

**AI21 MODELS**  
**TERMS OF SERVICE FOR THIRD PARTY PLATFORMS**

Last updated: July 20, 2023

These *AI21 Models Terms of Service* (the "**Terms**" or "**Agreement**") apply to, and govern, your access to and use – via a third party platform, such as an online marketplace (a "**Third Party Platform**") – of the specific AI21 Model(s) covered under your online order or other subscription ("**Order**") entered into with the operator of the Third Party Platform ("**Third Party Platform Provider**").

The Agreement constitutes a binding agreement between **AI21 Labs Ltd.** ("**Company**", "**we**", "**us**", or "**our**") and the customer entity specified in the Order or otherwise accessing the AI21 Models ("**Customer**", "**you**", or "**your**"). Company and Customer may be collectively referred to herein as the "**Parties**", and each individually as a "**Party**".

By accessing or using any part of AI21 Models (defined below), you agree to these Terms. IF YOU DO NOT ACCEPT THE TERMS, YOU ARE NOT AUTHORIZED TO ACCESS OR USE ANY PART OF AI21 MODELS.

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.

We reserve the right to unilaterally amend these Terms at any time by posting the modified version at the online location from which you accessed them. If we elect for the modified Terms to apply to you, we (or, if applicable, the Third Party Platform Provider) may provide you with notice by sending an email (or other written notice) to you, or through other similar mechanisms, and **the modified Terms shall become effective and binding fourteen (14) days following such notification (unless the notification specifies a later effective date)**.

**1. Definitions**

"**AI21 Models**" means our AI models (provided on a models-as-a-service basis), and associated application programming interfaces (APIs), software, model weights, model configurations, model parameters, tools, and other related Intellectual Property.

"**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.

"**API Call**" means a call or query from your Customer Application to the AI21 Models.

"**Confidential Information**" means all information disclosed or otherwise made available by one Party to the other Party, regardless of form, which is designated as 'confidential' (or the like), and/or that a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure, and includes, but is not limited to: (a) any information related to Discloser's business, such as cost data, pricing methodologies, price lists, business plans and opportunities, marketing plans, financial and accounting information, forecasts and valuations, market share data, sales volumes, discounts, and budgets; (b) information relating to actual or potential customers, suppliers, products and services; and (c) technical data, computer programs and software code (including firmware and source code), ideas, inventions, algorithms, know-how, analyses, lab notebooks, specifications, processes, techniques, formulas, engineering designs and drawings, architectures, circuit schematics and circuit layouts, models, samples, hardware configuration information, and other technology and intellectual property. For the avoidance of doubt, any discounts (or other deviations from our standard pricing or payment terms) granted to you shall be deemed our Confidential Information (except that you may disclose such Confidential Information to the Third Party Platform Provider).

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

"**Customer Content**" means any Content that: (a) you transmit, input, or otherwise provide or make available to the Third Party Platform or the Third Party Platform Provider in connection with AI21 Models (which Content, for the avoidance of doubt, shall not be transmitted automatically to Company); and/or (b) you decide (in your sole discretion) to provide or otherwise made available directly to Company.

"**Customer Application**" means the software application, website, tool, service, or product for which you are using AI21 Models.

"**End User**" means an end user of your Customer Application.

"**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, technology, and other 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.

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

"**Model Output**" means any output Content generated for you hereunder by AI21 Models.

"**Professional Services**" means AI21 Models-related installation, deployment, configuration, training, customization, integration, or other professional services. For the avoidance of doubt, model training services provided by Company are Professional Services.

"**Subscription Scope**" means any AI21 Models usage or consumption limitations and parameters (for example, number of Users, number or type of Customer Applications, number of API Calls, number of deployed instances, number of models, available features and functionalities, *etc.*) specified in the Order.

"**Site**" means the Company's website currently at ai21.com.

"**Support Services**" means any AI21 Models-related technical support and maintenance services specified in the Order. If no such services are specified in the Order, then "Support Services" shall mean Company's standard technical support services made available via the Site.

"**Trained Model**" means a custom model, based on Company's base model(s), which has been trained or otherwise generated by or for Customer in connection with this Agreement and/or the Third Party Platform, based on one or more datasets provided by or on behalf of Customer.

"**Update**" means an upgrade or update (such as a fix or patch) to or of AI21 Models.

"**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 AI21 Models and/or Model Output (such as metadata such as processing time and length of text, aggregated data, analytics, as well as parameters relating to the use of AI21 Models such as number of results requested from AI21 Models).

"**User**" means your employees and contractors who are authorized by you to use AI21 Models, and for whom you have supplied a user identification and password for AI21 Models. Acts and omissions of a User shall be deemed your acts and omissions, for which you shall remain primarily responsible and liable.

## 2. **Subscription**

- a) General. Subject to the terms and conditions of this Agreement (including without limitation your payment of all applicable fees), Company grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license, during the Term (defined below), to make API Calls to the AI21 Models from Customer Application (the "**Subscription**"). For the avoidance of doubt: (x) the Subscription is subject to the applicable Subscription Scope, and you shall not use any technical or other means within, or external to, AI21 Models to exceed or circumvent the Subscription Scope, (y) the Subscription does not grant you any direct access to, or use of, the AI21 Models' software code, weights, algorithms, configuration, or other underlying technology, and you shall refrain from accessing or using such software code, weights, algorithms, configuration, or underlying technology (and any references herein to "access" or "use" of the AI21 Models shall be construed accordingly); and (z) your access to and use of Model Output you display within your Customer Application, must comply with any technical documentation, usage guidelines, parameters, and other requirements provided to you in connection with your Subscription (or otherwise incorporated herein by reference), as may be modified by us from time to time ("**Developer Documentation**"), as well as with all applicable Laws. Unless the context requires otherwise, references in this Agreement to "AI21 Models" shall be deemed to include the Developer Documentation as well. Any rights not expressly granted herein are hereby reserved by Company and its licensors, and, except for the Subscription, you are granted no other right or license in or to AI21 Models, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.
- b) Usage Restrictions. You are not authorized to access or use AI21 Models other than by way of making API Calls from the Customer Application pursuant to your Subscription. Notwithstanding any direct or indirect access you may receive (whether authorized or not) to any portion of AI21 Models, you shall not do (or permit or encourage to be done) any of the following Subscription restrictions (in whole or in part):
- (i) copy, create public Internet "links" to, "frame", or "mirror" AI21 Models;
  - (ii) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available AI21 Models to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment), but this does not restrict you from allowing a third party providing you with professional services from exercising your Subscription rights on your behalf (provided that such third party agrees to be bound by the usage restrictions herein, and that Company will have no obligation or liability toward it);
  - (iii) publicly perform, display or communicate AI21 Models;
  - (iv) modify, adapt, translate, or create a derivative work of AI21 Models;
  - (v) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code, non-literal aspects, or other underlying components (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, algorithms, models, or model weights) of, AI21 Models, for example, by exfiltrating the weights of our models by cloning via logits;
  - (vi) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in AI21 Models;
  - (vii) circumvent, disable or otherwise interfere with security-related or technical features or protocols of AI21 Models;
  - (viii) use AI21 Models to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, AI21 Models;
  - (ix) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt AI21 Models, or use any robot, spider, scraper, harvesting, or any other automated means to access AI21 Models;

- (x) employ any hardware, software, device, or technique to circumvent any Subscription limitations; or
  - (xi) use AI21 Models or Model Output to circumvent the security of another person's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction.
- c) Delivery and Hosting. AI21 Models will be made available to you as a cloud service via the Third Party Platform. The hosting of AI21 Models (and related processing) will be provided by the Third Party Platform Provider.
- d) Features and Functionalities. We may, from time to time, modify and replace the features and functionalities (but not material functionalities to which you are entitled under the Order, unless it improves the material functionality), of AI21 Models. Some features and functionalities may in any event be restricted by geography or otherwise, in order for us to comply with applicable Law or commitments to third parties. You acknowledge and agree that your 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 Company regarding future functionalities or features.
- e) Monitoring. You agree that the Third Party Platform Provider may monitor (and collect information, such as Usage Statistics, regarding) any AI21 Models activity (for example, monitoring the number of API Calls, model version information, and length of input and output), and may share such information with Company.
- f) Updates. All references herein to "AI21 Models" shall include any Updates made available to you by Company via the Third Party Platform Provider. Company may from time to time provide Updates, but shall not be under any obligation to do so. Such Updates will be supplied according to whatever then-current internal policies Company may have in place, and some Updates may in any event be limited, suspended or restricted by geography, volume, duration or any other criteria decided by Company in its sole discretion. Company shall have no responsibility, obligation, or liability of any kind whatsoever in respect of versions of AI21 Models that are not Updated. An Update may be accompanied by separate or additional terms and conditions, as well as additional fees (in each case, "**Update Specific Terms**"). Unless expressly stated otherwise in Update Specific Terms, all Update Specific Terms apply in addition to (and not instead of) this Agreement.

### 3. Professional and Support Services

- a) Support Services. Subject to you remaining current all payment obligations under the Order, you will be entitled to receive the Support Services.
- b) Professional Services. Company 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* executed 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 into this Agreement by reference.
- c) General. Professional Services and Support Services (collectively, "**Professional and Support Services**") will be performed by us and/or our Affiliates and are provided for the benefit of you only. You shall fully cooperate with us, and shall make available to us all relevant systems, assets, and resources, in connection with the provision of Professional and Support Services. With your prior written approval (not to be unreasonably withheld, conditioned, or delayed) we may subcontract Professional and Support Services (in whole or in part) to a third party contractor. Unless expressly agreed otherwise in writing, Professional and Support Services shall be carried out remotely, and any physical attendance at your offices or other locations requested by you, if agreed to by us (for example, in a Professional Services SOW), shall be charged at our then-current rates, and we shall also be entitled to reimbursement for travel and lodging costs and expenses incurred.

#### 4. Customer Application and Content

- a) Ownership. As between you and Company, you are the exclusive owner of your Customer Application and Customer Content.
- b) Customer Content License. To the extent you provide or otherwise make available Customer Content directly to Company or any of its Affiliates (*i.e.*, not through Third Party Platform Provider), you hereby grant to Company and its Affiliates a worldwide, non-exclusive, royalty-free, paid-up, sublicensable (to our data subprocessors, as well as to our third party service providers engaged by us in the provision of Professional and Support Services), irrevocable right and license to copy, process, create derivative works of, modify, adapt, and otherwise use your Customer Content for the purpose of performing under this Agreement (for example, providing Support Services or Professional Services). **For the avoidance of doubt, it is agreed that the foregoing license to Company shall only extend to Customer Content that you provide or otherwise make available directly (*i.e.*, not through Third Party Platform Provider) to Company or its Affiliates.**
- c) Responsibility. You are, and shall always remain, solely responsible and liable for your Customer Application and Customer Content, as well as how you use the Model Output, including without limitation the provision of support, maintenance and other technical assistance in relation thereto, as well as ensuring your Customer Application and Customer Content does not violate any applicable Laws or third party rights. Without limiting the generality of the foregoing:
  - (i) under no circumstances shall we be required to provide goods or services to, or otherwise communicate with, an End User;
  - (ii) you will ensure that your use of AI21 Models or Model Output does not violate any agreement between you and any third party (such as End Users), or any Laws;
  - (iii) you will ensure that your Customer Application and Customer Content do not include or link to, do not otherwise allow or encourage, and are not used for: (A) illegal activities, such as child pornography, gambling, piracy, or violating copyright, trademark or other intellectual property rights or Laws; (B) accessing or authorizing anyone to access AI21 Models from an embargoed country as prohibited by the U.S. government; (C) threatening, stalking, harassing, defaming, defrauding, degrading, victimizing or intimidating anyone for any reason; (D) misleading End Users that Model Outputs were human-generated for generative use cases that do not involve a human in the loop; (E) generating spam; or (F) generating content for dissemination in electoral campaigns;
  - (iv) you will ensure that: (A) no processing of Customer Content under this Agreement (whether by us, our Affiliates, or if applicable the Third Party Platform Provider) will violate any Law, proprietary right, or privacy right; and (B) you have 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; and
  - (v) you will make reasonable efforts to reduce the likelihood, severity, and scale of any societal harm caused by your Customer Application.
- d) Data Location. Customer Content you provide directly to Company, may be hosted and processed by Company and its respective third party service providers in Israel, the United States, or other locations around the world.
- e) Data Storage. AI21 Models is not intended to, and will not, operate as a data storage or archiving product or service, and you agree not to rely on AI21 Models for the storage of any Customer Content whatsoever. Customer is solely responsible and liable for the maintenance and backup of all Customer Content.
- f) Security. Your network, operating system and the software of your servers, databases, and computer

systems must be properly configured to securely operate your Customer Application and store Model Output collected through your Customer Application. You must have a process to respond to any vulnerabilities or breaches in your Customer Application.

## 5. Payment to Third Party Platform Provider

Your Subscription is subject to you paying the applicable amounts under the Order (if any). Accordingly, the Subscription may be terminated or suspended if you fail to make such payments.

## 6. Company Ownership

We (and/or our licensors and suppliers, as applicable) are, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all Intellectual Property Rights) in and to:

- (a) AI21 Models (and all underlying Intellectual Property, such as our library of base models);
- (b) the results of the Professional and Support Services, as well as all know-how, processes, methods, and similar Intellectual Property related to the Professional and Support Services;
- (c) our Confidential Information;
- (d) any feedback, suggestions, or ideas for or about AI21 Models or Model Output that you provide directly to us (*i.e.*, not through Third Party Platform Provider) (collectively, "**Feedback**"); and
- (e) 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 that we create or develop.

You shall procure the assignment (and hereby irrevocably assign) to us (and/or our designee(s)) the ownership rights set forth in this Section (*Company Ownership*), and undertake to do all things reasonably requested by us (including without limitation executing, filing, and delivering instruments of assignment and recordation), at our reasonable expense, to perfect such ownership rights.

## 7. Confidentiality

- a) General. Either Party may disclose or otherwise make available Confidential Information under this Agreement and shall, in doing so, be referred to as the "**Discloser**" hereunder. The other Party when receiving Confidential Information shall be referred to as the "**Recipient**". For the avoidance of doubt, disclosures by, to, or between the Parties' respective Affiliates shall also be deemed Confidential Information and be subject to this Agreement.
- b) Exclusions. Confidential Information shall not include any information that: (a) is lawfully known by the Recipient at the time of disclosure, on a non-confidential basis; (b) is, or becomes, through no fault of the Recipient, available to the general public; (c) is independently developed by the Recipient without use or reference to Confidential Information; or (d) is rightfully disclosed to Recipient on a non-confidential basis by a third party.
- c) Safeguarding. The Recipient shall not use the Confidential Information for any purpose, except to perform under this Agreement and/or as otherwise expressly permitted by this Agreement. To maintain the confidentiality of the Discloser's Confidential Information, Recipient agrees to use the same degree of care it employs for the protection of its own Confidential Information (and in any event, a reasonable degree of care), and to procure that all such measures and safeguards are taken by its Representatives (defined below).
- d) Non-Disclosure. Recipient shall not disclose or make available any Confidential Information to any person other than to its Representatives (defined below) who have a strict need to know the Confidential Information for the purpose of Recipient performing its obligations under this Agreement, and who are bound to the Recipient by an agreement of confidentiality that contains

substantially the same confidentiality obligations contained in this Agreement (or by comparable fiduciary or professional duties of confidentiality). Recipient shall remain primarily responsible and liable for its Representatives' acts and omissions in respect of the Confidential Information, as fully as if they were the acts and omissions of Recipient itself. "**Representatives**" means Recipient's and/or its Affiliates' directors, officers, employees, professional advisors (including, without limitation, attorneys, financiers, and accountants), contractors, and agents.

- e) Compelled Disclosure. Recipient may disclose Confidential Information to the minimum extent required by a Legal Requirement; *provided, however*; that before Recipient does so disclose it shall, to the extent legally permitted, use reasonable endeavors to give the Discloser as much notice of such disclosure as possible, and reasonably assist Discloser in seeking a protective order or other appropriate remedy. "**Legal Requirement**" means (a) an order of any court of competent jurisdiction, any regulatory, judicial, governmental or similar body, or any taxation authority of competent jurisdiction, (b) the rules of any listing authority or stock exchange on which its shares or those of any of its Affiliates are listed or traded, and/or (c) the laws or regulations of any country to which its affairs or those of any of its Affiliates are subject.
- f) Proprietary Notices. Recipient shall not remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed on or in Confidential Information.
- g) Return/Destruction of Confidential Information. Promptly following written request by Discloser at any time (including within a reasonable time following termination of this Agreement), Recipient shall, as reasonably directed, return, destroy, and/or permanently delete all Confidential Information in its possession or control, and shall thereafter, upon written request, have one of its officers certify in a signed writing compliance with the foregoing. Notwithstanding the foregoing, the Recipient may retain an archival copy of Confidential Information solely to the extent that: (a) such archival copy is contained in electronic files as part of the Recipient's regular data backup or archiving procedures, and/or (b) such retention is required by any Legal Requirement; and in each of the foregoing cases under paragraphs (a) and (b), provided further that the Recipient shall refrain from accessing or using such Confidential Information, and shall treat such Confidential Information at all times in accordance with the provisions of this Agreement and shall refrain from any use thereof.

## 8. Privacy and Data Protection

- a) Your Compliance. You must comply with all Laws applicable to your use of AI21 Models and the data accessed through AI21 Models and your Customer Application, including without limitation, Laws related to the privacy of personally identifiable information ("**Privacy Laws**"), such as the European Union General Data Protection Regulation, Regulation (EU) 2016/679 ("**GDPR**") and the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100–1798.199 ("**CCPA**"). Your Customer Application must include your own user agreement and privacy policy (collectively, "**End User Agreement**"), which is prominently located where End Users download or access your Customer Application, and which accurately discloses to End Users how and what personal information you collect, use, store and share through your Customer Application. If you are governed by the GDPR or CCPA and will be using AI21 Models for the processing of "personal data" (as defined in the GDPR) or "Personal Information" (as defined in the CCPA), you may wish to execute our *Data Processing Agreement*. Please contact [privacy@ai21.com](mailto:privacy@ai21.com) for details. In no event must any End User Agreement grant any rights, impose any obligations or liabilities, or make any statements that conflict or are inconsistent with any of the terms and conditions of this Agreement (for example, the End User Agreement must not impose or purport to impose any obligation or liability on us or our Affiliates, and must not include any statement or suggestion contrary to our proprietary rights).
- b) HIPAA. We do not intend, and absent our prior express written consent we do not permit, use of AI21 Models by any person that is a "covered entity" or a "business associate" under the Health Insurance Portability and Accountability Act, as amended ("**HIPAA**"), where such use would involve access by us to "protected health information" (as defined under HIPAA). If you are (or become) a "covered entity" or "business associate" as defined in HIPAA, you will not use AI21 Models in any manner that would permit such access, absent prior express written consent from us.

## 9. Term and Termination

- a) Term. This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue for the duration of the subscription term specified in the Order, as well as any renewal thereof (the "**Term**"). "**Effective Date**" means the *earlier* of (i) the date the Order is entered into between you and the Third Party Platform Provider, unless the Order itself specifies a different start/effective date, or (ii) the date you first access the AI21 Model(s) covered under your Order. This Agreement will automatically terminate in the event your Order is terminated, whether by you (for example if you cancel your Subscription) or the Third Party Platform Provider.
- b) Termination. This Agreement may be terminated if you commit a breach under this Agreement.
- c) Suspension. The provision of AI21 Models and/or the Professional and Support Services may be suspended: (a) if such suspension is deemed necessary as a result of your breach of the Subscription (such as a breach under Section 2(b) (*Usage Restrictions*)) or your breach under Section 4 (*Customer Application and Content*); (b) if it is reasonably determined that suspension is necessary to avoid material harm to us, to our other customers, or to AI21 Models; and/or (c) as required by Law or at the request of governmental entities.
- d) Effect of Termination; Survival. Upon termination of the Order, this Agreement will automatically terminate. Upon termination of this Agreement for any reason: (A) the Subscription shall automatically terminate; and (B) you shall cease all access and use of AI21 Models, and cease all integrations with your Customer Application. We may (but shall not be obligated to) at any time delete any Customer Content that you have directly provided to us or our Affiliates. Any right, obligation or provision that is expressly stated to survive or that ought by its nature to survive termination of this Agreement, shall survive (including without limitation Sections 6 (*Company Ownership*) through 13 (*Miscellaneous*)). Termination shall not affect any rights and obligations accrued as of the effective date of termination.

## 10. Disclaimer of Warranties

AI21 MODELS, MODEL OUTPUT, THE PROFESSIONAL AND SUPPORT SERVICES, AS WELL AS ANY OTHER GOODS AND SERVICES PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF THE COMPANY HEREUNDER (COLLECTIVELY, THE "**COMPANY 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 COMPANY AND ITS LICENSORS.

COMPANY DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION: (A) REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, TIMELINESS, COMPLETENESS, OR QUALITY OF COMPANY MATERIALS; (B) THAT CUSTOMER'S USE OF COMPANY 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; (D) REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY LAWS, OR OTHER GOVERNMENT OR INDUSTRY RULES OR STANDARDS; OR (E) REGARDING THE INTER-OPERABILITY OF YOUR CUSTOMER APPLICATION WITH AI21 MODELS. COMPANY 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 THIRD PARTY PLATFORMS, THIRD PARTY PLATFORM PROVIDERS, CLOUD HOSTING PROVIDERS, OR PUBLIC NETWORKS.

## 11. Indemnification

You agree to defend, indemnify, and hold harmless us, our Affiliates, and each of our employees, officers, directors, agents and representatives, from and against all claims, damages, losses, liabilities, judgments, penalties, fines, costs, and expenses (including attorneys' fees) arising from or relating to: (i) your breach of these Terms; (ii) your use of AI21 Models, Model Output, and Developer Documentation; (iii) your Customer Application; (iv) any Customer Content; and/or (v) your actual or alleged infringement, misappropriation or violation of our, our Affiliate's or any third party's Intellectual Property Rights or other rights.

## 12. LIMITATION OF LIABILITY

- a) EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 8 (*CONFIDENTIALITY*), CUSTOMER'S BREACH OF THE SUBSCRIPTION (INCLUDING WITHOUT LIMITATION A BREACH UNDER SECTION 2(b) (*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.
- b) THE COMBINED AGGREGATE LIABILITY OF COMPANY AND ALL ITS AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED ONE HUNDRED US DOLLARS (USD\$100).
- c) 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, MISREPRESENTATION, RESTITUTION, OR OTHERWISE.

## 13. Miscellaneous

- a) Entire Agreement. This Agreement (and its annexes, if any) 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 these Terms. 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.
- b) Precedence. To the extent of any conflict or inconsistency between a provision in these Terms on the one hand, and a provision in a Professional Services SOW on the other hand, the former shall prevail (except to the extent expressly stated otherwise in the Professional Services SOW, or to the extent related solely to the Services particulars of the Professional Services SOW, in which case the latter shall prevail).
- c) Feature Specific Terms. Features and functionalities may be accompanied by separate or additional terms and conditions (in each case, "**Feature Specific Terms**"). Except to the extent expressly stated otherwise within Feature Specific Terms, all Feature Specific Terms apply in addition to (and not instead of) this Agreement.
- d) Assignment. This Agreement may not be assigned by you, in whole or in part, without our prior express written consent. We may assign this Agreement, in whole or in part, without restriction or obligation. Furthermore, any of our obligations hereunder may be performed (in whole or in part),

and any of our rights (including invoice and payment rights) or remedies hereunder may be exercised (in whole or in part), by our Affiliates. 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.

- e) 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 shall not apply to this Agreement and is 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. EXCEPT TO SEEK EQUITABLE RELIEF, 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 you may have against us shall only be enforceable against us, and not any other entity or our officers, directors, representatives, employees, or agents. Without derogating from any limitations or exclusions of liability in this Agreement, you hereby irrevocably waive any claims against us for sums to which you are entitled under any insurance policy carried by you or on your behalf.
- f) 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.
- g) 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.
- h) Relationship. The relationship of the Parties is solely that of independent contractors, and 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 us in connection with the provision of AI21 Models and/or the performance of our 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.
- i) 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 Company's Intellectual Property Rights. For the avoidance of doubt, any problems relating to hosting of AI21 Models by a third party is beyond the reasonable control of Company.

- j) Export Control. You must not use, transfer, export, re-export, import, or divert AI21 Models, Model Output, or any of our Confidential Information in violation of any Export Control Laws, or otherwise to: (A) Lebanon, Syria, Iran, Iraq, Sudan, Yemen, Cuba, or North Korea (or other countries specifically designated in writing by us from time to time); (B) any U.S. embargoed countries; or (C) anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. You represent and warrant that you are not located in any such country or on any such list. "**Export Control Laws**" means all applicable export and re-export control Laws applicable to you and/or Company 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.
- k) Government Users. If you are a U.S. government entity, or this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), you acknowledge that AI21 Models (and any other software and documentation we make available to you) 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 AI21 Models 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.
- l) 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).
- m) Customer Resources. You shall be solely responsible: (a) for providing all hardware, software, systems, assets, facilities, and ancillary goods and services needed for you to access and use AI21 Models; and (b) for ensuring their compatibility with AI21 Models. In the event we become legally or contractually required to modify or replace features or functionalities of AI21 Models in order to ensure that it complies with the terms of service or privacy policies of various platforms, networks and/or websites, you shall be responsible for making all necessary changes to your hardware, software, systems, assets, and facilities in order to continue using AI21 Models.
- n) Notices. Except as may be specified otherwise in this Agreement, all notices, consents, or other communications provided for in connection with this Agreement shall be in writing, and shall be deemed given as follows: (A) when received, if personally delivered; (B) the second business day after mailing, when mailed via either U.S. mail or registered or certified mail with postage prepaid and return receipt requested; (C) upon delivery confirmation, when delivered by nationally recognized overnight delivery service ("**Courier**"); (D) the second business day after sending confirmed by facsimile; or (E) the first business day after sending by email. **Notwithstanding anything in these Terms to the contrary, Company shall not be required to provide you with**

**any notice (for example, if Company terminates this Agreement) in the event the Third Party Platform Provider has not provided Company with your identity and contact details.** Notices by you to us must be given by Courier or registered mail, together with an email copy, to the following addresses:

AI21 Labs Ltd.  
Migdal Hameah  
124 Shlomo Ibn Gabirol Street,  
Tel Aviv, Israel  
Email: [support@ai21.com](mailto:support@ai21.com)