

Subscription Services Agreement

Introduction

This Subscription Services Agreement (the "Agreement") is a binding agreement between Tivarri Limited, doing business as Tailpipe ("Company") and the Subscriber identified in the service order and/or order form ("Subscriber") for access or use of Tailpipe (the "Services" as defined below) and states the terms upon which Company provides such Services to Subscriber. The purpose of this Agreement is to establish the terms and conditions under which Subscriber obtains Company's Services as described in a service order and/or order form or other document signed or agreed to by Subscriber. In the event of any inconsistency or conflict between the terms of this Agreement and the terms of any service order and/or order form, the terms of the service order and/or order form shall control. Subscriber and Company shall each be referred to as a "Party" and collectively referred to as the "Parties" for purposes of this Agreement.

Services

Subject to the terms and conditions of this Agreement, Company will provide, and hereby grants Subscriber the limited, non-exclusive, non-transferable, non-sublicensable right to access and use Company's software as a service product, or other services, initially set forth in the service order and/or order form executed by you.

Company operates a 'carbon emissions calculator' and 'carbon reduction recommendations engine' that allows the calculation of carbon dioxide equivalent emissions and provides recommendations for reduction and improvement based on input data (including, but not limited to, cloud computing spend and usage data) which can be accessed via an application programming interface or other remote access options, such as a web dashboard (the "Services").

Modification

Subscriber acknowledges that Company may modify the features and functionality of the Services at any time. Company shall provide Subscriber with thirty (30) days' notice of any deprecation of any material feature or functionality. Company will not materially decrease the overall functionality of the Services purchased by Subscriber during the applicable Term (as defined below).

Subscriber's Account

Subscriber shall create an account within the Services. Subscriber is responsible for (a) ensuring that Subscriber's account registration information is complete and accurate and (b) the security and confidentiality of Subscriber's account credentials. Subscriber shall designate at least one authorized user who shall have administrative access to Subscriber's account, with full access privileges and the authority to place orders. The

Services may only be used by Subscriber's authorized employees, agents, or contractors in the performance of their duties to Subscriber. Subscriber shall notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Subscriber is solely responsible for all activity which occurs within Subscriber's account and for the actions of its employees, contractors, or agents, whether or not such person is or was acting within the scope of their employment, engagement, or agency relationship.

Restrictions

Subscriber shall not:

- (a) copy the Services, except as expressly permitted by this Agreement;
- (b) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Services;
- (c) reverse engineer, disassemble, integrate, modify, remove, decompile, decode, create derivative works or updates of, adapt, or otherwise attempt to derive or gain access to the source code of the Services or any part thereof;
- (d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Services, including any copy thereof;
- (e) license, sublicense, sell, outsource, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or resell the Services to any third-party, other than authorized users in furtherance of Subscriber's internal business purposes as expressly permitted by this Agreement, unless expressly agreed to otherwise in writing by Company;
- (f) access the Services for competitive purposes; or
- (g) remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Services.

Compliance

Subscriber is responsible for compliance with the provisions of this Agreement by any authorized users, employees, agents, and/or contractors and for any and all activities that occur under Subscriber's account, which Company may verify from time to time. Without limiting the foregoing, Subscriber will ensure that any use of the Services is compliant with all applicable laws and regulations as well as any and all privacy notices, agreements, or other obligations Subscriber may maintain or enter into with authorized users.

Term

Unless the Services are terminated in accordance with this Agreement or the applicable service order and/or order form the term of the Services shall be as specified in the applicable service order and/or order form (the "Term"). Except as otherwise specified in a service order and/or order form the Term will automatically renew for

additional periods equal to the expiring Term or one (1) year (whichever is shorter), unless either Party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Term.

Mutual Termination for Cause

A Party may terminate this Agreement for cause: (a) upon written notice to the other Party of a material breach by the other Party if such breach remains uncured after thirty (30) days from the date of receipt of such notice; or (b) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

Termination by Company

In addition to its other rights and remedies, Company reserves the right, without liability to Subscriber, to immediately suspend any and all access to the Services if Subscriber breaches this Agreement (including a breach of the Restrictions) or any relevant service order and/or order form until such breach is cured. If such breach is (a) unable to be cured, or (b) is not cured within thirty (30) business days from the suspension, then Company may immediately terminate the Agreement and/or the applicable service order and/or order form.

If Company terminates Subscriber's Services, Subscriber must immediately pay any and all unpaid fees (as defined below) associated with the remainder of such Term in addition to any other amounts Subscriber may owe Company. Company's termination for cause will not relieve Subscriber's obligation to pay any fees payable to Company for the period prior to termination.

No refunds or credits or other fees or payments will be provided if Subscriber terminates the Services prior to the end of a Term.

Fees

Subscriber shall pay Company all fees as set forth in the applicable service order and/or order form (the "Fees"). Except as otherwise specified herein or in a service order and/or order form: (a) Fees are based on Services purchased, regardless of usage; b) payment obligations are non-cancellable and Fees paid are non-refundable; (c) all Services shall be deemed accepted upon delivery and (d) the Services purchased cannot be decreased during the relevant Term.

Payment and Billing

Except as otherwise set forth in the applicable service order and/or order form all Fees will be billed annually in advance. All invoices for Fees and taxes are due and payable within the time frame and in the currency set forth in the applicable service order and/or order form without deduction or setoff. If Subscriber fails to pay any amounts due under this Agreement by the due date, in addition to any other rights or remedies it may have

under this Agreement or by matter of law: (a) Company reserves the right to suspend the Services upon thirty (30) days' notice, until such amounts are paid in full; and (b) Company will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Subscriber pays all amounts due, together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Company in collecting such overdue amounts or otherwise enforcing Company's rights hereunder.

Taxes

Fees do not include any taxes, tariffs, levies, duties, or similar governmental charges or assessments of any nature, including, value-added, sales, use, or withholding taxes, assessable by any jurisdiction. Subscriber is responsible for paying all taxes associated with its purchases under this Agreement. If Company is legally required to pay or collect taxes for which Subscriber is responsible under this Section, Company shall invoice Subscriber and Subscriber shall pay such amounts, unless Subscriber provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

Confidential Information Definition

Confidential Information shall mean all information or data disclosed by a Party or any of its affiliates that is confidential, proprietary, or otherwise not publicly available, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure whether oral or in writing, and disclosed during the Term in connection with the Services. Confidential Information includes: (a) with respect to Subscriber: Subscriber Data (as defined below); (b) with respect to Company: the Services and the pricing; and (c) with respect to a Party: any technical, financial, economic, marketing, strategic, business, product, design, or operational information, including the terms of this Agreement and all service order and/or order form, of such Party. Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other party by a third-party without restriction on the disclosure; or (d) is independently developed by the other Party.

Protection of Confidential Information

In connection with the Services, each Party will protect the other's Confidential Information from unauthorized use, access, or disclosure in the same manner as each Party protects its own confidential information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information: (a) solely to the employees and/or non-employee service

providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. Given the unique nature of Confidential Information, the Parties agree that any violation or threatened violation by a Party to this Agreement with respect to Confidential Information may cause irreparable injury to the other Party.

Security

Company will maintain a security framework of policies, procedures, and controls that include administrative, physical, and technical safeguards for protection of the security and integrity of the Services, and of the Subscriber Data contained within the Services, using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards. Company will access and use the Subscriber Data solely to perform its obligations in accordance with the terms of this Agreement.

Privacy

In performing the Services, Company will comply with our Privacy Policy incorporated herein by reference and located at [Privacy Policy](#).

Intellectual Property Rights

All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts, or other derivative works of the Services provided or developed by Company) and anything developed or delivered by or on behalf of Company under this Agreement are owned exclusively by Company or its licensors. Except as provided in this Agreement, the rights granted to Subscriber do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Any rights in the Services or Company's intellectual property not expressly granted herein by Company are reserved by Company. Company's service marks, logos, and product and service names are marks of Company and the Subscriber agrees not to display or use the Company's marks in any manner without Company's express prior written permission.

Subscriber Data

Subscriber Data shall mean any content, data, information, and other materials submitted by Subscriber or an authorized user to the Services. Subscriber Data excludes Statistical Usage Data (as defined below), any content from publicly available sources, and Feedback (as defined below). Subscriber Data and Subscriber's Confidential Information are and will remain owned exclusively by Subscriber or its authorized users, as applicable. Subscriber hereby grants Company, its affiliates, and

its sub-processors a worldwide right and license to access, host, display, process, analyze, transmit, reproduce, and otherwise utilize Subscriber Data for the purposes of providing and improving the Services in accordance with this Agreement.

Statistical Usage Data

Company and its affiliates may collect, use, and otherwise process Statistical Usage Data for their own analysis, analytics, marketing, and other internal business purposes, including, without limitation, improving Company's products and services. Except where Subscriber has expressly provided its written consent, Company will only disclose Statistical Usage Data if such data is (a) aggregated or anonymized; and (b) does not disclose the identity of Subscriber or its authorized users or any Subscriber Confidential Information.

Warranties

Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third-party is required in connection with such Party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

Company Warranties

During an applicable Term, Company warrants that (a) this Agreement and any other applicable documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of data; and (b) the Services will perform materially in accordance with the applicable documentation. For any breach of a warranty in this section, Subscriber's exclusive remedies are those described herein. The warranties herein do not apply to any misuse or unauthorized modification of the Services made by Subscribers or any authorized users.

Disclaimers

EXCEPT AS SPECIFICALLY SET FORTH IN COMPANY WARRANTIES, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SUBSCRIBER ACKNOWLEDGES THAT COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY SUBSCRIBER FROM COMPANY OR

THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

Indemnification by Company

Company shall defend any claim brought against Subscriber by a third-party to the extent such claim alleges that Subscriber's use of the Services, as authorized in this Agreement (a) infringes any valid and enforceable third-party patent, copyright, or registered trademark; or (b) misappropriates a third-party trade secret. If a third-party makes a claim against Subscriber, Company shall pay all damages awarded against Subscriber by a court of competent jurisdiction, or the settlement agreed to by Company with respect to such claim.

If any claim is brought or threatened, or if Company reasonably believes that the Services may become the subject of a claim, Company may, at its sole option and expense: (a) procure the right to continue to use the applicable Services for Subscriber; (b) modify the Services to make it non-infringing; (c) replace the affected aspect of the Services with non-infringing technology having substantially similar capabilities; or (d) if Company determines none of the foregoing is commercially practicable, terminate this Agreement upon thirty (30) days' notice and refund Subscriber any prepaid Fees related to the applicable Services prorated for the remainder of the Term.

Company's defence and indemnity obligations do not apply to, and Company will have no liability with respect to, any claim arising in whole or part due to: (a) any modification of the Services made by anyone other than Company, (b) any use of the Services in combination with software, products, or services not provided by Company, (c) any third-party applications; (d) Services under an service order and/or order form , for which there is no charge; (e) Subscriber's use of the Services not in compliance with this Agreement; or (f) Subscriber's failure to use any update provided by Company.

This indemnity states Company's entire liability, and Subscriber's exclusive remedy, for any claims as described in this section.

Indemnification Procedure

The defence and indemnity obligations above are conditioned upon the indemnified Party providing the indemnifying Party with (a) prompt notice; (b) sole control over the defence and any settlement negotiations; and (c) all information and assistance reasonably requested by the indemnifying Party in connection with the defence or settlement of the indemnifiable claim. The indemnifying Party shall not agree to a settlement that imposes any obligation or liability on the indemnified Party without the indemnified Party's prior written consent. The indemnified Party may appear in connection with such claims, at its own expense, through counsel reasonably acceptable to the indemnifying Party.

EXCLUSION OF DAMAGES

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL EITHER PARTY TO THIS AGREEMENT, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS, OR LICENSORS, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION VIA SUBSCRIBER'S SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF COMPANY), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE COMPANY'S LIABILITY TO SUBSCRIBER, SUBSCRIBER'S AFFILIATES, OR ANY THIRD-PARTY ARISING OUT OF THIS AGREEMENT OR THE SERVICES, SHALL IN NO EVENT EXCEED THE FEES PAID BY SUBSCRIBER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS LIMITATION OF LIABILITY SECTION IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE SUBSCRIBER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES PROVIDED FOR IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM COMPANY'S INTELLECTUAL PROPERTY CLAIMS INDEMNITY OBLIGATIONS OF THIS AGREEMENT.

Jurisdiction-specific exclusions

Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for a Party's own fraud, willful injury to the person or property of another, or violation of law which means that some of the above limitations may not apply to Subscriber. **IN THESE JURISDICTIONS, THE COMPANY'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.**

Enforceable against Company

Any claims or damages that Subscriber may have against Company shall only be enforceable against Company and not any other entity, nor any officers, directors, representatives, or agents of Company.

Export Compliance

The Services and other technology, and derivatives thereof, may be subject to export controls and economic sanctions laws and regulations of the United States and other jurisdictions. Subscriber agrees to comply with all such laws and regulations as they relate to the access to and use of the Services and other Company technology. Each Party represents that it (nor its parents or controlling shareholders) is not named on any U.S. government or other applicable restricted-party list, and Subscriber will not, and will not permit any agent or end-user to: (a) access or use any Service in a U.S. embargoed or U.S. sanctioned country or region, (e.g., Cuba, Iran, North Korea, Syria, Crimea, or any other country or region embargoed or sanctioned during the Subscription Term); (b) access or use any Service if Subscriber, agent, or end-user is named on any U.S. government or other applicable restricted-party list; (c) place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations or other similar laws; or (d) access or use any Service for any purpose prohibited by the United States or applicable international import and export laws and regulations.

Company reserves the unconditional right to refuse to enter into a contractual relationship with any particular company, legal entity or individual on the basis of export control restrictions, embargoes, sanctions or other considerations to the extent permitted by law.

Use Restrictions

If Subscriber is a U.S. federal government department or agency or contracting on behalf of such department or agency, each of the Services is a "Commercial Product" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Services are licensed to Subscriber with only those rights as provided under the terms and conditions of this Agreement.

Governing Law

The Agreement will be governed by and construed in accordance with the laws of the England and Wales and any applicable federal laws applicable therein, without giving effect to any choice or conflict of law provision, principle, or rule and notwithstanding your domicile, residence, or physical location. Any action or proceeding arising out of or relating to the Services will be instituted in the courts of the England and Wales, and

each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. Subscriber waives any and all objections to the exercise of jurisdiction over Subscriber by such courts and to the venue of such courts.

If Subscriber (a) is not a U.S. citizen; (b) does not reside in the U.S.; (c) is not accessing the Services from the U.S.; and (d) is citizen of one of the countries identified below, Subscriber hereby agrees that any dispute or claim arising from the Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and Subscriber hereby irrevocably submits to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs England and Wales.

If Subscriber is a citizen of any European Union country or Switzerland, Norway or Iceland, the governing law and forum shall be the laws and courts of Subscriber's usual place of residence.

The provisions of the United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Acts will not apply to this Agreement in any manner whatsoever.

Severability

If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

Assignment

Each Party shall not assign this Agreement, in whole or part, or any right or interest herein, without the other Party's prior written consent, and any purported assignment will be void. However, Company may assign this Agreement without consent to an affiliate, or in connection with a merger, consolidation, or corporate reorganization, sale of all or substantially all of its assets or business, or other change of control transaction. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Force Majeure

Neither Party will be responsible or liable for any failure or delay in its performance under this Agreement, except for payment of Fees, to the extent due to any cause beyond its reasonable control. The Party suffering a force majeure event shall use reasonable efforts to mitigate against the effects of such force majeure event.

Waiver

Failure of either Party to insist on strict performance of any provision herein shall not be deemed a waiver of any rights or remedies that either party shall have and shall not be deemed a waiver of any subsequent default of the terms and conditions thereof.

Entire Agreement

This Agreement (together with any service order and/or order form, and linked terms) contains the entire understanding and agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous communications, representations, agreements, and understandings, either oral or written, between the Parties with respect to its subject matter. Except as expressly stated herein, there are no other agreements, representations, warranties or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind between the Parties, except as may otherwise be expressly provided herein. In the event of any conflict or inconsistency between or among the following documents, the order of precedence will be: (1) the service order and/or order form, (2) Statement of Work, (3) this Agreement, and (4) any links provided herein. Any amendment will take precedence over the document it amends. The headings used herein are for convenience only and shall not affect the interpretation of the terms of this Agreement.

Notice

Any legal notice under this Agreement must be in writing and delivered by personal delivery, express courier, or certified or registered mail, postage prepaid and return receipt requested or by email. Notices provided by personal delivery will be effective immediately once personally received by an authorized representative of Company. Notices provided by overnight courier or registered or certified mail will be effective once received and where confirmation has been provided to evidence the receipt of the notice. Notices will be sent to Subscriber at the address set forth on the service order and/or order form or such other address as Subscriber may specify. Notices will be sent to Company at the following address: c/o Tivarri, 28 Victoria Buildings, Bath, BA2 3EH, United Kingdom.

Contact Information

For general inquiries, complaints, questions or claims concerning the subscription, please contact:

Tailpipe 28 Victoria Buildings, Bath ,BA2 3EH , United Kingdom, +44 1225 42887 hello@tailpipe.ai

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