

## Terms of Service

Effective: May 7, 2024

Please read these terms of service (“Terms of Service”) and the Practice Technology, Inc. (“PTI”) Services Description (collectively, this “Agreement”) carefully. This Agreement is between you and PTI and its affiliates (“we,” “us,” or “our”) and governs your access to and use of our Services and Software. You may enter into this Agreement on behalf of yourself or on behalf of a legal entity. If you enter into this Agreement on behalf of a legal entity, you represent that you are a duly authorized representative with the authority to bind that legal entity to this Agreement. All references to “you” and “your” in this Agreement mean the person accepting this Agreement as an individual or the legal entity for which the representative is acting.

We may provide the Services and Software through PTI, our affiliate(s), or both. You may only use the Services and Software in accordance with the terms and subject to the conditions of this Agreement.

**READ THIS AGREEMENT CAREFULLY, AS IT PROVIDES, AMONG OTHER THINGS: (i) that you and PTI will resolve certain claims in a prescribed manner and that you will not bring class-action claims against PTI; (ii) that certain terms and conditions apply with respect to recurring subscription Charges and automatic renewals; (iii) that PTI may make modifications, deletions, and additions to these Terms of Service and our Service Description; and (iv) that you release PTI from, and waive your right to recover from PTI, certain damages. You acknowledge that you will only use our Services and Software if you agree to be legally bound by all terms and conditions herein. Your acceptance of this Agreement creates a legally binding contract between you and PTI.**

### 1. Account Information; Sharing

- a. **Registration; Username and Passwords.** You may be required to provide information about yourself to register for and to access or use the Services and Software. You represent and warrant that any such information, including Customer Data, is and will remain accurate and complete, and that PTI has no liability whatsoever for errors and omissions in your Customer Data. You may also be asked to choose a username and password to access or use the Service and Software. We may reject, or require that you change, any such username or password, in our sole discretion. You are entirely responsible for maintaining the security of your username and password, and you agree not to disclose or make your username or password accessible to any third party.
- b. **Prohibition on Sharing.** You may not share an account or any other user rights with any other individual, unless otherwise expressly pre-approved by PTI in writing. You may not share any login credentials or passwords regarding the foregoing with any other individual. You acknowledge that sharing of any such rights is strictly prohibited. Your right to use or access the Services and Software is personal to you and not assignable or transferable. You may not assign or transfer any account or any other user rights with any other individual, except upon: (i) an individual termination of employment or

relationship with their employer, as applicable, or (ii) PTI's prior express written approval.

## 2. Ordering Services

- a. **Order Form; Enrollment.** You may order PTI Services and Software through an order form approved and authorized by PTI (each an "Order Form"). Any order for Services or Software made pursuant to an Order Form is subject to the terms of this Agreement. An Order Form may contain additional or different terms, conditions, and information regarding the Services or Software you are ordering as authorized and agreed to by PTI. In the event of any conflict or inconsistency between this Agreement and any Order Form authorized and agreed to by PTI, the applicable Order Form controls and governs over this Agreement, to the extent necessary to resolve the particular conflict or inconsistency only. PTI will provide the Services and Software set forth in your Order Form; however, PTI may, in its sole discretion: (i) discontinue the Services or Software, or (ii) modify the features or functionality of the Services or Software. PTI may require that you enroll in a Service or Software by providing Client Data prior to ordering Services or Software through an Order Form. Ordering certain Services or Software may be contingent upon enrollment in other related Services or Software. See the PTI Services Description or contact PTI at [support@prevail.net](mailto:support@prevail.net) or [sales@prevail.net](mailto:sales@prevail.net) for more information related to ordering and enrolling in Services or Software.
- b. **Minimum Commitment.** You will maintain your minimum quantity of the Services or Software set forth on your Order Form for the duration of the applicable Initial Subscription Term or then-current Renewal Term. Any timely and contractually available modification to the Services set forth on your Order Form will be effective only upon the commencement of your next Renewal Term, unless you request an increase in the Services or Software, which will take effect as indicated in the applicable Order Form.
- c. **Outstanding Balance; Late Payment.** Without limiting our rights in this Agreement, you acknowledge that PTI is not required to provide any Services or Software set forth in an Order Form until all outstanding balances that are due and owing for previously-provided Services or Software are paid in full.

## 3. Access and Use; Software License; Services Management

- a. **Access and Use; Software License.** Subject to the terms and conditions of this Agreement, you may access and use, during the Initial Subscription Term or then-current Renewal Term, the Services and/or Software set forth on each applicable Order Form. If access to or use of any portion of the Services or Software requires or allows you to download, use, or install PTI software ("Software"), PTI grants you a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable, and royalty-free license to use the Software in object code format on a compatible device for your internal use only, solely to access and use the Services and/or Software during the applicable Initial Subscription Term or then-current Renewal Term. You acknowledge

and agree that your access to and use of the Services and Software under this Section 3(a) (and as otherwise provided in this Agreement) is revocable in PTI's sole discretion.

- b. **Ownership.** You acknowledge that, notwithstanding anything to the contrary herein, Software is provided to you under a limited license and Services are provided on a subscription basis unless otherwise expressly agreed to by PTI in writing. You acknowledge that neither Software nor Services have been sold to you, and that you have neither obtained nor will obtain any ownership or other right, title, or interest in or to our Software, Services, or Proprietary Rights relating thereto, unless expressly agreed to by PTI in writing and only insofar as is expressly agreed to by PTI in writing. Any copies of Software will remain the exclusive property of PTI unless expressly agreed to by PTI in writing. The Software may include code that is licensed to you under third party license agreements, including open-source software made available or provided with the Software. Without limiting the generality of the foregoing, PTI owns all right, title, and interest in and to all upgrades, enhancements, new releases, changes, and modifications to the Software and Services, together with all ideas, architecture, algorithms, models, processes, techniques, user interfaces, database designs and architecture, and "know-how" embodying the Software and Services. Under no circumstances will you be deemed to receive, have, or be granted title to all or any portion of the Software, Services, title to which at all times vests exclusively in PTI unless expressly agreed to by PTI in writing. None of the Software, Services, or any component thereof, is or shall be deemed to be a "work made for hire," as that term is defined in 17 U.S.C. § 101.
- c. **Services Management.** PTI provides Software and Services through systems that are custom developed, proprietary, and encompass software and database applications that utilize "Cloud Based" network services offered by AWS (Amazon Web Services). Monitoring, performance, and security of PTI's systems are handled via a management service contract according to best practice industry standards with recognized professional companies. PTI maintains secure physical and logical business systems. Periodic changes and updates are made to PTI systems and network. Changes that affect your usage and access to PTI's system may be communicated directly via email or messaging system located on the PTI website. Other changes that do not directly affect your usage and/or data will be periodically made and may or may not be communicated to you. Except as elsewhere provided for in this Agreement, PTI systems, Software, and Services, are provided "as is" and "as available" and PTI does not warrant the accuracy, adequacy, or completeness of PTI's systems and disclaims all liability for errors or omissions therein. Except as provided for in this Agreement, no warranty of any kind is made by PTI in connection with PTI's systems, Software, or Services, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights, or freedom from viruses or other code defects. By the terms of this Agreement, you agree that PTI has no responsibility for maintaining, testing, or providing any equipment, systems, Software, or Services and that PTI shall not be liable for any special, consequential, incidental, punitive, or indirect damages arising from or relating to use of PTI's systems, Software, or Services. Any questions, comments, concerns, or feedback regarding PTI's systems, Software, or Services should be addressed to

[support@prevail.net](mailto:support@prevail.net) and, where appropriate, PTI will provide a written or emailed response within seven business days.

#### 4. **Responsibility for Use and End Users**

- a. **Use of Software and Services; End User Responsibility.** You will, and you will cause your End Users to, abide by and ensure compliance with, all the terms and conditions of this Agreement. Use of the Software or Services is void where prohibited. You are responsible for your and your End Users' access to and use of the Software and Services. You are responsible for the activities of all your End Users, including ensuring that all End Users will comply with the terms and conditions of this Agreement and any applicable PTI policies. You acknowledge that you remain liable for the acts and omissions of any third party that you allow, enable, or otherwise provide access to the Software or Services, whether or not such access was expressly permitted by PTI.
  - b. **Violations by End Users or Third Parties.** PTI assumes no responsibility or liability for violations of this Agreement by End Users or any other third party that you allow, direct, or enable to access the Software or Services. If you become aware of any violation of this agreement in connection with use of the Software or Services by any person, you must contact PTI at [support@prevail.net](mailto:support@prevail.net).
  - c. **Liability for Content and Data.** Under no circumstances will PTI be liable in any way for any data or other content viewed while using the Software or Services, including any errors or omissions in any such data or other content, or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to any data or other content.
  - d. **Investigation of Use.** PTI may investigate any complaints and violations that come to our attention and may take any action, in its sole discretion, including issuing warnings, suspending or disconnecting the Software or Services, removing applicable data or other content, terminating accounts or End User Profiles, or taking other reasonable actions in its sole discretion.
5. **System Requirements; Changes.** Your use of the Software and Services may require one or more compatible devices, internet access, or certain third-party software, and you may be required to obtain updates or upgrades from time to time for Software or third-party software, which may result in additional costs to you. Because use of the Software and Services involves hardware, software, and Internet access, your ability to access and use the Software and Services may be affected by the performance of the foregoing. High-speed Internet access is recommended. You are solely responsible for any fees that may apply to your access to or use of the Software and Services., including fees for hardware, software, or Internet access. You acknowledge and agree that Software and Services provided by PTI utilize text message services that require explicit consent. You are responsible for obtaining the necessary consents from all recipients of text messages prior to use of any PTI Software or Services and agree to comply with all applicable laws and regulations governing text message communications. You consent to receive text messages from PTI. You agree that the foregoing requirements are your

responsibility, and PTI may, in its sole discretion, discontinue availability or compatibility of the Software or Services on a particular operating system, device, or platform.

6. **Prohibited Uses.** You agree that you will not, and will not permit any End Users to, directly or indirectly: (i) use the Software or Services to engage in illegal activity or would give rise to criminal or civil liability, (ii) store, transmit, or distribute through Software or Services other people's private information, including but not limited to information protected by HIPAA or similar state laws as well as information protected by copyright, trademark, or other intellectual property rights, without their express permission, (iii) modify, customize, disassemble, decompile, prepare derivative works of, create improvements, derive innovations from, reverse engineer, or attempt to gain access to any underlying technology of the Software or Services, including but not limited to any source code, process, data set or database, management tool, development tool, server, or hosting site; (iv) knowingly or negligently use the Software or Services in a way that abuses, interferes with, or disrupts PTI's networks, your account, or any other user rights, or the Software or Services; (v) build or benchmark a competitive product or service, or copy any features, functions, or graphics of the Software or Services; (vi) use the Software or Services for the development, production, or marketing of a service or product substantially similar to the Software or Services; (vii) upload or transmit any software or code that does or is intended to harm, disable, destroy, or adversely affect performance of the Software or Services in any way or which does or is intended to harm or extract information or data from other hardware, software, networks, of other users of the Software or Services; (viii) engage in any activity or use of the Software, Services, or your account in any manner that could damage, disable, overburden, impair, or otherwise interfere with or disrupt the Software, Services, or any servers or networks connected to the Software, Services, or PTI security systems; (ix) use the Software or Services in violation of any PTI policy or in a manner that violates applicable Law, including anti-spam, import and export control, intellectual property, privacy, anti-terrorism, or anti-bribery; (x) remove, delete, alter, or obscure any Proprietary Rights notices provided on or with the Software or Services, including any copy thereof; (xi) make, use, or offer the Software or Services for lease, rent, or sale, or reproduce, resell, distribute, publish, display, assign, transfer, sublicense, lend, use on a timeshare or service bureau basis, or use the Software or Services for any commercial or other purpose that is not expressly permitted by this Agreement; or (xii) make available the Software or Services, or any features or functionality thereof, to any third party for any reason or by any manner, unless expressly permitted by this Agreement or otherwise expressly agreed to in writing by you and PTI.
7. **Compliance with Laws.** You are solely responsible for your and your End Users' compliance with all Laws that apply to your and your End Users' access to and use of the Software and Services, including Laws requiring you to provide proper notifications and obtain proper consents, which may be necessary to all PTI and PTI's authorized third parties to access, use, and share information and data. You shall comply with, and ensure that all End Users comply with, all applicable Laws in connection with your obligations under this Agreement, including access to and use of the Software and Services.

## 8. Customer Materials

- a. **Customer Materials.** You and your End Users may provide, upload, or originate data, content, files, documents, or other materials (collectively, “Customer Input”) in accessing or using the Software or Services, and PTI may provide, create, or make available to you, in its sole discretion or as part of the Software or Services, certain derivatives, transcripts, analytics, outputs, visual displays, or data sets resulting from the Customer Input (together with Customer Input, “Customer Materials”); provided, however, that no Customer Materials provided, created, or made available by PTI results in any conveyance, assignment, or other transfer of PTI’s Proprietary Rights contained in or embodied in the Software, Services, or other technology used to provide, create, or make available any Customer Materials in any way and PTI retains all Proprietary Rights therein. You further acknowledge that any Customer Materials provided, created, or made available to you by PTI is for your and your End Users’ use solely in connection with the use of the Software or Services, and that you are solely responsible for Customer Materials.
- b. **Service Generated Data; Consent to Use.** Customer Materials does not include any telemetry data, product usage, diagnostic data, and similar content or data that PTI collects or generates in connection with your or your End Users’ use of the Software or Services (“Service Generated Data”). As between you and PTI, all right, title, and interest in and to Service Generated Data, and all Proprietary Rights therein, belong to and are retained solely by PTI. You agree that PTI compiles and may compile Service Generated Data based on Customer Inputs, Customer Materials, and use of the Software and Services. You consent to PTI’s access, use, collection, creation, modification, distribution, processing, sharing, maintenance, and storage of Service Generated Data for any purpose, to the extent and in the manner permitted under applicable Law, including for the purpose of product and service development, marketing, analytics, quality assurance, machine learning or artificial intelligence (including for the purposes of training and tuning of algorithms and models), training, testing, improvement of Software, Services, or PTI’s other products, software, and services, or any combination thereof, and as otherwise provided in this Agreement. In furtherance of the foregoing, if, for any reason, there are any rights in such Service Generated Data which do not accrue to PTI under this Section 8(b) or as otherwise provided in this Agreement, you hereby unconditionally and irrevocably assign and agree to assign to PTI on your behalf, and shall cause your End Users to unconditionally and irrevocably assign and agree to assign to PTI, all right, title, and interest in and to the Service Generated Data, including all Proprietary Rights relating thereto.
- c. **Permitted Use; Customer Materials.** PTI may redistribute, publish, import, access, use, store, transmit, review, disclose, preserve, extract, modify, reproduce, share, use, display, copy, distribute, translate, transcribe, create derivative works, and process Customer Materials: (i) in accordance with this Agreement and as required to perform our obligations under this Agreement; (ii) in accordance with our Privacy Policy; (iii) as authorized or instructed by you; (iv) as permitted or required by Law; (v) to monitor for acceptable and prohibited uses of Software and Services; or (vi) to protect the rights,

property, or security of PTI, its end users, customers, or the public, including systems and networks.

- d. **Customer License Grant.** You agree to grant and hereby grant PTI a perpetual, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license and all other rights required or necessary to redistribute, publish, import, access, use, store, transmit, review, disclose, preserve, extract, modify, reproduce, share, use, display, copy, distribute, translate, transcribe, create derivative works, and process Customer Materials and to perform all acts with respect to Customer Materials: (i) as may be necessary for PTI to provide the Software or Services to you, including to support the Software or Services; (ii) for the purpose of product and service development, marketing, analytics, quality assurance, machine learning, artificial intelligence, training, testing, improvement of the Software, Services, or PTI's other products, software, and services, or any combination thereof; and (iii) for any other purpose relating to any use or other act permitted in accordance with Section 8©. If you have any Proprietary Rights in or to Service Generated Data or Aggregated Anonymous Data, you hereby grant PTI a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, sublicensable, and transferable license and all other rights required or necessary to enable PTI to exercise its rights pertaining to Service Generated Data or Aggregated Anonymous Data, as the case may be, in accordance with this Agreement.
- e. **Our Obligations over your Customer Materials.** PTI will maintain reasonable and appropriate physical and technical safeguards to prevent unauthorized disclosure of or access to Customer Materials provided by you to PTI. PTI will notify you if it becomes aware of an unauthorized disclosure or unauthorized access to Customer Materials. PTI will only access, use, collect, maintain, process, store, and transmit Customer Materials in accordance with this Agreement, which may include PTI's consultants, contractors, service providers, subprocessors, and other PTI-authorized third parties accessing, using, collecting, maintaining, processing, storing, and transmitting Customer Materials on PTI's or your (or your End Users') behalf in connection with the Software or Services. PTI will ensure that any sharing of Customer Materials with an authorized third party will be in compliance with applicable Law. PTI has no other obligations with respect to Customer Materials.
- f. **Customer Responsibilities, Acknowledgment, and Consents.** You agree that you are solely responsible for the Customer Materials sent, uploaded, displayed, or transmitted in the use of the Software or Services, including its accuracy, and for compliance with all Laws pertaining to the Customer Materials, including Laws requiring you to obtain the consent of a third party to use Customer Materials and to provide appropriate notices of third party rights. You represent and warrant that you have the right to upload Customer Input and for PTI to provide, create, or make available any Customer Materials to you, and that such use or provision by you, your End User, or PTI does not violate or infringe any rights of any third party. Under no circumstances will PTI be liable in any way for: (i) your Customer Materials that are transmitted or viewed while using the Software or Services, (ii) errors or omissions in the Customer Materials, or (iii) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to

Customer Materials. PTI may delete Customer Materials, at any time without notice to you, if PTI becomes aware that it violates any provision of this Agreement or any applicable Laws. As between you and PTI, you retain all ownership rights in your Customer Materials, subject to any license or other rights granted herein, and without limiting any of PTI's Proprietary Rights set forth herein.

#### 9. Eligibility; Restriction on Use by Children

- a. **Eligibility.** You affirm that you are of legal age to enter into this Agreement and to use the Software and Services. You affirm that you are otherwise fully able and competent to enter into and abide by the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement. Your access may be terminated without warning if it comes to our attention that you are under the legal age to enter into this Agreement or are otherwise ineligible to enter into this Agreement or to use the Software or Services.
- b. **Restrictions on Use by Children.** Software and Services provided by PTI is not intended for use by individuals under the age of sixteen (16) years old.

#### 10. Payments and Charges

- a. **Charges.** Access to and use of the Software and Services is contingent upon you maintaining an up-to-date payment information with PTI. You agree that PTI may charge your credit card, debit card, or other payment mechanism selected by you and approved by PTI ("Payment Method") for all amounts due and owing in connection with your use of the Software or Services, as set forth in the applicable Order Form or otherwise used or ordered by or for you through the Software or Services ("Charges"). You agree to promptly update your Payment Method to allow for timely payment. Changes made to your Payment Method will not affect Charges that PTI submits to your chosen Payment Method before PTI could reasonably act on your changes. Additionally, you agree to permit PTI to use any updated Payment Method information provided by your issuing bank or the applicable payment network and to charge your current primary Payment Method by using the details of such Payment Method saved in our system, even if such Payment Method is declined. PTI further reserves the right to use your backup Payment Method to the extent one is provided. By adding a backup Payment Method, you authorize PTI to process any applicable Charges on your backup Payment Method if your primary Payment Method is declined.
- b. **Timing of Charges.** PTI will charge your Payment Method, and you agree to pay, costs and fees contemplated by this Agreement as follows:
  - i. **Annual and Recurring Costs.** You agree to pay PTI any Annual Costs and Recurring Costs identified by this Agreement and any Order Form by: (i) an annual payment (by check or credit card) due on the first of the month following the Effective Date of a corresponding Order Form, and due annually



thereafter, or (ii) twelve equal monthly payments drafted from your Payment Method on file with PTI on the first of each month.

- II. **Individual Costs.** Except as otherwise provided for by this Agreement or any Order Form, you agree to pay PTI any Individual Costs identified by this Agreement and any Order Form by a lump sum payment due on the first of the month following the Effective Date of a corresponding Order Form.
- III. **Use Costs.** PTI will calculate and invoice Use Costs owed by you under this Agreement monthly, and will charge your Payment Method on file with PTI on the first of the following month.

- c. **Non-Cancelable and Non-Refundable Charges.** You agree that all Charges are non-cancelable for the Initial Subscription Term or the then-current Renewal Term, as applicable, and are final and non-refundable, unless otherwise agreed to by PTI in writing, required by Law, or set forth in your Order Form.
- d. **Changes to Pricing.** PTI may change prices for Software or Services at any time, in its sole discretion. For changes to your Charges, PTI will provide you with not less than: (i) thirty (30) calendar days prior notice, or (ii) the time period prescribed by applicable law (each, (i) and (ii), a "Rate Change Notice"). Unless prohibited by the terms of your Order Form, any changes to your Charges will be effective upon the commencement of your next Renewal Term or other date calculated in accordance with applicable Law. If you seek to terminate or modify the Software or Services affected by the Rate Change Notice, then you must terminate or modify your affected Software or Services within the applicable Rate Change Notice time period. If you do not terminate or modify the affected Software or Services within the applicable Rate Change Notice time period, then you shall be deemed to have automatically accepted the change to your Charges, unless your affirmative, express consent to such change is required under applicable Law. If required by applicable Law, we will remind you of your termination and modification right, any applicable time-period, and the consequences of not terminating.
- e. **Promotional Rates and Discounts.** Prices specified in an Order Form may include a promotional rate, discount, sale, or special offer, which may be temporary and may expire: (i) per the terms of the offer, or (ii) upon the commencement of a Renewal Term. The expiration of the discount or promotional pricing may expire without additional notice to you, unless specified in an Order Form or as required by applicable Law. PTI reserves the right to discontinue or modify any promotion, discount, sale, or special offer in its sole discretion.

- f. **Collection of Charges.** You agree that if PTI is unable to collect the Charges for the Services through your Payment Method, PTI may, to the extent not prohibited by applicable Law, take any other steps it deems necessary to collect such Charges from you and that you will be responsible for all costs and expenses incurred by PTI in connection with such collection activity, including collection fees, court costs, and attorneys' fees. You further agree that, to the extent not prohibited by applicable law, PTI may collect interest at the lesser of 1.5% per month or the highest amount permitted by Law on any Charges not paid when due.
- g. **Termination or Suspension for Nonpayment.** Without limiting our rights in any other section of this Agreement, if any failure to pay Charges continues for five (5) calendar days following the due date, PTI may terminate, suspend, or disconnect your Software or Services immediately and without prior notice.
- h. **Billing Communications.** You agree that PTI may contact you via email or otherwise at any time with information relevant to your use of the Services, including billing communications, regardless of whether you have opted out of receiving marketing communications or notices.

## 11. Term; Termination and Suspension

- a. **Term; Automatic Renewal.** Each Order Form will specify an effective date for Software or Services (the "Effective Date"). Unless your Order Form expressly states otherwise or applicable Law prohibits, the initial term of your Order Form will be one year following the Effective Date (the "Initial Subscription Term") and will automatically renew for successive one-year terms (each a "Renewal Term") unless either party provides written notice of termination or modification of the Software or Services provided under such Order Form (i) at least thirty (30) calendar days prior to the commencement of the next Renewal Term, or (ii) within the notice period required by applicable Law (collectively, (i) and (ii), the "Renewal Notice Period"). In order to terminate or modify the affected Software or Services, you must provide notice to PTI in an email to [support@prevail.net](mailto:support@prevail.net) or [sales@prevail.net](mailto:sales@prevail.net), in accordance with the Renewal Notice Period. Any statutory rights you may have under the applicable Laws to terminate your Software or Services at an earlier time during the Initial Subscription Term or any given Renewal Term remains unaffected by this clause, and, if required by applicable Law, we will send you a reminder notice prior to the commencement date of the Renewal Term (and in accordance with the notice periods specified in this Agreement or other such deadline set by applicable Law that may apply to you) reminding you of your right to terminate the affected Software or Services and how to do so.
- b. **Customer Termination.** You may obtain information on how to terminate your account, Software, and Services by sending an email to [support@prevail.net](mailto:support@prevail.net) or [sales@prevail.net](mailto:sales@prevail.net). If you have subscribed to one or more Software or Services for a specific term, such termination will be effective as to each such Software or Service on

the last day of the then-current term for each applicable Software or Service, provided that you provide proper and timely notice pursuant to Section 11(a) of this Agreement. You may terminate this Agreement by providing written notice of termination if PTI has materially breached this Agreement and has not cured such material breach within thirty (30) business days of PTI's receipt of your written notice of such breach. Your notice shall state the specific provision of the Agreement that you contend PTI has breached and set forth in reasonable detail the facts and circumstances you allege provide the basis for such breach.

- c. **PTI Termination Rights and Suspension.** Notwithstanding anything to the contrary herein, if you fail to comply with any provision of this Agreement or any referenced policies, guides, notices, or statements, PTI may: (i) immediately suspend your access to the Software or Services, or (ii) terminate this Agreement, effective immediately. If PTI chooses to suspend your Services and the failure to comply continues, PTI may exercise any or all of its termination rights in this Section 14(c). Additionally, PTI may terminate this Agreement, for any reason or no reason, upon thirty (30) business days' advance notice.
- d. **Effect of Termination or Suspension.** Upon any termination of this Agreement, you must cease any further use of the Software and Services, except for any access rights granted in Section 14(e) of this Agreement. No expiration or termination of this Agreement will affect your obligation to pay all Charges that may have become due before such expiration or termination, including that PTI may retain any Charges previously paid by you if this Agreement is terminated, unless prohibited by applicable Law. If your Software or Services are suspended for your failure to comply with this Agreement, you will be liable for all Charges due and owing during the period of suspension.
- e. **Deletion and Access to Customer Materials after Termination.** For thirty (30) calendar days following expiration or termination of this Agreement, PTI will provide you access to retrieve your Customer Materials, after which time your Customer Materials will be deleted according to applicable Law, this Agreement, and our regularly scheduled deletion protocols, policies, and procedures. All access during the period set forth in this Section 14(e) is provided to you subject to and governed by this Agreement.

## 12. Modifications to this Agreement

- a. **General Changes.** PTI may make modifications, deletions, and addition to this Agreement ("Changes") from time to time in accordance with this Section 12(a). Changes to these Terms of Service or our Services Description will be posted on the PTI website at [prevail.net/terms](http://prevail.net/terms) or [prevail.net/services](http://prevail.net/services) which you should regularly check for the most recent version and also save the most up to date version in your files. When Changes are made, PTI will indicate the effective date of the Changes at the top of the Terms of Service or the Services Description as appropriate. If you continue to use the Software or Services after the effective date of the Changes, then you agree to the revised terms

and conditions. In some instances, PTI may notify you of a Change and also may request express confirmation of your consent to a Change. If a Change requires a specific notice pursuant to applicable Law, PTI will provide you with such notice in the manner prescribed by applicable Law, together with any required notification of your rights.

- b. **Other Changes.** You agree that PTI may modify, delete, and make additions to its guides, statements, policies, and notices, with or without notice to you, and for similar guides, statements, policies, and notices applicable to your use of the Software and Services by posting an updated version on the applicable webpage.
- c. **Change Notifications.** It is your responsibility to keep your email address up to date for any notices that PTI may send to you from time to time and to regularly review this Agreement by reviewing these Terms of Service and the Services Description.

### 13. PTI Proprietary Rights; Feedback

- a. **Feedback.** If you or any of your employees, contractors, agents, or End Users send, transmit, or otherwise provide any feedback, comments, suggestions, questions, or the like, regarding the Software or Services, including any ideas, know-how, concepts, enhancements, recommendations, or other information relating to the Software or Services, including suggesting or recommending changes to the Software or Services such as new features or functionality relating thereto (collectively, "Feedback"), you acknowledge that: (i) PTI owns, and PTI shall retain ownership of, all right, title, and interest in and to such Feedback, including any Proprietary Rights therein, and (ii) PTI may, but is not required to, use the Feedback, including any Proprietary Rights therein, for any purpose whatsoever without any attribution, financial compensation, or reimbursement of any kind to you or any third party. You hereby unconditionally and irrevocably assign and agree to assign to PTI on your behalf, and you shall cause your employees, contractors, agents, and End Users to unconditionally and irrevocably assign and agree to assign, all right, title, and interest in and to the Feedback, including all Proprietary Rights relating thereto. All Feedback is and will be treated as PTI Confidential Information until PTI, in its sole discretion, chooses to make any specific Feedback non-confidential.
- b. **Ownership of PTI Property.** PTI, its affiliates, its licensors, and suppliers (as applicable) own and shall retain ownership of: (i) all Service Generated Data (as provided in Section 8(b)), (ii) all Feedback (as provided in Section 13(a)), (iii) the Software and Services, and any underlying or other technology and intellectual property embodied or contained in, used to provide or support, or otherwise associated or provided in connection with, the Software or Services, including all Proprietary Rights related thereto, and (iv) all trade names, trademarks, service marks, trade dress, logos, icons, insignia, symbols, interface and other designs, domain names, and corporate names, and the like (whether registered or unregistered) ("PTI Marks") associated or displayed with the

Software or Services, together with the goodwill associated with any of the foregoing PTI Marks (all of the foregoing, collectively, "PTI Property"). No rights to use the PTI Marks are provided to you herein.

- c. **Reservation of Rights.** PTI reserves all rights not expressly granted to you in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third party, any Proprietary Rights or other right, title, or interest in or to any PTI Property or other intellectual property provided in connection with this Agreement or the Service or Software.

#### 14. Confidentiality

- a. **Definition.** "Confidential Information" means: (i) with respect to PTI, any information disclosed by, for, or on behalf of PTI, directly or indirectly, to you or any End User in connection with this Agreement, the Software or Services, or learned or accessed by you or any End User in connection with the Software or Services, including business information, development plans, product roadmap details, systems, strategic plans, source code, services, products, pricing, methods, processes, financial data, programs, trade secrets, know-how, and marketing plans, however it is conveyed in any form or medium, together with all information derived from the foregoing, and any other information that is designated as being confidential (whether or not it is marked as "confidential") or which is known by you or the End User or reasonably should be understood by you or the End User to be confidential ("PTI Confidential Information"); and (ii) with respect to you, any information disclosed by you to PTI that: (a) must be kept confidential pursuant to applicable Law, or (b) is sensitive security and technical information that is clearly and conspicuously marked as "confidential" by you ("Customer Confidential Information"). Customer Materials are not Customer Confidential Information; however, Customer Materials will be protected in accordance with Section 8(e) of this Agreement.
- b. **Exclusions.** Confidential Information does not include information that: (i) is already rightfully known to the receiving party at the time it is received, free from any obligation to keep such information confidential; (ii) becomes publicly known or available through no act or omission of the receiving party or any third party; (iii) is rightfully received from a third party without restriction and without breach of this Agreement; or (iv) is independently developed by the receiving party without the use of the disclosing party's Confidential Information.
- c. **Obligation of Confidentiality.** You and PTI shall take reasonable steps to maintain the confidentiality of each other's Confidential Information using measures that are at least as protective as those taken to protect its own information of a similar sensitivity, but in no event using less than a reasonable standard of care. Neither you nor PTI will disclose the other party's Confidential Information to any person or entity except

to its employees, advisors, and attorneys who have a strict need to know the information in connection with this Agreement and who are bound by confidentiality obligations at least as protective of the provisions herein. In addition to the foregoing permitted disclosures, PTI also may disclose Customer Confidential Information to its consultants, contractors, service providers, subprocessors, and other third parties who are bound by confidentiality obligations at least as protective as the confidentiality provisions herein.

- d. **Permitted and Compelled Disclosures.** Notwithstanding the restrictions in this Section 14 and without limiting any other rights of PTI, we may disclose Customer Confidential Information received in connection with this Agreement, the Software, or Services to the extent reasonably necessary to comply with a governmental request or as required by applicable Law; provided, however, that PTI will first notify you, unless providing such notice or timely notice is: (i) prohibited by applicable Law; or (ii) determined by PTI in its sole discretion to be a threat to the Software, Services, or PTI's rights or property.

15. **Third Party Proprietary Rights.** You agree to not, and to not permit any End User to, post, modify, distribute, or reproduce in any way in connection with your or your End Users' use of the Services and Software any copyrighted material, trademarks, or other proprietary material that may infringe, misappropriate, or otherwise violate another's Proprietary Rights without obtaining the prior written consent of the owner of the Proprietary Rights. You represent and warrant that you are either the author of all Customer Input to be provided under this Agreement or have obtained and hold all rights necessary to provide such Customer Input and receive all Customer Materials in the form provided by PTI, in connection with your or your End Users' use of the Software or Services. PTI may deny access to the Software or Services to any End User who is alleged to infringe or violate another person's Proprietary Rights and may remove any stored Customer Materials upon PTI's receipt of notice by the Property Rights owner (e.g., a takedown request). Without limiting the foregoing, if you believe that any of your or your affiliates' Property Rights or have been infringed or violated in connection with the Services, notify PTI by email to [prevail.net/support](mailto:prevail.net/support).

16. **Third-Party Integrations and Offerings.** The Software or Services may interoperate, integrate, or be used in connection with third party offerings and services ("Third-Party Offerings"). PTI is not responsible for, and PTI hereby disclaims any liability for, any act or omission of any provider of Third-Party Offerings or the operation of any Third-Party Offerings, including access to, modification of, or deletion of data, regardless of whether PTI, Software, or Service endorses, approves, or supports any such Third-Party Offerings. PTI does not guarantee the interoperation, integration, or support of any Third-Party Offerings. PTI may, at any time, in its sole discretion, modify the Services or Software, which may result in the failed interoperation, integration, or support of Third-Party Offerings. You have sole discretion whether to purchase or connect to any Third-Party Offerings, and your use of any Third-Party Offering is governed solely by the terms of such Third-Party Offerings.

17. **NO WARRANTIES.** YOU AGREE THAT THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS"

AND PTI, ITS AFFILIATES, SUPPLIERS, AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. PTI, ITS AFFILIATES, SUPPLIERS, AND LICENSORS MAKE NO GUARANTEE, PROMISE, WARRANTY, OR REPRESENTATION: (i) REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE OR SERVICES, (ii) REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SOFTWARE OR SERVICES, OR (iii) THAT THE SOFTWARE OR SERVICES WILL MEET ANY USER'S REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE OR SERVICES IS AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SOFTWARE OR SERVICES. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE OR SERVICES REMAINS WITH YOU. PTI DOES NOT ASSUME ANY RESPONSIBILITY FOR RETENTION OF ANY DATA, INCLUDING CUSTOMER MATERIALS AND CUSTOMER DATA, USER INFORMATION, OR COMMUNICATIONS. USE OF THE SOFTWARE OR SERVICES IS AT YOUR SOLE RISK.

18. **Indemnification.** To the extent not prohibited by applicable Law, you agree to indemnify, defend, and hold PTI and its affiliates and each of our licensors and suppliers ("Indemnified Parties") harmless, including any officers, directors, employees, shareholders, members, consultants, and agents of the Indemnified Parties, from any third party allegation, claim, proceeding, liability, damage, or cost (including reasonable attorneys' fees) arising out of or related to: (i) your or your End User's use of the Software or Services, (ii) your or your End User's breach of this Agreement or violation of applicable Law, (iii) your or your End User's infringement or violation of any Proprietary Rights or other right of any person or entity, (iv) your relationship with your End User or any dispute between you and your End User, or (v) a personal injury or property damage to a third party relating to your or your End User's acts or omissions.

19. **LIMITATION ON LIABILITY.** READ THIS SECTION CAREFULLY AS IT LIMITS OUR LIABILITY TO YOU. PTI AND ITS AFFILIATES AND EACH OF THEIR LICENSORS, AND SUPPLIERS WILL NOT BE LIABLE FOR ANY: (i) SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES; (ii) LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF BUSINESS OPPORTUNITY; (iii) UNAUTHORIZED ACCESS TO, LOSS OF, DELETION OF, OR ALTERATION OF SYSTEM DATA, CUSTOMER MATERIALS, OR CUSTOMER DATA; (iv) COSTS RELATED TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (v) TERMINATION, SUSPENSION, DISCONTINUANCE, OR DISCONNECTION OF THE SERVICES; (vi) A FAILURE OF YOUR INTERNET SERVICES, DOWNTIME, OR MAINTENANCE; (vii) OUR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES; or (viii) DAMAGES, IN THE AGGREGATE FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCEEDING THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES (IF ANY) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS. THESE EXCLUSION OF DAMAGES AND LIMITATIONS ON AVAILABLE DAMAGES APPLY TO ALL CLAIMS, OBLIGATIONS, AND LIABILITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, CONTRACT, OR ANY OTHER LEGAL THEORY, EVEN IF PTI, ITS AFFILIATES, OR OUR LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY BE INCURRED BY YOU

AND EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW CERTAIN EXCLUSIONS OF DAMAGES OR LIMITATIONS ON LIABILITY, THE ABOVE LIMITATION ONLY APPLIES TO YOU TO THE EXTENT THAT THE EXCLUSION OF DAMAGES OR LIMITATIONS ON LIABILITY ARE NOT PROHIBITED UNDER APPLICABLE LAW.

## 20. **Dispute Resolution; Class Action Waiver**

- a. **Informal Dispute Resolution First.** We want to address any disputes informally first. Prior to initiating a legal action, you agree to send an individualized request to [pre-vail.net/support](mailto:pre-vail.net/support) so that we can work together to resolve a dispute. Likewise, if we have a dispute with you, we will send you an individualized request prior to initiating a legal action.
- b. **Class Action Waiver.** The parties expressly waive the right to bring or participate in any kind of class, collective, or mass action, private attorney general action, or any other representative action. Each of us may bring claims against the other only on an individual basis and not on a class, collective, representative, or mass action basis, and the parties hereby waive all rights to have any dispute be brought, heard, administered, resolve, or arbitrated on a class, collective, representative, or mass action basis.

21. **Anonymized and Aggregated Data.** You agree that PTI may obtain and aggregate technical and other data about your and your End Users use of the Services and Software on a de-identified or anonymized basis (“Aggregated Anonymous Data”), and PTI may use the Aggregated Anonymous Data in accordance with applicable Law, including to analyze, develop, improve, support, and operate the Software and Services provided to you or other unrelated customers, during and after the term of this Agreement, including to generate industry benchmarks or best practices guidance, recommendations, or similar reports.

22. **Privacy Policy.** You consent to and agree to our Privacy Policy, and you are on notice of and acknowledge that our collection, sharing, and processing (which may include organizing, structuring, storing, using, or disclosing) of your personal data will be subject to our Privacy Policy. If you are: (i) a “business” and we process “personal information” (as those terms are defined in the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020) on your behalf, (ii) a “controller” and we process “personal data” (as those terms are defined by other applicable US state data privacy Laws) on your behalf, or (iii) you meet both criteria set out in (i) and (ii), then our Privacy Policy is incorporated herein by reference and applies to our “processing” or your “personal information” and “personal data” (as those terms are defined under the aforementioned Laws). If your use or your End User’s use of the Software or Services requires PTI to process personal data, PTI will process such personal data subject to our Privacy Policy.

## 23. **Miscellaneous**



- a. **Assignment; Successors and Assigns.** You may not assign your rights or transfer any of your obligations under this Agreement without our prior express written consent. Any purported assignment or transfer in violation of this section is null and void. We may assign our rights or transfer any or all of our obligations under this Agreement at any time, without prior notice to you: (i) in the event of a merger, acquisition, or sale of all or substantially all of our assets, or (ii) to our affiliate. This Agreement is binding upon, and inures to the benefit of, the parties and their respected permitted successors and assigns.
- b. **Governing Law; Jurisdiction; Venue.** The laws of the State of Texas, U.S.A., regardless of conflict of laws principles, govern all matters arising out of or relating to this Agreement, including its interpretation, construction, performance, and enforcement. The parties consent to the exclusive jurisdiction and venue in the state courts located in and service Tarrant County, Texas, and the federal courts in the Northern District of Texas. Notwithstanding the above, you and PTI agree that this paragraph does not preclude either you or us from initiating any proceedings (including nullity proceedings) before the United States Patent Trial and Appeal Board (PTAB), United States Trademark Trial and Appeal Boards (TTAB), the United States Patent and Trademark Office (PTO), the United States Copyright Office, as long as such proceeding relates to the validity, enforceability, or unenforceability of any copyright, patent, trademark, or other intellectual property right owned or assigned to either you or PTI.
- c. **Merger; Integration.** This Agreement constitutes and embodies the final agreement between you and PTI and contains the complete and exclusive expression of your and our agreement pertaining to its subject matter. All prior or contemporaneous writings, negotiations, and discussions between you and PTI regarding the subject matter hereof are expressly merged into and superseded by this Agreement. We expressly object to and do not agree to any terms or conditions presented by you that are in addition to or different from those contained in this Agreement or an Order Form. You acknowledge that no terms or conditions presented by you that purport to add to, modify, or vary the terms and conditions of this Agreement or an Order Form will be binding on us, including: (i) text or information set forth on any purchase order, email correspondence, invoice or invoice process, or preprinted form, or (ii) terms and conditions of any request for proposal, request for bid, request for information, or questionnaire. In entering into this Agreement, neither you nor PTI has relied upon any statement, representation, warranty, or agreement of the other party except to the extent expressly contained in this Agreement.
- d. **No Agency Relationship.** PTI and you are independent contractors and do not intend to create an express or implied agency relationship by entering into this Agreement, whether arising under general or state common law of agency.
- e. **No Third-Party Rights or Remedies.** This Agreement does not and is not intended to confer any enforceable rights or remedies upon any person other than PTI and you.

- f. **Notice.** We may give notice to you by: (i) electronic mail to your email address on record in your account information; (ii) written communication sent by letter delivered by a nationally recognized overnight delivery service; (iii) first-class postage prepaid mail to your address on record in your account information; or (iv) directly via email or messaging system located on the PTI website. You are responsible for ensuring that your email address and mailing address on record are current. You agree that any notice sent to the then-current email or property address in our systems, or delivered directly via email or messaging system located on the PTI website, is adequate and binding notice upon you. You will provide notice to us (such notice is deemed given when received by PTI) by letter delivered by a nationally recognized overnight delivery service or first-class postage prepaid mail to 112 Goliad St Benbrook, TX 76126.
- g. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way. You and PTI intend that any invalid, illegal, or unenforceable portions of this Agreement will be interpreted to provide the greatest effect and intent of the original. If a construction of the invalid, illegal, or unenforceable portion is not possible, the invalid, illegal, or unenforceable portion will be severed from this Agreement and the rest of this Agreement will remain in full force and effect.
- h. **Survival.** All sections of this Agreement which, by their nature should survive termination or expiration, will survive, including sections pertaining to confidential information, PTI's Proprietary Rights, license rights granted by you to PTI, payment obligations, warranty disclaimers, indemnification, and the limitation on liability.
- i. **Waiver.** PTI's failure to exercise any right or enforce any condition or provision under this Agreement does not operate as a current or future waiver. For any waiver to be effective against us, the waiver must be in a writing signed by PTI's duly authorized representative.
- j. **Interpretation.** Any heading, caption, or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular will have the same meanings when used in the plural and vice versa, where appropriate and unless otherwise specified. Any use of the term "e.g." or "including" or variations thereof in this Agreement will be construed as if followed by the phrase "without limitation."

24. **Definitions.** The following definitions apply to this Agreement. Service-specific definitions are located in the PTI Services Description.

- a. "End User" means you, your employees, your contractors, your agents, and your affiliates who you have authorized to use the Software or Services under this Agreement.

- b. "Law" means all U.S. or non-U.S. national, regional, state, provincial, or local law, statute, rule, regulation, ordinance, administrative ruling, judgment, decree, order, directive, or policy applicable to PTI's provision of and your use of the Software or Services.
- c. "Proprietary Rights" means any copyright, patent, trade secret, know-how, trademark, service mark, trade name, rights of publicity, or other intellectual property or property rights.
- d. "PTI Web-based Application" means PTI's web client available through the PTI Website that allows you and End Users to access Services without downloading any plugins or software.
- e. "PTI Website" means PTI's website located at [www.prevail.net](http://www.prevail.net) or such other website as PTI may maintain from time to time.
- f. "Services" means: (i) any service described in the PTI Services Description and made available to you as set forth in an Order Form that references this Agreement; (ii) any free services provided by PTI to you, in its sole discretion, in connection with this Agreement and whether or not described in the Services Description; (iii) any support services provided by PTI to you; and (iv) the PTI Website, including any access to or use of the PTI Web-based Application.