

Terms of Service

Last Updated: May 29th, 2025

These Terms of Service (the “**Terms**”) constitute a legally binding agreement between you and Akave, Inc. (“**Akave**,” “**we**,” or “**us**”) with respect to your access to and use of the Data Storage Service (as defined below). Your access to and use of the Data Storage Service is offered subject to your acceptance of all terms and conditions set forth herein.

PLEASE READ THESE TERMS CAREFULLY. BY CLICKING “I ACCEPT” OR BY ACCESSING OR USING THE DATA STORAGE SERVICE IN ANY MANNER, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS AND BY SUCH OTHER TERMS, CONDITIONS, POLICIES, AND DOCUMENTS THAT MAY BE INCORPORATED HEREIN BY REFERENCE, INCLUDING, WITHOUT LIMITATION, THE AKAVE PRIVACY POLICY^[SA1]; (B) AFFIRM THAT YOU ARE AT LEAST 18 YEARS OF AGE (OR HAVE REACHED THE AGE OF MAJORITY IN THE JURISDICTION WHERE YOU RESIDE); AND (C) IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER ORGANIZATION, REPRESENT AND WARRANT THAT YOU HAVE THE ORGANIZATIONAL AND LEGAL AUTHORITY TO ACCEPT THESE TERMS ON SUCH COMPANY’S OR OTHER ORGANIZATION’S BEHALF AND TO BIND SUCH COMPANY OR ORGANIZATION. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT ACCESS OR USE THE DATA STORAGE SERVICE IN ANY MANNER.

THESE TERMS MAY REQUIRE THE USE OF BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES RATHER THAN JURY TRIALS OR CLASS ACTIONS, IN ACCORDANCE WITH THE TERMS OF SECTION 21 (**DISPUTE RESOLUTION**) BELOW.

AKAVE MAY REFUSE ACCESS TO OR USE OF THE DATA STORAGE SERVICE FOR YOUR NONCOMPLIANCE WITH ANY PART OF THESE TERMS. THESE TERMS ARE VOID WHERE PROHIBITED BY LAW, AND ANY RIGHTS TO ACCESS OR USE THE DATA STORAGE SERVICE IS REVOKED IN SUCH JURISDICTIONS.

1. Applicability. As used herein, “you” means the natural person or entity that has agreed to be bound by these Terms, including, without limitation and as dictated by the circumstances, (i) an entity that is purchasing or registering (or that has purchased or registered) for access to the Data Storage Service, whether on a paid subscription, free

trial, or other basis (a “**Subscriber**”), and (ii) an individual employee or representative of a Subscriber who accesses or uses the Data Storage Service as an authorized user of such Subscriber (an “**Authorized User**”). If you are a Subscriber, you are responsible for all acts and omissions of your Authorized Users with respect to the Data Storage Service, and for ensuring the compliance of your Authorized Users with the provisions of these Terms.

2. Data Storage Service. Akave operates an online data storage and retrieval service through its website with a homepage at <https://akave.cloud/>, its subdomains and/or other websites, and those associated mobile and/or desktop applications designated by Akave for use with such service from time to time (the “**Site**”), including all features, content, tools, applications, application program interfaces, widgets and other tools and services made available therethrough or included thereon (collectively, the “**Data Storage Service**”). The scope of your access to the Data Storage Service may be determined or otherwise limited by the terms of the applicable Subscription Plan (as defined below) selected by Subscriber, which Subscription Plan will be identified and described on an order form executed by Subscriber and Akave and incorporating these Terms, or through such other ordering process (including via online registration or via the online check-out functionality available through the Site) as may be permitted by Akave from time to time (an “**Order**”). Without limiting the foregoing, Subscriber’s and its Authorized Users’ use of the Data Storage Service is subject to any usage limitations, including, without limitation, capacity and retrieval limitations, set forth on the Order or otherwise presented through the Site at the time of purchase. Akave may choose not to accept Orders at its sole and absolute discretion. For the avoidance of doubt, all Orders accepted by Akave shall be subject to these Terms, except where Subscriber and Akave have agreed to and executed a separate written agreement with respect to an applicable Order. Akave reserves the right to discontinue or modify any aspect of the Data Storage Service at any time and in its discretion.

3. Changes to Terms. Akave reserves the right to modify or change these Terms, in whole or in part, at any time and in its sole discretion. Any modifications or changes to these Terms will be effective immediately upon posting to the Site, unless otherwise specified in the updated Terms. Your continued access to and use of the Data Storage Service confirms your acceptance of these Terms and any changes or modifications made to these Terms. You should review these Terms and the Akave Privacy Policy^[SA2] frequently and ensure you understand all terms, conditions, and policies applicable to your access to and use of the Data Storage Service.

4. Access to the Data Storage Service.

a. *Subscribers and Authorized Users.* Subject to and conditioned upon Subscriber’s compliance with these Terms, Akave will provide to Subscriber’s Authorized Users

access to and use of the Data Storage Service, in accordance with Subscriber's Subscription Plan and during Subscriber's paid-up subscription period (or Trial (as defined herein), if applicable), as set forth in the Order.

b. *Limitations.* The rights granted under Section 4(a) hereof are non-exclusive, non-transferable (except in accordance with Section 22 hereof), non-sublicensable, and revocable (in accordance with the terms hereof). Akave may suspend or terminate Subscriber's or any Authorized User's access to the Data Storage Service or any component thereof if Akave reasonably determines that Subscriber or such Authorized User has violated any part of these Terms. Additionally, all rights granted under Section 4(a) shall immediately terminate upon any termination of these Terms or Subscriber's Subscription Plan, in which event all Authorized Users shall immediately cease all access to and use of the Data Storage Service in accordance with Section 9(e) hereof. Subscriber will be liable to Akave for any violation of these Terms by Subscriber or any Authorized User.

c. *Rights of Subscribers.* As between Akave and Subscriber, Subscriber shall be responsible for determining the scope and level of each Authorized User's access to the Data Storage Service, subject to all such usage restrictions and other limitations as may be set forth herein or in the Order. Subscriber may, at any time and in its sole discretion, revoke or limit the access of any Authorized User to the Data Storage Service. If, at any time, Subscriber ceases to classify an individual as an Authorized User hereunder, all rights of such person or entity to access or use the Data Storage Service shall immediately cease.

5. User Accounts. In order to access and use the Data Storage Service or certain features thereof, you will be required to establish one or more Akave user accounts (each, a "**User Account**"). You must provide true, accurate, current, and complete information as prompted by the applicable registration or login form, and you are responsible for keeping such information up to date. You are responsible and liable for all activities conducted through your User Account(s), regardless of who conducts those activities. You are responsible for maintaining (and if you are a Subscriber, for ensuring that your Authorized Users maintain) the confidentiality of any user IDs, passwords and other credentials associated with each User Account, and shall immediately notify Akave of any actual or suspected unauthorized access to or use of any User Account or any associated user IDs, passwords, or other credentials. Authorized Users may not share their access credentials with any other individuals, and Subscriber will not permit access to or use of the Data Storage Service by anyone other than its Authorized Users. You will cooperate fully with Akave and take all actions that Akave reasonably deems necessary to maintain or enhance the security of the Data Storage Service and Akave's computing systems and networks. Akave is not and shall not be deemed liable for any loss or damage to you or any third party arising from your (and if you are a Subscriber, your Authorized Users') failure to comply with this Section 5.

6. Subscriber Data.

a. *Provision of Data.* You understand and acknowledge that Akave's ability to provide the Data Storage Service to Subscriber and its Authorized Users is expressly dependent upon Subscriber, directly or through its Authorized Users, providing or making available to Akave all required data (the "**Data**"). All Data must be provided or otherwise made accessible to Akave in the manner set forth in the Order or as otherwise expressly approved of by Akave from time to time. You acknowledge and agree that Akave shall not be liable to Subscriber, any Authorized User, or any third party for any failure, delay, or deficiency in the performance or availability of the Data Storage Service arising from any failure by Subscriber or its Authorized Users to provide all Data to Akave on a full, complete, and timely basis in accordance with the requirements of this Agreement.

b. *Data Obligations.* As between you and Akave, you are solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Data. You will not (and if you are a Subscriber, you will ensure that your Authorized Users do not), directly or indirectly, upload or otherwise submit to Akave or the Data Storage Service any Data or other information, materials, or content that: (a) infringes the intellectual property rights, rights of privacy or publicity, or other proprietary rights of any third party, (b) violates any applicable law, or (c) contains any malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code. By uploading, submitting, or otherwise making available any Data to Akave or the Data Storage Service, whether directly or indirectly, you represent, warrant, and covenant that: (i) all such Data has been and will be collected and made available to Akave in accordance with all applicable laws, rules and regulations; and (ii) you have all necessary permissions, authorizations, licenses, and consents necessary to capture, collect, provide, transmit, and otherwise make the Data available to Akave, including, without limitation, all necessary consents from any data subjects, and to permit the processing of such Data by Akave as needed for its operation and provision of the Data Storage Service.

c. *Restricted Data.* You shall not (and if you are a Subscriber, you shall ensure that your Authorized Users do not) provide Akave with any Data containing or constituting health or medical data, individually identifiable health information, payment card data, consumer information data, personal data or similarly sensitive data that triggers specific data privacy or security obligations for the processing, transfer, or storage of

such data (collectively, “**Regulated Data**”) without first notifying Akave in writing and Akave consenting in writing to receive and store such Regulated Data. If Akave consents in writing to receive and store such Regulated Data, you understand that Akave may require Subscriber to execute additional documents, such as an amendment to the Order, a data processing agreement, a business associate agreement, or other agreements as a condition precedent to Akave’s receipt of such Data. Subscriber will be deemed the controller of any personal data under all applicable data protection laws. You shall comply with all applicable laws with respect to the transfer, storage, controlling, and processing of Regulated Data. You shall comply, and if you are a Subscriber, you will ensure that your Authorized Users and all of your affiliates, agents, contractors, and customers to comply, with all applicable export control laws and regulations, as they relate to the Data being transferred to Akave, the Data stored by Akave, and access to the Data Storage Service.

d. *Data Encryption.* Except where expressly set forth on the Order or otherwise agreed to by Subscriber and Akave in writing, Akave will not encrypt any Data received under or in connection with these Terms. In the event that parties have agreed, in the Order or in a separate writing, to the encryption of Data by Akave, Subscriber shall clearly notify Akave in writing, prior to transferring the Data to Akave, of the portion or category of Data that is to be encrypted. Processing for the encryption of Data and the management of encryption keys shall be as set forth on the Order.

7. Restrictions. You shall access and use (and if you are a Subscriber, you shall ensure that all Authorized Users access and use) the Data Storage Service solely within the scope of the rights granted hereunder and in accordance with any user documentation and all applicable laws. You shall not, and if you are a Subscriber, you shall ensure that your Authorized Users do not: (i) copy, reproduce, frame, mirror, modify, decompile, disassemble, create derivative works based on, or reverse engineer the Data Storage Service or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to any of the Data Storage Service or use any of the Data Storage Service for time sharing or similar purposes for the benefit of any third party; (iii) sell, resell, rent or lease the Data Storage Service; (iv) remove any copyright or proprietary notices contained in the Data Storage Service or any output thereof; (v) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the Data Storage Service; (vi) access the Data Storage Service via any bot, web crawler or non-human user; (vii) access or use (or

permit a third party to access or use) the Data Storage Service for any unlawful purpose or for purposes of monitoring the availability, performance or functionality of the Data Storage Service or for any other benchmarking or competitive purposes; (viii) attempt to gain unauthorized access to the Data Storage Service or any related systems, software or networks; (ix) access the Data Storage Service in order to build a competitive product or service, or copy any features, functions or graphics of the Data Storage Service; (x) use the Data Storage Service to transmit viruses or malicious code; (xi) attempt to circumvent any fees or other amounts due hereunder; or (xii) make any use of, or take any other action with respect to, the Data Storage Service or any component thereof in a manner that violates applicable law, any provision of these Terms, or any contractual obligations owed by Subscriber to any third party.

8. Term & Termination. These Terms shall remain in full force and effect while you use or have access to the Data Storage Service. Akave may terminate or restrict your access to any or all of the Data Storage Service or to your User Account for any reason, including, without limitation, if Akave determines that you have violated any provision of these Terms. Any termination of these Terms is without prejudice to any rights or obligations of the parties accrued up to and including the date of termination. Upon termination of these Terms, you will remain liable for any accrued charges and amounts due from you as of the date of such termination, if any, and shall immediately cease to use the Data Storage Service.

9. Subscription Plans.

a. *Subscription Plans.* The Data Storage Service is offered on a subscription basis and in accordance with the individual service plan selected by Subscriber and identified on the Order (a “**Subscription Plan**”). We may modify, terminate, or replace any Subscription Plan from time to time in our sole discretion and without prior notice; provided, however, that any such modification, termination, or replacement shall not become effective as to Subscriber and its Authorized Users until the end of Subscriber’s then-current subscription term. The scope of benefits available to Subscriber and its Authorized Users with respect to any Subscription Plan shall be as described on the Order or as otherwise limited by the terms disclosed to Subscriber at the time of purchase of the Subscription Plan through the Site.

b. *Trial Access.* Where so set forth on the Order, your Subscription Plan may include or commence with a free trial (a “**Trial**”). Akave reserves the right, in its sole discretion, to determine your eligibility for a Trial. If you receive a Trial, you may only use those portions of the Data Storage Service included in the Trial, only for the duration of that Trial, only in accordance with such capacity and usage limitations as may be applicable

to the Trial, and only for the purpose of evaluating the desirability of purchasing access to the Data Storage Service. Upon the expiration of any Trial period, all access to the Data Storage Service by Subscriber and its Authorized Users will cease, except where Subscriber has purchased and/or registered for ongoing access to the Data Storage Service on a commercial basis in accordance with the terms hereof.

c. *Term.* Unless earlier terminated as provided for herein, Subscriber's Subscription Plan shall commence on Subscriber's acceptance of the Order and shall continue for the initial term identified on the Order (the "**Initial Term**"), after which time the Subscription Plan shall automatically renew for successive periods of the same length (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**") unless either party provides the other with written notice of non-renewal not less than 30 days prior to the expiration of the then-current Initial Term or Renewal Term, as the case may be.

d. *Termination for Cause.* Either party may terminate Subscriber's Subscription Plan, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party (a) materially breaches these Terms, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within 60 days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business.

e. *Effect of Termination.* Upon any termination of Subscriber's Subscription Plan for any reason: (a) Subscriber shall (i) except as expressly provided in the following sentence, immediately cease (and ensure that each of its Authorized Users immediately cease) all use of the Data Storage Service, (ii) promptly pay to Akave all Fees (as defined below) and other amounts due and owing (but unpaid) to Akave as of the date of such termination; and (b) Akave shall, if requested in writing by Subscriber within 30 days from the effective date of termination, delete all Data within a reasonable period from such request (not to exceed 6 months). Notwithstanding the foregoing, subject to Subscriber's full payment of all amounts due and owing hereunder and its compliance with these Terms, Akave will permit Subscriber, for a period of thirty (30) days

following expiration or termination of the Subscription Plan, reasonable access to such Data as was available to Subscriber through the Data Storage Service as of the date of such termination or expiration for purposes of permitting Subscriber to download or export such Data. After such 30-day period, Akave will have no obligation to maintain or provide Subscriber or any Authorized User with access to any Data and may thereafter, unless legally prohibited, delete all Data housed in or available through the Data Storage Service.

10. Fees and Payment Terms.

a. *Fees.* As consideration for Akave's provision of the Data Storage Service hereunder, Subscriber will pay to Akave all fees, charges, and other amounts set forth on the Order (as adjusted in accordance with the terms hereof, collectively, "**Fees**"). ALL FEES ARE FULLY EARNED UPON PAYMENT AND ARE NON-REFUNDABLE. AKAVE DOES NOT PROVIDE ANY REFUNDS OR CREDITS WITH RESPECT TO ANY FEES PAID HEREUNDER, INCLUDING, WITHOUT LIMITATION, FOR ANY AMOUNTS PREPAID BY SUBSCRIBER FOR RESERVED STORAGE CAPACITY. Where Subscriber has committed to minimum usage or capacity levels on the Order, Subscriber shall remain responsible for payment of all Fees applicable to such minimum usage or capacity levels, and Fees will not be decreased due to any usage by Subscriber below committed capacity levels.

b. *Changes to Fees.* Akave reserves the right to increase Fees payable hereunder at any time upon 60 days advanced notice to Subscriber; provided, however, that any increase in Fees will not be effective as to Subscriber until the end of the then-current Initial Term or Renewal Term, as the case may be. For the avoidance of doubt, such Fee increases do not include Overage Charges or Fee changes due to Usage Level increases, which shall not be subject to notice under this Section 10(b).

c. *Overage Charges.* Subscriber understands and acknowledges that the pricing and fee levels quoted on the Order have been calculated based on certain usage tiers selected by Subscriber and set forth on the Order (as the same may be increased in accordance with Section 10(d), "**Usage Levels**"). If Subscriber exceeds its applicable Usage Levels at any time during any calendar month or other applicable period occurring in the Term, Akave shall charge to Subscriber and Subscriber shall pay, in addition to all other Fees due hereunder, all applicable overage charges, as determined in accordance with Akave's then-current rates (collectively,

“Overage Charges”). Subscriber agrees and acknowledges that Subscriber, and not Akave, is solely responsible for monitoring and managing its use (and use by its Authorized Users) of the Data Storage Service, including, without limitation, for ensuring that Subscriber’s and its Authorized Users’ usage is in line with Subscriber’s selected Usage Levels.

d. *Usage Level Increases*. In the event that Subscriber exceeds any Usage Levels at any time during any calendar month or other applicable period occurring in the Term (an **“Overage Month”**), Akave shall automatically adjust Subscriber’s then-current Usage Levels to reflect the lowest usage level tier sufficient to cover Subscriber’s actual usage levels during such Overage Month. Akave shall promptly notify Subscriber of any Usage Level adjustments made by Akave in accordance with the preceding sentence and of all resulting Fee changes, which shall be in accordance with Akave’s then-current pricing. Akave will charge Subscriber for, and Subscriber shall pay, such Fees as may be applicable to the updated Usage Levels in accordance with the terms of this Section 10. Any Usage Level adjustments made by Akave in accordance with this Section 10(d) shall be effective with respect to the calendar month or other applicable period immediately following the Overage Month and shall remain in effect for the remainder of the Term unless further adjusted in accordance with the terms of this Section 10(d). For the avoidance of doubt, automatic adjustments to Usage Levels by Akave hereunder shall be limited to Usage Level increases made necessary by Subscriber overages; Akave shall not make any downward adjustments or reductions to Usage Levels as a result of any decrease in Subscriber’s actual usage levels.

e. *Payment Terms*. Except where otherwise set forth in an applicable Order (such as where the Order indicates that Akave will invoice Subscriber for Fees), Subscriber must have a current valid credit card or other payment method acceptable to Akave (a **“Payment Method”**) in order to purchase any Subscription Plan. By providing a Payment Method to Akave, Subscriber is expressly authorizing Akave to charge Subscriber all Fees applicable to Subscriber’s Subscription Plan at the applicable frequency and at the then-current rate. Except as otherwise established by an applicable Order or as otherwise set forth or contemplated herein (including, without limitation, with respect to Overage Charges, which are billed after they are incurred), all Fees are payable and will be billed to Subscriber’s Payment Method in advance of each Initial Term or Renewal Term, as applicable. ALL FEES ARE FULLY EARNED UPON PAYMENT

AND ARE NON-REFUNDABLE. Where an Order indicates that Akave will invoice Subscriber for Fees, Fees will be invoiced: (i) in arrears following the end of each month occurring in the Term, if Subscriber is purchasing access to the Data Storage Service on a month-to-month basis (as identified on the Order), if Subscriber has incurred Overage Charges, or if a Usage Level increase has resulted in increased Fees as set forth above, or (ii) in all other cases, in advance of or promptly following the commencement of the Initial Term and each Renewal Term. Subscriber will pay each invoice issued hereunder no later than 15 days after the invoice date or on such other payment terms as may be specified in the Order. Any past-due amounts will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower. All Fees and other amounts hereunder shall be payable in \$USD.

f. *Taxes.* The Fees and other amounts specified in an Order or these Terms are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, “**Taxes**”). Subscriber shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Akave’s net income.

g. *Promotions.* Akave may offer from time to time promotions with respect to the Data Storage Service that may affect pricing and that are governed by terms and conditions separate from or in addition to those set forth herein. If there is a conflict between the terms for a promotion and the provisions of this Agreement, the promotion terms will govern.

11. Intellectual Property.

a. *Akave Intellectual Property.* As between you and Akave, Akave is and shall remain the sole and exclusive owner of all right, title, and interest in and to the Data Storage Service and all software, technologies, and other intellectual property embodied in or used to provide the same, and all intellectual property rights therein or relating thereto. No rights are granted to you hereunder other than as expressly set forth herein.

b. *Subscriber Intellectual Property.* As between Subscriber and Akave, Subscriber is and shall remain the sole and exclusive owner of all Data provided to Akave by or on behalf of Subscriber hereunder. You hereby grant to Akave a nonexclusive, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up license to process, display, copy, store, transmit, and otherwise access and use the Data for purposes of providing the Data Storage Service to Subscriber and its

Authorized Users. You represent and warrant to Akave that you have all rights, licenses, and consents necessary to grant the foregoing license.

c. *Feedback.* To the extent you provide Akave with any suggestions, feature requests, evaluation results, feedback, or other input in relation to any aspect of the Data Storage Service (collectively, “**Feedback**”), you hereby assign and agree to assign to Akave all right, title and interest in and to such Feedback, including any intellectual property rights therein, and agree that Akave will be free to use such Feedback in any manner, including by implementing such Feedback in the Data Storage Service and/or Akave’s other technologies, products and services, without compensation or other obligation to you or any third party.

d. *Usage Data.* You agree and acknowledge that Akave owns all statistical usage data derived from the operation and performance of the Data Storage Service, including performance results (“**Usage Data**”). For the avoidance of doubt, Usage Data does not include Data. Akave may use the Usage Data to maintain, optimize and improve the Data Storage Service, to develop, improve, or offer other Akave products or services, or to otherwise operate Akave’s business; provided, however, that if Akave provides Usage Data to any third party, such Usage Data shall be aggregated and de-identified such that Subscriber cannot be reasonably identified.

12. Confidentiality.

a. *Confidential Information.* “Confidential Information” means (subject to the exclusions below) any non-public information relating to or disclosed by a party in the course of the Agreement that should be reasonably understood to be confidential. The receiving party will (i) use the same care to protect Confidential Information as it uses for its own similar information, but no less than reasonable care, (ii) not disclose Confidential Information to any third party without prior written authorization or (in the case of Akave) as otherwise required for its performance of the Data Storage Service hereunder, except that receiving party may disclose Confidential Information to its employees, contractors, consultants, and advisors who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are bound by obligations of confidentiality, non-use and non-disclosure no less protective of disclosing party’s Confidential Information than the provisions hereof, and (iii) use Confidential Information only for the purpose of fulfilling its obligations or exercising its rights expressly granted under this Agreement. The receiving party will

promptly return or destroy the other party's Confidential Information in its possession or control upon request.

b. *Exclusions.* Confidential Information does not include information that: (i) is or becomes publicly available through no fault of the receiving party; (ii) was already in possession of the receiving party without confidentiality restrictions at the time of receipt from the other party, as evidenced by written records; (iii) was rightfully obtained by the receiving party on a non-confidential basis from a third party; or (iv) was independently developed by the receiving party without violation of this Section. If a receiving party is required to disclose Confidential Information by law, the receiving party will, where permitted by applicable law, promptly notify the disclosing party and reasonably cooperate with its efforts to limit or protect the required disclosure, but will otherwise not be in violation of this Section on account of making the required disclosure.

13. Data Security. Akave will use commercially reasonable efforts to maintain appropriate physical, administrative, and technical safeguards to protect against the unauthorized accessing, use, destruction, corruption, loss or alteration of Data in a manner appropriate in light of the level of sensitivity of such Data. Akave will use commercially reasonable efforts to promptly notify Subscriber of any material breach of security with respect to any Data in Akave's control or possession. Additionally, in furtherance of Akave's security efforts, Subscriber agrees and acknowledges that Akave may create backup copies of the Data and provide such backup copies to certain affiliated and/or unaffiliated partners for storage and back-up purposes.

14. Technical and Hardware Requirements. Your access to and use of the Data Storage Service is dependent upon access to telecommunications and Internet services. You acknowledge that Akave is not responsible for acquiring or maintaining any telecommunications or Internet services or other hardware or software that you may need to access and use the Data Storage Service or for any costs, fees, expenses, or taxes of any kind related to the foregoing.

15. Support. Where so indicated on the Order, Subscriber will be entitled to the commitments and remedies set forth in the Akave Enterprise Subscriber Support and Service Level Agreement (the "**SLA**"), available for review at https://docs.akave.xyz/legal/akave_cloud_sla.pdf. The remedies expressly provided in the SLA are Subscriber's sole and exclusive remedy, and Akave's entire obligation, with respect to any service-level violation.

16. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE DATA STORAGE SERVICE IS PROVIDED ON AN "AS IS" AND

“AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND, AND AKAVE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE, AND NON-INFRINGEMENT.

17. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER, OR FOR LOSS OF PROFIT OR LOSS OF GOODWILL, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AKAVE WILL USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE LOSS OR DAMAGE TO THE DATA, HOWEVER, AKAVE CANNOT AND DOES NOT GUARANTEE THE DATA WILL BE FREE FROM ALL DAMAGE OR LOSS (INCLUDING, WITHOUT LIMITATION, DURING STORAGE OF THE DATA, RETRIEVAL OF THE DATA, OR TRANSFER OF THE DATA TO OR FROM AKAVE). IN NO EVENT SHALL AKAVE’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND ITS PROVISION OF THE DATA STORAGE SERVICE TO YOU, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY YOU TO AKAVE HEREUNDER FOR THE DATA STORAGE SERVICE IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF ANY CLAIM.

18. Force Majeure. Akave shall not be liable to you for any loss, injury, delay, expenses or damages arising out of any cause or event not within its reasonable control including, but not limited to: (i) riots, wars or hostilities between any nations; (ii) Acts of God, fires, storms, floods or earthquakes; (iii) strikes or labor disputes; (iv) vendor or supplier failures, including data center outages or maintenance; (v) outages of internet connection, connectivity, power, cooling or other utility services; (vi) network updates, maintenance, or outages; (vii) governmental restrictions or trade disputes; (viii) or other similar contingencies.

19. Relationship. The relationship of the parties is that of independent contractors and nothing in any Order or these Terms is intended to create or shall be construed as creating between the parties the relationship of joint venture, partners, employer/employee or principal and agent. Neither party shall have any responsibility for the hiring, termination or compensation of the other party’s employees or contractors or for any employee benefits with respect to any such employee. Neither party shall

attempt to create any obligation or make any representation on behalf of or in the name of the other party.

20. Indemnification.

a. *Indemnification by Akave.* Akave shall indemnify, defend, and hold harmless Subscriber from and against any and all liabilities, losses, judgments, penalties, damages, expenses and costs (including, without limitation, reasonable attorney's fees and expenses, expert witness fees and expenses, court costs and the like) of any kind or character (collectively, "**Losses**") arising from any claim brought against Subscriber by a third party and alleging that the Data Storage Service, as provided by Akave, violates the intellectual property rights of such third party; provided, however, that Akave shall have no obligation or liability to the extent that any claim or associated Losses result from (i) the Data, (ii) any breach by Subscriber or any Authorized User of this Agreement, (iii) any instructions, specifications, or directions provided to Akave by Subscriber or any Authorized User, or (iv) any combination of the Data Storage Service with any content, technology, or intellectual property not provided by Akave.

b. *Indemnification by You.* You shall indemnify, defend, and hold harmless Akave (and its members, managers, stockholders, officers, directors, agents, and affiliates) from and against any and all Losses arising out of or in any way related to your (or if you are a Subscriber, your Authorized Users') (i) breach of this Agreement, (ii) violation of applicable law (including, without limitation, with respect to the content of the Data, your and Akave's right to possess the Data, and Akave being able to legally store and transfer the Data to and from Subscriber or its designees), or (iii) any dispute between you and your own customers, affiliates, or other third parties (including disputes arising out of or in any way related to a violation of intellectual property rights of a third party).

c. *Indemnification Procedure.* A party seeking indemnification hereunder shall: (i) give prompt notice of the applicable claim to the indemnifying party (provided, however, that failure of the indemnified party to provide such notice will not release the indemnifying party from any of its indemnity obligations, except to the extent that the indemnifying party's ability to defend such claim is materially prejudiced thereby); (ii) grant sole control of the defense or settlement of the claim to the indemnifying party; provided, however, that the indemnifying party may not settle any claim in a manner that would impair any of the indemnified party's rights or interests without the indemnified party's prior written consent, such consent not to be unreasonably withheld or delayed; and (iii) provide

reasonable cooperation and assistance to the indemnifying party, at the indemnifying party's request and expense.

21. Dispute Resolution.

Please read this Section carefully. It impacts the rights that you may otherwise have. It provides for resolution of most disputes through individual arbitration instead of trial courts and class actions. This “Dispute Resolution” section survives any expiration or earlier termination of these Terms.

a. *Informal Dispute Resolution.* As a condition precedent which must be satisfied prior to initiating any arbitration or other action against the other party, both you and Akave agree to the following dispute resolution procedure: In the event of any controversy, claim, action or dispute arising out of or related to the Data Storage Service or the breach, enforcement, interpretation, or validity of these Terms (a "**Claim**"), the party asserting the Claim must first try in good faith to settle such Claim by providing written notice, by first class or registered mail, to the other party describing the facts and circumstances (including any supporting documentation) of the Claim. The party asserting the Claim must allow the receiving party 30 days in which to respond to or settle the Claim.

For purposes of these Terms, notices must be sent as follows:

- If to Akave: to both of the following contacts: (1) Akave, Inc., 1007 N Orange St., 4th Floor, Suite #3519, Wilmington, Delaware 19801, with a copy emailed to support@akave.ai.
- If to you: to any address listed in or associated with your User Account or that you otherwise submit to us through your use of the Data Storage Service.

b. *Arbitration.*

i. To the extent the parties cannot resolve any Claim through the informal dispute resolution procedure set forth above, and except as otherwise set forth herein, a Claim must be resolved through binding individual arbitration. You and Akave each expressly delegate to the arbitrator the authority to determine the arbitrability of any Claim, including the scope, applicability, validity, and enforceability of this arbitration provision.

ii. To begin an arbitration proceeding, a party must send a written request to the other at the address(es) set forth

above. You agree that the arbitration will be conducted by the American Arbitration Association (“**AAA**”) pursuant to its Consumer Arbitration Rules (“**AAA Rules**”), as modified by this arbitration agreement. The AAA Rules are available on the AAA’s website www.adr.org, or by calling the AAA at (800) 778-7879. In accordance with the AAA Rules, you must also send a copy of its written demand for arbitration to AAA when submitting its request to Akave. In the event that the AAA is unable or unwilling to initiate arbitration within fourteen (14) days of receiving a demand for arbitration, arbitration may be conducted by JAMS, Inc. (in accordance with its Streamlined Arbitration Rules & Procedures) or by any other mutually agreeable arbitration administration service. You and Akave each agree that these Terms evidences a transaction in interstate commerce and that this arbitration provision will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act and federal arbitration law and will not be governed by state law. The arbitration will be conducted in the English language. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief to the extent required to satisfy your individual claim, and must follow and enforce these Terms as a court would. Any arbitration shall be confidential, and neither you nor Akave may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

iii. Additionally, and notwithstanding anything herein to the contrary, nothing in this section shall prohibit Akave from seeking temporary injunctive relief in a court of competent jurisdiction to prevent an imminent or stop an actual breach of these Terms.

c. *Class Action and Jury Waiver.* You and Akave each agree that any proceeding, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If a court or arbitrator determines in an action between you and Akave that this class action waiver is unenforceable, the arbitration agreement set forth above will be void as to the parties. If for any reason a Claim proceeds in court rather than through arbitration, you and Akave each waive any right to a jury trial.

22. Miscellaneous. These Terms, together with the Order and any data processing agreement, business associate agreement, or other similar document that may be incorporated herein by reference, contains the entire agreement made between the parties relating to its subject matter. Headings in these Terms are included for reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms should be determined to be invalid for any reason, such provision shall be severed and the remaining provisions shall remain in effect. All provisions of these Terms shall survive termination to the extent needed to give effect thereto, including, without limitation, the provisions of Sections 1 (with respect to the final sentence), 3, 5 (with respect to the final sentence), 6 through 12, 14, and 16 through 22. Failure by either party to insist upon strict compliance with any term of these Terms in any one or more instances will not be deemed to be a waiver of its rights to insist upon such strict compliance with respect to any subsequent failure. Except as otherwise set forth herein, all waivers, amendments or modifications with respect to these Terms must be in a writing signed by both parties. Any notices required or permitted to be given to a party shall be given to the address(es) set forth in Section 21 above. These Terms shall be construed in accordance with and governed by the laws of the State of Delaware, and the venue for any dispute, litigation, proceeding, arbitration, or action to interpret or enforce these Terms shall be brought in the state or federal courts sitting in the State of Delaware. You may not assign these Terms or any Order without the prior written consent of Akave. Akave may assign these Terms and any Order without restriction. The provisions of these Terms shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

For more information or other questions, please contact us at:

Akave, Inc.

1007 N Orange St., 4th Floor, Suite #3519

Wilmington, Delaware 19801

support@akave.ai