

AI21 MODELS TERMS OF SERVICE

Last Updated: 4 November, 2024

This *AI21 Models Terms of Service* (the "**Agreement**") applies to, and governs, any access to and use of the Service (defined below), and YOU ARE AGREEING TO THIS AGREEMENT BY CLICKING ON THE "I ACCEPT" (OR SIMILAR) BUTTON, BY CHECKING A CHECKBOX FOR THE ACCEPTANCE OF THIS AGREEMENT, OR OTHERWISE BY REGISTERING FOR OR ACCESSING, USING, OR RECEIVING THE SERVICE, WHICHEVER IS EARLIER.

This Agreement also applies to, and governs, each Order (defined below), and this Agreement is hereby incorporated by reference into, and made a part of, such Order.

The Agreement constitutes a binding agreement between **AI21 Labs Ltd.** (or, if applicable, the other *AI21 Labs* entity specified in the Order) ("**AI21**") and the customer specified in the Order or the Service registration page, as the case may be ("**Customer**"). **If an individual is submitting an Order, or otherwise subscribing to the Service, using an organization's email address, such organization shall be deemed the Customer.**

AI21 and Customer may be collectively referred to herein as the "**Parties**", and each individually as a "**Party**".

An individual entering into this Agreement on behalf of the Customer, represents that he/she has the right, authority and capacity to act on behalf of the Customer and to bind the Customer to this Agreement.

If Customer has purchased its Service subscription through a Reseller (defined below), Customer's payment obligations under Section 6 (*Payment*) shall not apply. In such cases: (a) AI21 will only be obligated to provide the Service to Customer if AI21 and the applicable Reseller have entered into a purchase order (or similar ordering document, whether online or offline) for such purchase; (b) AI21 may share information with Reseller related to Customer's use and consumption of the Service; (c) AI21 shall be entitled to withhold or otherwise suspend Customer's access to the Service if AI21 has not been paid by Reseller; (d) this Agreement governs Customer's access to and use of the Service, notwithstanding anything to the contrary in Customer's agreement with the Reseller; and (e) Reseller is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of AI21 or in any way concerning the Service.

1. **DEFINITIONS.** The following capitalized terms have the meanings set forth below:

"**AI21 Models**" means AI21's artificial intelligence (AI) large language models, and associated application programming interfaces (APIs), software, model weights, model configurations, model parameters, tools, and other related Intellectual Property. For the avoidance of doubt, Trained Models (but excluding Customer's datasets embodied therein) are AI21 Models.

"**Affiliate**" means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

"**Content**" means any text, data, information, reports, files, images, graphics, software code, or other content.

"**Customer Content**" means any Content submitted or uploaded to, or transmitted through, the Service, or otherwise provided or made available to AI21, by or on behalf of Customer.

"Customer Environment" means the on-premise or virtual equipment, systems and/or servers owned or managed solely by Customer, as specified in the Order. A Customer Environment may, for example, be Customer's virtual private cloud (VPC) instance.

"Deployment Type" means the deployment type (as specified in the Order) of the Service subscribed to by Customer, as specified in the Order. If no Deployment Type is specified in the Order, the Deployment Type shall be deemed to be on a software-as-a-service (SaaS) multi-tenant public cloud basis.

"Documentation" means the Service-related operational guides or manuals (such as the Usage Policies), which AI21 provides or makes available to Customer, in any form or medium. Documentation does not include any marketing materials. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Documentation as well.

"Effective Date" means the date the Order is executed by the Parties, unless the Order itself specifies a different start/effective date; *provided, however*, that if, in connection with such Order, the date on which the Customer first accessed or used the Service, or set up an Account, was prior to Order execution, then the Effective Date shall be deemed to be such earlier date.

"Input" means any Customer Content inputted or otherwise submitted by Customer to the Service in order to receive an Output (defined below). Unless the context requires otherwise, references herein to "Customer Content" shall be deemed to include Input as well.

"Intellectual Property Rights" means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, whether registered or unregistered, and whether vested, contingent, or future) in and to inventions, discoveries, works of authorship, designs, software, technical information, databases, know-how, mask works, methods, branding, technology, and other intellectual property (collectively, **"Intellectual Property"**), and includes but is not limited to patents, copyrights and similar authorship rights, moral (and similar personal) rights, mask work rights, data and database rights, trade secret rights and similar rights in confidential information and other non-public information, design rights, trademark, service mark, trade name, trade dress and similar branding rights, as well as: (i) all applications, registrations, renewals, reexaminations, extensions, continuations, continuations-in-part, provisionals, substitutions, divisions or reissues of or for the foregoing; and (ii) all goodwill associated with the foregoing.

"Installed Component" means any device client software or AI21 Model (or similar distributed component) that is made available to Customer by AI21 for installation within the Customer Environment (or otherwise on Users' devices), to be used in connection with the Service. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Installed Component as well.

"Law" means any federal, state, foreign, regional or local statute, regulation, ordinance, or rule of any jurisdiction.

"Order" means the ordering document (which attaches, hyperlinks to, or otherwise incorporates by reference, this Agreement) entered into between the Parties, which, *inter alia*, specifies the Service and any Other Services purchased by Customer. The Order may take the form of: (a) a written document (such as an *Order Form, Sales Order, Proposal, or Quote*) that is mutually signed by the Parties; and/or (b) an online or electronic order submitted by Customer via the Website (or other online functionality operated or authorized by AI21) and accepted by AI21. Where Customer has purchased its Service subscription from a Reseller, the "Order" shall be deemed the applicable purchase order (or other ordering document, whether online or offline) entered into between Customer and Reseller.

"Other Services" means, as the case may be, Setup Services, Support Services, Professional Services, and/or any other services (other than the Service) provided by or on behalf of AI21 pursuant to this Agreement.

"Output" means any Content which is generated by the Service and returned to Customer, in response to the Customer's Input. Unless the context requires otherwise, references herein to the "Service Content" shall be deemed to include Output as well.

"Output Use Case" means the specific use case(s) for Output, as specified in the Order or as otherwise specified in a written addendum to this Agreement signed by AI21 and Customer. If no specific use case is specified in the Order and no such addendum is signed, then the Output Use Case shall be deemed for Customer's internal, non-production, and non-commercial use only.

"Privacy Policy" means the AI21's privacy policy, currently available at https://studio.ai21.com/v2/privacy_policy.html.

"Professional Services" means Service-related installation, deployment, configuration, training, customization, integration, or other professional services.

"Reseller" means any distributor, reseller, or similar channel partner (such as a marketplace platform provider) authorized by AI21 to sell Service subscriptions.

"Service" means a subscription to one or more AI21 Models, as specified in the Order. As may be further specified in the Order, such Service will either be provided via the Studio Platform or via an application programming interface (API) or similar integration. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Studio Platform.

"Service Content" means any Content (excluding Customer Content) appearing on or in, or otherwise provided or made available via, the Service (for example, Content appearing within the Studio Platform). Unless the context requires otherwise, references herein to the "Service" shall be deemed to include the Service Content as well.

"Studio Platform" means AI21's generally available software-as-a-service platform, known as *AI21 Studio* (or *Studio*). Unless the context requires otherwise, references in this Agreement to the "Studio Platform" shall be deemed to include any applicable web applications, mobile applications, application programming interfaces (APIs), and other tools that AI21 makes generally available in connection therewith.

"Subscription Scope" means any Service-related usage or consumption limitations, entitlements, and parameters (for example, Deployment Type, number of Users, number of tokens, available features and functionalities, *etc.*) specified in the Order.

"Support Services" means any Service-related technical support and maintenance services that are specified in the Order (or, if not specified in the Order, that are made generally available by AI21 to its Service customers either via information publicly available on the Website or via sending support requests to support@ai21.com).

"Trained Model" means a custom model, based on an AI21 Model covered by this Agreement, which has been trained (whether via functionality of the Service or via Other Services) pursuant to this Agreement based on one or more datasets provided by or on behalf of Customer.

"Usage Statistics" means any non-Customer-identifying information, data, reporting, suggestions, analyses, and/or intelligence relating to the operation, support, and/or Customer's use, of the Service (such as metadata, query logs, aggregated data, analytics, *etc.*), as well as any resulting industry benchmarks, analytics, datasets, and models developed by or on behalf of AI21.

"Usage Policies" means the *Responsible Use* policy (currently available at <https://docs.ai21.com/docs/responsible-use>) and any other usage policies referenced in the Documentation.

"**User**" means Customer's (and/or, pursuant to Section 4.3 (*Customer Affiliates*), its Affiliates') employees and contractors who are authorized by Customer to use the Service, and for whom Customer (or AI21, at Customer's request) has supplied a user identification and password for the Service.

"**Website**" means the AI21's website, currently available at <https://www.ai21.com/>.

2. **ACCOUNT**

In order to receive the Service (for example, if Customer's Service subscription is via the Studio Platform), Customer may be given the opportunity (or otherwise be required) to generate an account by submitting the information requested in the applicable online registration page or Service interface ("**Account**"). Customer's Account registration may impose limitations on the number or types of Accounts; absent such limitations, Customer shall be entitled to a single administrator Account that will have administrative privileges over the Account ("**Admin Account**") and such number of user Accounts for each user (each, a "**User Account**"). Customer shall ensure that all information submitted during the registration process is, and will thereafter remain, complete and accurate. As between AI21 and Customer, Customer shall be solely responsible and liable for maintaining the confidentiality and security of its Account credentials, as well as for all activities that occur under or in such Account. Customer shall immediately notify AI21 in writing of any unauthorized access to, or use of, an Account, or any other breach of security.

3. **PILOTS AND EVALUATION PRODUCTS**

3.1. Pilots. If agreed in the Order, Customer may be entitled to conduct an evaluation, 'proof-of-concept', or pilot of the Service (a "**Pilot**"). A Pilot is limited to whatever duration, features, and functionalities AI21 elects in its sole discretion (or that is otherwise specified in the Order), and, unless agreed otherwise in the Order, AI21 reserves the right to add and remove any features and functionalities, as well as terminate a Pilot, at any time, with or without notice.

3.2. Evaluation Products. From time to time, AI21 may permit Customer to try certain Service features or functionalities (whether new or existing) at no charge for a free trial or evaluation period (each, an "**Evaluation Product**"). Evaluation Products may be designated or identified as beta, pilot, evaluation, trial, or the like. Unless configured otherwise by AI21, or agreed otherwise (for example, in the Order), the default evaluation period for an Evaluation Product (the "**Evaluation Period**") is **thirty (30) days**. However, AI21 reserves the right to terminate an Evaluation Period at any time, with or without notice.

3.3. General. For the avoidance of doubt, the restrictions set forth in Section (*Usage Restrictions*) shall also apply to Evaluation Products and Pilots. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EVALUATION PRODUCTS AND PILOTS ARE PROVIDED FOR CUSTOMER'S INTERNAL EVALUATION ONLY (AND NOT FOR PRODUCTION USE), AND AI21 SHALL HAVE NO OBLIGATION OR LIABILITY OF ANY KIND WHATSOEVER FOR EVALUATION PRODUCTS OR PILOTS. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OF AI21'S LIABILITY FOR AN EVALUATION PRODUCT OR PILOT, AI21'S AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF AN EVALUATION PRODUCT AND/OR PILOT SHALL NOT EXCEED **TEN US DOLLARS (USD\$10)**.

4. **SERVICE SUBSCRIPTION**

4.1. General. Subject to the terms and conditions of this Agreement (including without limitation Customer's payment of all applicable Fees), AI21 grants Customer a

limited, non-exclusive, non-transferable, non-sublicensable right and license, during the Subscription Term (defined below), to do the following, in accordance with the Documentation (collectively, the "**Subscription**"):

- (a) To receive the Service (and, if applicable, to access and use the Studio Platform), and view the Service Content, for Customer's internal end use;
- (b) To use the Output in accordance with the Output Use Case; and
- (c) In respect of Installed Components to which Customer is entitled, to download, install, and use such Installed Components within the applicable Customer Environment.

For the avoidance of doubt: (i) the Subscription is subject to the applicable Subscription Scope, and Customer shall not use any technical or other means within, or external to, the Service to exceed or circumvent the Subscription Scope, and (ii) the Service is only licensed or provided on a subscription basis (and is not sold) hereunder. The Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by AI21 or by third-party providers, or because of other causes beyond AI21's reasonable control.

4.2. Restrictions. As a condition to (and except as expressly permitted by) the Subscription, Customer shall not do (or permit or encourage to be done) any of the following Subscription restrictions (in whole or in part):

- (a) copy, create public Internet "links" to, "frame", or "mirror" any AI21 Technology;
- (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available any AI21 Technology to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment);
- (c) publicly perform, display or communicate any AI21 Technology;
- (d) modify, adapt, translate, or create a derivative work of any AI21 Technology;
- (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, any AI21 Technology;
- (f) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in any AI21 Technology;
- (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of any AI21 Technology;
- (h) use any AI21 Technology to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, any AI21 Technology, or to otherwise train any artificial intelligence or machine learning models;
- (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt any AI21 Technology, or use any robot, spider, scraper, or any other automated means to access any AI21 Technology;
- (j) employ any hardware, software, device, or technique to pool connections or reduce the number of Users or servers/machines that directly access or use any AI21 Technology (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling');
- (k) forge or manipulate identifiers in order to disguise the origin of any Customer Content;
- (l) take any action that imposes or may impose (as determined in AI21's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support any AI21 Technology, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure;

- (m) use any AI21 Technology in connection with any stress test, penetration test, competitive benchmarking or analysis, or vulnerability scanning, or otherwise publish or disclose (without AI21's prior express written approval) any the results of such activities or other performance data of any AI21 Technology;
- (n) use any AI21 Technology to circumvent the security of another person's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction; and/or
- (o) use any AI21 Technology for the purposes of engaging in any illegal activities, generating defamatory, harassing, abusive, or hateful Content, infringing or violation the property rights or personal rights of others, generating malware or spam, impersonating others, promoting harmful activities, engaging in any activity that has a high risk of physical or economic harm, and/or providing any medical or financial advice.

4.3. Customer Affiliates. Subject to (and without expanding) the Subscription Scope, Customer may permit its Affiliate to exercise Customer's Subscription rights under the Order, provided that: (a) such use is solely for the benefit of Customer or such Affiliate; and (b) such Affiliate agrees to be bound by the Service- and Subscription-related restrictions and limitations set forth in this Agreement, and further agrees that AI21 shall have no obligation or liability of any kind whatsoever towards such Affiliate. Customer shall remain primarily responsible and liable for its Affiliates' and Users' compliance with this Agreement, and any acts and omissions of such Affiliates and Users in connection with this Agreement shall also be deemed the acts and omissions as of Customer.

4.4. Usage Statistics. AI21 and its Affiliates may use log files and other data regarding Customer's use of the Service for quality control purposes, for enforcement of this Agreement, for analytics purposes (such as generating Usage Statistics), and for further improving, enhancing, and otherwise further developing AI21's products and services.

4.5. Delivery and Hosting. The Service will be made available to Customer electronically (via the Website, via an API integration, or otherwise as elected by AI21 or as specified in the Order). Any software and other components distributed to Customer (such as the Agents) shall be deemed accepted upon delivery. The hosting of the Service may be provided by a third party cloud hosting provider selected by AI21 ("**Hosting Provider**"), and accordingly Customer Content may be processed by such Hosting Provider.

4.6. Features and Functionalities. AI21 may, from time to time and without notice, modify, replace, and discontinue the features and functionalities (but not material functionalities to which Customer is entitled under the Order, unless it improves the material functionality), as well as the user interface, of the Service. Some features and functionalities may in any event be restricted by geography or otherwise, in order for AI21 to comply with applicable Law or commitments to third parties. Customer agrees that its purchase hereunder is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written statements made by or on behalf of AI21 regarding future functionalities or features.

4.7. Documentation. Customer shall use the Service and the Output in accordance with the Documentation. The Documentation is hereby incorporated by reference into this Agreement.

5. SERVICES

- 5.1. Setup Services. If applicable, and subject to payment by Customer of the applicable Fees therefor, AI21 shall provide whatever Service-related setup or onboarding services may be specified in the Order ("**Setup Services**").
- 5.2. Support Services. Subject to Customer remaining current all payment obligations under this Agreement, Customer will be entitled to receive the Support Services. AI21 will respond to Support Services requests within one (1) week, but AI21 shall not be obligated to respond to any Support Services requests that are not sent to support@ai21.com.
- 5.3. Professional Services. Other than Setup Services, AI21 is not obligated to provide any Professional Services. Any Professional Services mutually agreed to between the Parties shall be set out in sequential *Professional Services Statements of Work* signed by the Parties and referencing this Agreement (each, a "**Professional Services SOW**"). Professional Services shall be charged in accordance with such Professional Services SOW. Each Professional Services SOW shall be deemed incorporated by reference into this Agreement.
- 5.4. General. Other Services will be performed by AI21 and/or its Affiliates, and are provided for the benefit of Customer only. Customer shall fully cooperate with AI21, and shall make available to AI21 all relevant systems, assets, and resources, in connection with the provision of Other Services. With Customer's prior written approval (not to be unreasonably withheld, conditioned, or delayed) AI21 may subcontract Other Services (in whole or in part) to a third party contractor, and without derogating from AI21's liabilities towards the Customer under this Agreement. Unless expressly agreed otherwise in writing, Other Services shall be carried out remotely, and any physical attendance at Customer's offices or other locations requested by Customer, if agreed to by AI21 (for example, in a Professional Services SOW), shall be charged at AI21's then-current rates, and AI21 shall also be entitled to reimbursement for travel and lodging costs and expenses incurred.

6. **PAYMENT**

- 6.1. Fees. Customer agrees to pay AI21 the fees and other charges set forth in the Order (the "**Fees**").
- 6.2. Fee Increases. AI21 shall be entitled from time to time, and by written notice, to increase the Fees under the Order; *provided, however*, that the updated Fees shall apply to the next Order renewal, provided that such notice was given at least thirty (30) days prior to such renewal.
- 6.3. Payment Terms. Unless expressly stated otherwise in the Order or in this Agreement: (a) all Fees are stated, and are to be paid, in US Dollars; (b) billing cycles for the Subscription are on a calendar quarterly basis; (c) AI21 shall be entitled to invoice Customer for Fees in advance at the commencement of each billing cycle (except for Fees for overages, which are charged in arrears), and Customer shall pay each invoice within thirty (30) days of receipt of invoice; (c) all payments and payment obligations under this Agreement are non-refundable and non-cancellable, and Customer shall pay all Fees without offsets or other deductions; (d) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month or the highest amount permitted by applicable Law; and (e) AI21 shall be entitled to issue invoices (and any associated reporting) and billing notices via email to the applicable Customer contact email address specified in the Order and/or via a functionality of the Service. Moreover, AI21 shall be entitled to charge you for all reasonable costs (including attorneys' fees, court costs, and collection agency fees) incurred by AI21 in collecting any late payments or interest.

- 6.4. Payment Dispute.** If Customer believes that AI21 has invoiced Customer incorrectly, Customer must contact AI21 no later than thirty (30) days after receiving the invoice in which the alleged error appeared; otherwise Customer shall be deemed to have waived all claims in connection with the applicable invoice and payment.
- 6.5. Taxes.** Amounts payable under this Agreement do not include any applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, assessable by any local, state, provincial, federal or foreign jurisdiction ("**Taxes**"), except for taxes based upon AI21's net income. Customer is responsible for paying all Taxes associated with its purchases hereunder. If AI21 has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to (and paid by) Customer, unless Customer provides AI21 with a valid tax exemption certificate authorized by the appropriate taxing authority. In the event that Customer is required by any Law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to AI21 shall be increased by the amount necessary so that AI21 receives and retains, free from liability for any deduction or withholding, an amount equal to the amount it would have received had Customer not made any such withholding or deduction.
- 6.6. Payment Processing.** Customer represents and warrants that all payment and billing information provided is (and will remain) complete and accurate, and Customer has obtained all necessary consents to enable the necessary payment method. If applicable to the payment method, payment of Fees may be processed through a third-party payment processing service (which will receive and process Customer's billing information), and additional terms may apply to such payments. Customer authorizes AI21 (and/or its designee) to: (a) request and collect payment (and to otherwise take other billing actions, such as refunds) from Customer on a recurring basis; and (b) make any inquiries AI21 deems necessary, from time to time, to validate Customer's designated payment method or financial information, in order to ensure timely payment of Fees (including, but not limited to, for the purpose of receiving updated payment details from Customer's payment, credit card, or banking account provider – such as, updated expiry date or card number).
- 6.7. Reporting; Usage Audit.** AI21 may issue Subscription- and Fee-related reporting and billing notices via email to the applicable Customer or billing contact email address specified in the Order, as well as via a functionality of the Service. AI21 (or a third party it reasonably designates) shall, from time to time, be entitled to audit Customer's use of the Service (a "**Usage Audit**"), and Customer shall facilitate such Usage Audit by providing AI21 with all access (including without limitation VPN access) reasonably requested by AI21 (such as, for the purpose of calculating any Fees for overages).

7. CUSTOMER CONTENT AND OUTPUT

- 7.1. Ownership of Customer Content.** As between the Parties, Customer is the exclusive owner of all Customer Content.
- 7.2. Ownership of Output.** As between the Parties, and subject to Customer's compliance with the terms and conditions of this Agreement, Customer will be the exclusive owner of all Output.
- 7.3. Location of Customer Content.** Unless the Order states otherwise, Customer Content and Output may be hosted and processed by AI21 (and its Affiliates, Hosting Providers, and respective third party service providers) in Israel, the United

States, the European Economic Area (EEA), the United Kingdom, and other locations around the world.

- 7.4. No Sensitive Data.** Unless the Service specifically requests or requires otherwise, Customer shall ensure that no Customer Content includes or links to Sensitive Data. "**Sensitive Data**" means any (i) categories of data enumerated in Article 9(1) of the European Union's General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any successor law; (ii) credit, debit or other payment card data subject to the *Payment Card Industry Data Security Standards* ("**PCI DSS**"); (iii) *Nonpublic Personal Information* (NPI) (as defined by the Gramm-Leach-Bliley Act and its implementing rules and regulations); or (iv) any data similar to the foregoing that is protected under foreign or domestic laws.
- 7.5. Responsibility for Customer Content.** Customer is solely responsible for the legality, accuracy and quality of Customer Content, such as for ensuring that Customer's collection, processing, storage and transmission Customer Content is compliant with all applicable Laws, as well as any and all privacy policies, agreements or other obligations Customer may maintain or enter into with its customers. Customer represents and warrants that:
- (a) no processing of Customer Content under this Agreement (whether by AI21, its Affiliates, or if applicable the Hosting Provider) will violate any Law, proprietary right, or privacy right;
 - (b) Customer has obtained and will maintain all required consents and licenses, and will maintain all ongoing legal bases under relevant privacy Laws (if applicable), necessary to provide, make available, and otherwise expose Customer Content to AI21, its Affiliates, and the Hosting Provider (if applicable); and
 - (c) Customer Content will not include or link to, and will not otherwise allow or encourage: (A) illegal activities, such as child pornography, gambling, piracy; (B) threatening, stalking, harassing, defaming, defrauding, degrading, victimizing or intimidating anyone for any reason; (C) generating spam; or (D) generating content for dissemination in electoral campaigns.
- 7.6. Responsibility for Output.** Customer acknowledges and agrees that artificial intelligence and machine learning are rapidly evolving fields, and that, given the probabilistic nature of artificial intelligence and machine learning, use of the Service may in some situations result in incorrect Output and/or the Output may not be unique across users (and the Service may generate the same or similar Output for different users of the Service). Customer is solely responsible and liable for evaluating and verifying (including without limitation by human review) the Output as being suitable and appropriate for the Output Use Case (and for Customer's use in general). AI21 recommends Customer to carefully test, review, and vet the Output before implementation or other use. In addition, Customer shall not engage in any automatic decision-making (including, without limitation, profiling), or rely upon Output in isolation to make a decision, relating to any person, which has a legal effect or a similarly significant effect on that person. Moreover, Customer shall: (a) not represent that Output was human-generated when it was not; and (b) notify end users of the Output that factual assertions in Output should not be relied upon without independently checking the accuracy and completeness of the Output.
- 7.7. License to Customer Content and Output.** Customer hereby grants to AI21 and its Affiliates a worldwide, non-exclusive, royalty-free, paid-up, sublicensable (to AI21's data subprocessors, Hosting Providers, as well as to third party service providers engaged by AI21 in the provision of the AI21 Technology), irrevocable right and license to copy, process, create derivative works of, modify, adapt, and otherwise

use Customer Content and Output (in any media, now known or hereafter developed):

- (a) during the Term of this Agreement, for any of the following purposes: (i) to perform under this Agreement (for example, to provide the Service, to process the Inputs in order to generate Outputs, to perform Other Services such as technical support, *etc.*); (ii) to prevent or address technical or security issues and resolve support requests; and/or (iii) to conduct an investigation (when we have a good faith belief, or when have received a complaint) as to whether such Customer Content was provided in violation of this Agreement, in violation of any Laws, or in violation of any third party rights; and
- (b) on a perpetual basis, and provided the Customer Content is anonymized, aggregated or de-identified for the purpose of generally maintaining, improving, and enhancing the AI21 Technology (such as developing new Service features and functionalities). **However, unless agreed otherwise in writing, AI21 will not train AI21 Models on Customer Content.**

7.8. Data Storage. The Service is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the Service for the storage of any Customer Content or Output whatsoever. Customer is solely responsible and liable for the maintenance and backup of all Customer Content and Output.

7.9. Data Security. AI21 will maintain administrative, physical, and technical safeguards for protection of the security and confidentiality of Customer Content, in accordance with AI21's ISO 27001 certification. Those safeguards will include measures for preventing access, use, modification, or disclosure of Customer Content by AI21 personnel except (a) to perform under this Agreement (for example, to provide the Service, the Other Services, or to prevent or address Service-related technical problems), (b) as required by Law, or (c) as Customer permits in writing.

7.10. Traceless Operations. *If, in the Order, Traceless Operations is specified, then this Section (Traceless Operations) shall apply:* Customer hereby opts out of data retention for specific *Completion API* requests, by passing an appropriate API parameter to be agreed by the Parties (e.g. "retain=False"). Accordingly, and unless Customer permits otherwise, AI21 will not retain or store any Customer Content transmitted in *Completion API* requests carrying the agreed parameter (collectively, the "**Blocked Customer Content**"), except for non-specific metadata not containing any Customer Content that is required for billing purposes (e.g. length of generated text). Notwithstanding the foregoing, the foregoing shall not apply (and Blocked Customer Content shall not extend) to datasets uploaded by or on behalf of Customer (or otherwise provided to AI21) in connection with the AI21 providing model training services and the resulting Trained Models.

7.11. Privacy Policy. AI21's Privacy Policy is available here (https://studio.ai21.com/v2/privacy_policy.html), and the Privacy Policy is hereby incorporated by reference into this Agreement.

7.12. DPA. To the extent that, in connection with the processing of Customer Content pursuant to this Agreement, Customer requires a data processing agreement ("**DPA**"), Customer shall request (via email to privacy@ai21.com) and execute (and deliver to AI21 the executed copy of) the AI21's applicable DPA template. Such executed DPA shall be deemed incorporated by reference into this Agreement.

7.13. HIPAA BAA. To the extent that, in connection with the processing of Customer Content pursuant to this Agreement, Customer requires a business associate agreement ("**BAA**") pursuant to the US Health Insurance Portability and

Accountability Act and its implementing rules and regulations, as amended ("HIPAA"), Customer shall request (via email to privacy@ai21.com) and execute (and deliver to AI21 the executed copy of) the AI21's applicable BAA template. Such executed BAA shall be deemed incorporated by reference into this Agreement.

8. **AI21 TECHNOLOGY**

Notwithstanding anything in this Agreement to the contrary, AI21 (and/or its licensors and suppliers, as applicable) is, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all Intellectual Property Rights) in and to the following (collectively, the "**AI21 Technology**"):

- (a) the Service (and all underlying Intellectual Property, such as the AI21 Models, any Trained Models, and Installed Components); *provided, however*, that, unless permitted otherwise in writing (for example, in a Professional Services SOW) AI21 will not provide other customers of the Service with any access to Customer's datasets or the corresponding Trained Model;
- (b) Other Services;
- (c) the Service Content (but **excluding the Output**);
- (d) AI21's Confidential Information;
- (e) any feedback, suggestions, or ideas for or about the Service or Service Content (collectively, "**Feedback**");
- (f) Usage Statistics; and
- (g) any improvements, derivative works, enhancements, and/or modifications of/to any of the foregoing, as well as any other Intellectual Property conceived, authored, or otherwise developed pursuant to this Agreement, in each case regardless of inventorship or authorship.

To the extent any of the foregoing Intellectual Property Rights do not automatically vest in AI21, Customer hereby irrevocably assigns (and shall procure the assignment of) such Intellectual Property Rights to AI21 (and its designees, successors, and assigns), and undertakes to do all things reasonably requested by AI21 (including without limitation executing, filing, and delivering instruments of assignment and recordation), at AI21's expense, to perfect such ownership rights. Any rights not expressly granted herein are hereby reserved by AI21 and its licensors, and, except for the Subscription, Customer is granted no other right or license in or to the Service or any other AI21 Technology, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

9. **CONFIDENTIALITY**

Each Party (as "**Receiving Party**") will: (a) protect the Confidential Information (defined below) of the other Party (the "**Disclosing Party**") that the Receiving Party receives, using the same degree of care that Receiving Party uses to protect its own Confidential Information of like kind (but not less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of Receiving Party and its Affiliates' employees, contractors, and professional advisors (such as lawyers and accountants) who need that access for purposes consistent with this Agreement and who are bound by obligations of confidentiality to the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by Law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notice and cooperate in any effort to obtain confidential treatment of the Confidential Information including, without limitation, the opportunity to seek appropriate administrative or judicial relief. The Receiving Party acknowledges that disclosure of

Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. "**Confidential Information**" means all information that is identified as confidential at the time of disclosure by the Disclosing Party or reasonably should be known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and/or the circumstances surrounding the disclosure. For the avoidance of doubt, the Products and the Service are Confidential Information of AI21. Confidential Information shall not, however, include information that: (a) was rightfully in Receiving Party's possession or known to it (on a non-confidential basis) prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (d) is independently developed by the Receiving Party.

10. **PERFORMANCE WARRANTY; DISCLAIMERS**

- 10.1. AI21 warrants that: (a) the Service will operate in substantial conformity with the applicable Documentation; and (b) any Professional Services will be performed in a professional and workmanlike manner, in substantial conformity with the applicable Professional Services SOW ((a) and (b) collectively, the "**Performance Warranty**"). In the event of a breach of the Performance Warranty, AI21 will (as its sole liability, and as the Customer's sole remedy, for such breach), at its own expense, correct the non-conformity or re-perform the Professional Services (as the case may be). The Performance Warranty will not apply if the error or non-conformance was caused by: (i) Customer's misuse of the Service; (ii) modifications to the Service by Customer or any third party; (iii) any Third Party Content; and/or (iv) any equipment, software, hardware, or services of Customer or any of its third parties, which are used by Customer in connection with the Service. Customer shall notify AI21 in writing of any error or non-conformity of the Performance Warranty promptly (and in any event, not more than 10 days) after becoming aware of the breach.
- 10.2. OTHER THAN THE PERFORMANCE WARRANTY, THE SERVICE, SERVICE CONTENT, OUTPUT, OTHER SERVICES, OTHER AI21 TECHNOLOGY, AS WELL AS ANY OTHER GOODS AND SERVICES PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF THE AI21 HEREUNDER (COLLECTIVELY, THE "**AI21 MATERIALS**") ARE PROVIDED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL DEFECTS, AND ALL EXPRESS, IMPLIED AND STATUTORY CONDITIONS AND WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET POSSESSION, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED BY AI21 AND ITS LICENSORS.
- 10.3. AI21 DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION: (A) REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, TIMELINESS, COMPLETENESS, OR QUALITY OF AI21 MATERIALS; (B) THAT CUSTOMER'S USE OF AI21 MATERIALS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE; (C) REGARDING THE OPERATION OF ANY CELLULAR NETWORKS, THE PASSING OR TRANSMISSION OF DATA VIA ANY NETWORKS OR THE CLOUD, OR ANY OTHER CELLULAR OR DATA CONNECTIVITY PROBLEMS; OR (D) REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY LAWS, REGULATIONS, OR OTHER GOVERNMENT OR INDUSTRY RULES OR STANDARDS. AI21 WILL NOT BE LIABLE OR OBLIGATED IN RESPECT OF

DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO HOSTING PROVIDERS OR PUBLIC NETWORKS.

11. **LIMITATION OF LIABILITY**

11.1. EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 9 (*CONFIDENTIALITY*), CUSTOMER'S BREACH OF THE SUBSCRIPTION (INCLUDING WITHOUT LIMITATION A BREACH UNDER SECTION 4.2 (*USAGE RESTRICTIONS*)), AND/OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR LICENSORS BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:

- (a) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
- (b) ANY LOSS OF PROFITS, BUSINESS, OPPORTUNITY, REVENUE, CONTRACTS, ANTICIPATED SAVINGS, OR WASTED EXPENDITURE;
- (c) ANY LOSS OF, OR DAMAGE OR INTERRUPTION TO, DATA, NETWORKS, INFORMATION SYSTEMS, REPUTATION, OR GOODWILL; AND/OR
- (d) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

11.2. THE COMBINED AGGREGATE LIABILITY OF AI21 AND ALL AI21 AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO AI21 UNDER THIS AGREEMENT IN THE **SIX (6) MONTHS** IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY (OR, IF NO FEES APPLY, ONE HUNDRED US DOLLARS (USD\$100)). FOR THE AVOIDANCE OF DOUBT, THE EXISTENCE OF MULTIPLE CLAIMS DOES NOT ENLARGE THE FOREGOING LIMIT.

11.3. THE FOREGOING EXCLUSIONS AND LIMITATION SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, AND WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, INDEMNITY, MISREPRESENTATION, OR OTHERWISE.

12. **INDEMNIFICATION**

12.1. Indemnification by AI21. In the event that, during the term of this Agreement and the six (6) month period thereafter, a third party makes or institutes any claim, action, or proceeding against Customer alleging that Customer's authorized access and use of the Service or Output in accordance with this Agreement infringes such third party's copyright or patent (an "**Infringement Claim**"), AI21 shall (as its sole liability, and as Customer's sole remedy, in connection with such Infringement Claim):

- (a) At its own expense, defend Customer against the Infringement Claim; and
- (b) Indemnify and hold harmless Customer for any amount finally awarded against or imposed upon Customer by the court (or otherwise agreed in settlement) under the Infringement Claim (*provided, however, that any insurance recoveries and/or indemnity or contribution amounts received by*

the Customer prior to receipt of indemnification by AI21, shall reduce the indemnifiable amount to be paid by AI21 by the amount of such recovery).

AI21 shall have no liability under this Section (*Indemnification by AI21*):

- (A) to the extent that the Infringement Claim is attributable to or results from: (i) a modification to the Service or Output not made by AI21; (ii) the combination of the Service or Output with any non-AI21 product or service (for example, incorporating the Output into a Customer product or service); (iii) any Customer instructions or specifications; (iv) any Customer breach under this Agreement; (v) any Inputs; and/or (vi) any failure by Customer to use the most current version of the Service made available by AI21 to Customer pursuant to this Agreement;
- (B) if Customer did not use the Service or Output in accordance with the Documentation; and/or
- (C) if Customer is entitled to (or has otherwise received) indemnification for the Infringement Claim (or part thereof) from a Reseller.

Should the Service (in whole or in part) become, or in AI21's opinion be likely to become, the subject of an Infringement Claim or an injunction prohibiting Customer's use of the Service, then Customer permits AI21, at AI21's option and expense, to either: (x) obtain for Customer the right to continue using the Service (or part thereof, as applicable); or (y) replace or modify the Service (or part thereof, as applicable) so that its use hereunder becomes non-infringing; *provided, however*, that if (x) and (y) are not, in AI21's opinion, commercially feasible, AI21 may terminate this Agreement upon written notice to Customer, and, following Customer's compliance with all post-termination obligations, Customer shall be entitled to receive a pro-rated refund of any prepaid Subscription-related Fees hereunder based remaining period of the Subscription Term.

12.2. Indemnification by Customer. If AI21 or its Affiliates (or their respective directors, officers, or employees) (collectively, "**AI21 Indemnitees**") incur or suffer any loss or liability whatsoever (including but not limited to a fine, penalty, damages award, legal costs and expenses such as attorney's fees, *etc.*) under or in connection with any demand, claim, suit, or proceeding made or brought (whether by an individual, organization, or governmental agency) against an AI21 Indemnitee (each, a "**Misuse Claim**"), and such Misuse Claim arises directly or indirectly from any Customer Content, from any breach by Customer under this Agreement, from any violation by Customer of applicable Law, and/or from Customer's use of the Service, Customer agrees to:

- (a) At its own expense, defend AI21 Indemnitees against the Misuse Claim; and
- (b) Indemnify and hold harmless AI21 Indemnitees for such loss and liability, as well as for any amount finally awarded against or imposed upon AI21 Indemnitees by the court (or otherwise agreed in settlement) under the Misuse Claim.

12.3. Indemnity Procedure. As a condition to indemnification under this Section (*Indemnification*), the indemnified Party agrees: (A) to provide the indemnifying Party with prompt written notice of the Infringement Claim or Misuse Claim, as applicable (the "**Claim**"); (B) to cede to the indemnifying Party sole control of the defense and settlement of the Claim (except that any settlement shall require the indemnified Party's prior written consent, not to be unreasonably withheld, conditioned or delayed); (C) to provide the indemnifying Party with all information and assistance reasonably requested by it; and (D) not to admit any liability under (or otherwise compromise the defense of) the Claim. The indemnified Party may participate in the defense of the Claim at its own cost and expense.

13. **TERM AND TERMINATION**

- 13.1. Term of Agreement.** This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue for the duration of the Subscription Term (defined below).
- 13.2. Renewals.** Unless specified otherwise in the Order, upon expiration of the initial Subscription term specified in the Order (the "**Initial Subscription Term**"), the Order and Subscription shall automatically renew for successive renewal terms of equal length as the Initial Subscription Term (each a "**Renewal Subscription Term**", and together with the Initial Subscription Term, the "**Subscription Term**"), unless either Party notifies the other Party in writing that it chooses not to renew ("**Non-Renewal Notice**"); *provided, however*, that the Non-Renewal Notice is given at least sixty (60) days prior to the end of the then-current Subscription Term. At the commencement of each Renewal Subscription Term, AI21 shall be entitled to invoice Customer for the applicable Fees therefor.
- 13.3. Termination.** This Agreement may be terminated as follows:
- (a) In accordance with any termination rights specified the Order;
 - (b) Either Party may terminate this Agreement for cause upon written notice if the other Party commits a material breach under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notice from the other Party alleging the breach. The foregoing 30-day cure period shall:
 - (i) not be required if the breach is not curable; and (ii) be reduced to ten (10) days if the material breach in question is non-payment by Customer;
 - (c) Either Party may terminate this Agreement upon written notice to the other Party upon the occurrence of any of the following events in respect of such other Party: (i) a receiver is appointed for the other Party or its property, which appointment is not dismissed within sixty (60) days; (ii) the other Party makes a general assignment for the benefit of its creditors; (iii) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (iv) the other Party is liquidating, dissolving or ceasing normal business operations; and/or
 - (d) AI21 may terminate this Agreement convenience upon thirty (30) days' prior written notice to Customer. In case of such termination for convenience by AI21, Customer shall be entitled to receive a pro-rated refund of any pre-paid and unutilized Fees under the Order based on the remaining period of the then-current Subscription Term.
- 13.4. Suspension.** AI21 reserves the right to temporarily suspend provision of the Service: (a) if Customer is seven (7) days or more overdue on a payment; (b) if AI21 deems such suspension necessary as a result of Customer's breach of the Subscription (such as a breach under Section 4.2 (*Restrictions*)); (c) if AI21 reasonably determines suspension is necessary to avoid material harm to AI21, to its other customers, or to the Service, including if the Service's cloud infrastructure is experiencing denial of service attacks or other attacks or disruptions outside of AI21's control, or (d) as required by Law or at the request of governmental entities.
- 13.5. Effect of Termination.** Upon termination of this Agreement for any reason: (a) the Subscription shall automatically terminate; (b) Customer shall cease all access and use of the Service and uninstall all Installed Components (and AI21 shall be entitled to remotely uninstall all Installed Components or deactivate the Service) and certify in a signed writing that it has done so; (c) Customer shall pay any outstanding Fees and other charges that accrued as of termination (even if termination takes effective prior to the end of a billing cycle), which shall become immediately due and payable, and, if necessary AI21 shall issue a final invoice therefor; and (d) upon written notice to AI21, Customer will have up to thirty (30) calendar days to access the Service solely to the extent necessary to retrieve

Customer Content ("**Retrieval Right**") (and if Customer exercises its Retrieval Right, this Agreement shall continue in full force and effect for the duration of the Retrieval Right). AI21 shall have no further obligation to make Customer Content available after the later of (A) the effective date of termination of this Agreement, or (B) the Retrieval Right period, if applicable, and thereafter AI21 shall be entitled to delete the Customer Content.

- 13.6. Survival. Sections 7 (*Customer Content*) through 14 (*Miscellaneous*) shall survive termination of this Agreement, as shall any right, obligation or provision that is expressly stated to so survive or that ought by its nature to survive. Termination shall not affect any rights and obligations accrued as of the effective date of termination.

14. MISCELLANEOUS

- 14.1. Entire Agreement. This Agreement (and its annexes) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation or statement not expressly specified in this Agreement. Any terms or conditions (whether printed, hyperlinked, or otherwise) in any purchase order or other standardized business forms, which purport to supersede, modify, or supplement this Agreement, shall be deemed rejected, void and of no effect (even if AI21 signs or acknowledges such document). Customer shall include the Order reference/number in any purchase order issued to AI21. The section and subsection headings used in this Agreement are for convenience of reading only, and shall not be used or relief upon to interpret this Agreement. This Agreement may be executed in any number of counterparts (including digitally, electronically scanned and e-mailed PDF copies, and any similarly signed and electronically or digitally transmitted copies) each of which will be considered an original, but all of which together will constitute one and the same instrument.
- 14.2. Amendment. This Agreement may only be modified or supplemented by a written instrument referencing this Agreement, which is duly signed by each Party.
- 14.3. Precedence. To the extent of any conflict or inconsistency between a provision in this Agreement on the one hand, and a provision in the Order or a Professional Services SOW on the other hand, the former shall prevail (except to the extent expressly stated otherwise in the Order or Professional Services SOW, or to the extent related solely to the commercial or technical particulars of the Order or Professional Services SOW, in which case the latter shall prevail).
- 14.4. Third Party Content. The Service may present, or otherwise allow Customer to view, access, link to, and/or interact with, Content from third parties and other sources that are not owned or controlled by AI21 (such Content, "**Third Party Content**"). The Service may also enable Customer to communicate with the related third parties. The display or communication to Customer of such Third Party Content does not (and shall not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by AI21 of such Third Party Content or third party, nor any affiliation between AI21 and such third party. AI21 shall have no obligation or liability of any kind whatsoever for Third Party Content or for the third party's policies, practices, actions, or omissions. If Customer enables or uses Third Party Content with the Service, AI21 will allow the Third Party Content providers to access and use Customer Content as required for the interoperation of the Third Party Content and the Service. Any Third Party Content provider's use of Customer Content is subject to the applicable agreement between Customer and the Third Party Content provider.

- 14.5. Third Party Software.** The Service may include what is commonly referred to as 'open source' software. Under some of their respective license terms and conditions, AI21 may be required to provide Customer with notice of the license terms and attribution to the third party, in which case AI21 may provide Customer with such information (whether via the Service, via the Website, or otherwise). Notwithstanding anything to the contrary herein, use of the open source software will be subject to the license terms and conditions applicable to such open source software, to the extent required by the applicable licensor (which terms and conditions shall not restrict the license rights granted to Customer hereunder), and to the extent any such license terms and conditions grant Customer rights that are inconsistent with the limited rights granted to Customer in this Agreement, then such rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software. AI21 will comply with any valid written request submitted by Customer to AI21 for exercising any rights Customer may have under such license terms and conditions.
- 14.6. Assignment.** This Agreement may not be assigned by Customer, in whole or in part, without AI21's prior express written consent. AI21 may assign this Agreement, in whole or in part, without restriction or obligation. Furthermore, any AI21 obligation hereunder may be performed (in whole or in part), and any AI21 right (including invoice and payment rights) or remedy may be exercised (in whole or in part), by an Affiliate of AI21. Any prohibited assignment will be null and void. Subject to the provisions of this Section (*Assignment*), this Agreement will bind and inure to the benefit of each Party and its respective successors and assigns.
- 14.7. Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Israel, without regard to any conflicts of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods, as well as the Uniform Computer Information Transactions Act (UCITA) (regardless of where or when adopted), shall not apply to this Agreement and are hereby disclaimed. Any claim, dispute or controversy between the Parties will be subject to the exclusive jurisdiction and venue of the courts located in Tel Aviv, Israel and each Party hereby irrevocably submits to the personal jurisdiction of such courts and waives any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction. EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. EXCEPT TO SEEK EQUITABLE RELIEF, PAYMENT OF FEES, OR TO OTHERWISE PROTECT OR ENFORCE A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS, NO ACTION, REGARDLESS OF FORM, UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE DATE ON WHICH THE CORRESPONDING LIABILITY AROSE. Any claims or damages that Customer may have against AI21 shall only be enforceable against AI21, and not any other entity or AI21's officers, directors, representatives, employees, or agents. Without derogating from any limitations or exclusions of liability in this Agreement, Customer hereby irrevocably waives any claims against AI21 for sums to which Customer is entitled under any insurance policy carried by or on behalf of Customer.
- 14.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) the Parties agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal

intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision will be ineffective solely as to such jurisdiction, and will be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

- 14.9. Publicity.** AI21 may use Customer's name and logo in AI21's customer lists (including, but not limited to, on the Website and in AI21's promotional materials).
- 14.10. Waiver and Remedies.** No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 14.11. Supplemental Terms.** Features and functionalities may be accompanied by separate or additional terms and conditions ("**Feature Specific Terms**"). Third Party Content may be accompanied by separate or additional terms and conditions ("**Third Party Content Terms**", and together with Feature Specific Terms, "**Supplemental Terms**"). Supplemental Terms may be set forth in the Order and/or may require Customer's acceptance (via the Service) prior to Customer accessing the applicable feature, functionality, or Third Party Content. Except to the extent expressly stated otherwise within the Supplemental Terms, all Supplemental Terms apply in addition to (and not instead of) this Agreement.
- 14.12. No Third Party Beneficiaries.** Except as may be otherwise expressly provided in this Agreement (such as AI21's Affiliates), there shall be no third-party beneficiaries of or under this Agreement, and nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties (and their respective successors and permitted assigns), any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 14.13. Relationship.** The relationship of the Parties is solely that of independent contractors, neither Party nor its employees are the servants, agents, or employees of the other, and no exclusivities arise out of this Agreement. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, franchise, fiduciary, partnership, association, or otherwise between the Parties. Except to the extent required by AI21 in connection with the provision of the Service and/or the performance of the AI21's obligations hereunder, neither Party has any authority to enter into agreements of any kind on behalf of the other Party and neither Party will create or attempt to create any obligation, express or implied, on behalf of the other Party.
- 14.14. Force Majeure.** Neither Party shall have any liability for any performance (excluding payment obligations) under this Agreement that is prevented, hindered, or delayed by reason of an event of Force Majeure (defined below). The Party so affected shall be excused from such performance to the extent that, and for so long as, performance is prevented, interrupted, or delayed by the Force Majeure. If and when performance is resumed, all dates specified under this Agreement shall be automatically adjusted to reflect the period of such prevention, interruption, or delay by reason of such Force Majeure. For purposes of this Agreement, an event of "**Force Majeure**" shall be defined as: (a) fire, flood, earthquake, explosion,

pandemic or epidemic (or similar regional health crisis), or act of God; (b) strikes, lockouts, picketing, concerted labor action, work stoppages, other labor or industrial disturbances, or shortages of materials or equipment, not the fault of either party; (c) invasion, war (declared or undeclared), terrorism, riot, or civil commotion; (d) an act of governmental or quasi-governmental authorities (including without limitation lockdowns); (e) failure of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, shortage of adequate power or transportation facilities; and/or (f) any matter beyond the reasonable control of the affected Party. Notwithstanding the foregoing, Customer shall not be entitled to use, or rely on, this Section (*Force Majeure*) in connection with any Customer breach of the Subscription and/or of AI21's Intellectual Property Rights. For the avoidance of doubt, any problems relating to hosting of the Service by a third party is beyond the reasonable control of AI21.

14.15. Notices. Any notice or communication required or permitted under this Agreement will be in writing to the addresses set forth in this Agreement (or at such other address as may be given in writing by either Party), and will be deemed to have been received by the addressee upon: (a) personal delivery; (b) the second business day after being mailed or couriered; or (c) the day of sending by email, except for notices of breach (other than for non-payment) or an indemnifiable claim, which must be made by mail or courier. Email notifications to AI21 shall be info@ai21.com. AI21 may also give Customer notices via Customer's Account and/or via postings on or through the functionality of the Service (and such notices shall be deemed given immediately).

14.16. Export Compliance. Customer represents and warrants that: (a) it is not a resident of, and will not access or use the Service in, a country that the U.S. government has embargoed for use of the Service, and that Customer is not a person or entity named on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations of any jurisdiction; and (b) its country of residence and/or incorporation (as applicable) is the same as the country specified in the contact and/or billing address provided to AI21. Customer shall not transfer, export, re-export, import, re-import or divert the Service in violation of any Export Control Laws (defined below), and shall not transfer, export, re-export, import, re-import or divert the Service to Lebanon, Syria, Iran, Iraq, Sudan, Yemen, Cuba, North Korea, or to the Crimea, Donetsk, or Luhansk regions of Ukraine (or other countries specifically designated in writing by AI21 from time to time). In the event of a breach under this Section (*Export Compliance*), Customer agrees to indemnify and hold harmless AI21 and all AI21 Affiliates (and their respective directors, officers, and employees) for any fines and/or penalties imposed upon AI21 or an AI21 Affiliate (or such persons) as a result of such breach. "**Export Control Laws**" means all applicable export and re-export control Laws applicable to Customer and/or AI21 or its Affiliates, as well as the United States' Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.

14.17. Customer Resources. Except for the Service, Customer shall be solely responsible: (a) for providing all hardware, software, systems, assets, facilities, and ancillary goods and services needed for Customer to access and use the Service; (b) for ensuring their compatibility with the Service; and (c) for obtaining (and maintaining) all consents and licenses necessary to exercise Customer's rights under the Subscription. In the event AI21 is legally or contractually required to modify or replace features or functionalities of the Service in order to ensure the Service complies with the terms of service or privacy policies of various platforms, networks and/or websites, Customer shall be responsible for making all necessary

changes to Customer's hardware, software, systems, assets, and facilities in order to continue using the Service.

- 14.18. Expense.** Except as may be expressly stated otherwise in this Agreement, each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 14.19. Government Users.** If Customer is a U.S. government entity, or this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), Customer acknowledges that the Service constitutes "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212, DFARS 252.227-7014 and DFARS 227.7202. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Service shall be as provided in this Agreement. If a government agency needs additional rights, it must negotiate a mutually acceptable signed written addendum to this Agreement specifically granting those rights.
- 14.20. Participation in Drafting; Essential Basis of the Agreement.** The Parties intend that this Agreement should be interpreted in all instances as if the Parties participated equally in the drafting of all its provisions, and that no provision in this Agreement should be interpreted in a manner unfavorable to a Party on the basis that it drafted the provision. Moreover, Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions of this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.
- 14.21. Subpoenas.** Nothing in this Agreement prevents or otherwise restricts AI21 from disclosing Customer Content to the extent required by Law, subpoenas, or court orders, but AI21 will use commercially reasonable efforts to notify Customer where permitted to do so.
- 14.22. High-Risk Activities.** Customer shall not use the Service with or for, and acknowledges that the Service is not intended for, High-Risk Activities. "**High-Risk Activities**" means activities where use or failure of the Service could lead to death, personal injury, damage to tangible property, or environmental damage, and includes without limitation life support systems, emergency services, nuclear facilities, autonomous vehicles, and traffic control.
- 14.23. Anti-Corruption.** Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any of AI21's employees or agents, or otherwise from any Resellers, in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer shall use reasonable efforts to promptly notify AI21.