in accordance to Customer specifications, (iii) combined with other products, processes or materials where the alleged infringement would not have occurred without such combination. This section states Subset Data's entire liability and Customer's exclusive remedy for infringement or misappropriation of intellectual property of a third party.

**8.2.** Customer agrees, at its own expense, to indemnify, defend and hold Subset Data harmless against any suit, claim or proceeding brought against Subset Data in connection with any third-party demand, claim, action, suit or proceeding that arises from an alleged violation of Customer obligations in Section 3.4.

**8.3.** Each party's indemnification obligations are conditioned upon the indemnified party: (i) promptly notifying the indemnifying party of any claim in writing; and (ii) cooperating with the indemnifying party in the defense of any claim. The indemnified party shall have the right to participate in the defense of any third-party claim with counsel selected by it subject to the indemnifying party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the indemnified party. Notwithstanding any other provision of this Agreement, the indemnifying party shall not enter into settlement of any third-party claim without the prior written consent of the indemnified party, which shall not be unreasonably withheld.

## **9. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS OR PROFITS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE OTHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (C) FOR ANY MATTER BEYOND A PARTY'S REASONABLE CONTROL; OR (D) EXCEPT FOR SECTIONS 3.4 AND 7.2, FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO SUBSET DATA FOR THE APPLICABLE SERVICES UNDER THIS AGREEMENT OR RELATING TO ANY SUBJECT MATTER OF THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGES. CUSTOMER ACKNOWLEDGES THAT AN INTERRUPTION IN SERVICE(S) DUE TO CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF SUBSET DATA, SUCH AS A FAILURE OF TELECOMMUNICATIONS OR NETWORK SYSTEMS NOT CONTROLLED BY SUBSET DATA, SHALL NOT BE CONSIDERED A SERVICE OUTAGE OR SERVICE DEFICIENCY FOR PURPOSES OF ANY REMEDY PROVIDED IN THIS AGREEMENT.



## 10. GENERAL

**10.1 Miscellaneous** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party except with the other's prior written consent, except that either party may transfer and assign any of its rights under this Agreement without consent in connection with a reorganization, merger, consolidation, acquisition, or other restructuring involving all or substantially all of its voting securities or assets. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Subset Data in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the substantially prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. The parties agree that any material breach of Section 2 or 3 may cause irreparable injury and that injunctive relief in a court of competent jurisdiction will be appropriate to prevent an initial or continuing breach of Section 2 or 3 in addition to any other relief to which the owner of such Confidential Information may be entitled. Subset Data is permitted to disclose that Customer is one of its customers to any third-party at its sole discretion. This Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. The federal and state courts sitting in San Francisco, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement.