

## TERMS OF SERVICE

**Last Updated on:** 31 May, 2023

These Terms of Use (“**Terms**”) describe the terms under which Prescinto Technologies Pvt. Ltd, a company having registered office at 15th Floor, Block - A Westgate Business Bay, Makarba, Ahmedabad - 380051, Gujarat, India and also having presence across Bangalore, US, EU and Brazil (“**Prescinto**”, “**Our**”) provides a subscriber access to and use of Our Service(s) (“**Customer**”). By accessing and/or using Our Service, a) Customer agrees to be bound by these Terms, Master Service Agreement and acknowledge having read our privacy policy. b) Customer warrants to us that they are of 18 years or above and are competent to enter into this agreement c) That, in the event Customer is entering into these Terms on behalf of any entity/company or its group, Customer possesses the requisite authority to bind such entities, company or its groups to these Terms. If Customer does not agree to these Terms, it should immediately cease using our Service(s).

Customer and Prescinto are individually referred to as “**Party**” and collectively as “**Parties**”.

- 1. CUSTOMER’S RIGHT:** Prescinto shall provide the Service(s) to the Customers only for its internal business purpose through a web portal including the right to download, install and use the Mobile Apps in connection with the authorized use of the Service(s). Subject to Customer’s compliance with this Agreement and solely during the Subscription Term, Customer shall have the limited, non-exclusive, revocable right to access and use the Service(s) for Customer’s internal business purposes in accordance with the pricing plan set forth in the relevant Order Form or Master Services Agreement.
  
- 2. CUSTOMER OBLIGATIONS:** (a) Customer’s access and use of the Service(s) shall be in accordance with the Mega Watt (MW) limit as set forth in the Order Form or Master Services Agreement. (b) Customer agrees not to (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, disassemble, reverse engineer, decompile or make the Service(s) available to any third party, other than Users in furtherance of its internal business purposes as expressly permitted by this Agreement; (ii) modify, adapt, or hack the Service(s) or otherwise attempt to gain or gain unauthorized access to the Service(s) or related systems or networks; (iii) use the Service(s), store or transmit Sensitive Personal Information; (iv) use the Service(s), store or transmit Customer Data in violation of applicable laws and regulations, including but not limited to violation of any person’s privacy rights or export control laws/regulations; (v) access Service(s) for purposes of creating derivative works based on, or developing or operating products or services for third-parties in competition with the Service(s); (vi) use the Service(s) to store or transmit any content that infringes upon any person’s intellectual property rights or is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (vii) use the Service(s) to knowingly post, transmit, upload, link to, send or store any viruses, malware, trojan horses, time bombs, or any other similar harmful software; (viii) “crawl,” “scrape,” or “spider” any page, data, or portion of or relating to the Service(s) (through use of manual or automated means); (c) The Customer shall be responsible for providing the necessary inputs as set forth in the Master Service Agreement. Customer acknowledges and agrees that Prescinto shall have no liability for any of the following (i) any claims arising from Customer’s failure to provide inputs as specified in the Order Form or Master Services Agreement; (ii) Prescinto’s compliance with Customer’s inputs and instructions provided under this Clause; (iii) any data generated from incorrect or insufficient equipment data transmitted to the Service(s); (iv) failure of implementation of recommendations proposed by Prescinto and taking corrective measures; (v) determining whether the Service(s) or the information generated thereby is sufficient for Customer's purposes.

### **3. SERVICES:**

3.1 Beta Service(s): From time to time, We may make Beta Service(s) available to Customers at no charge. Customers may choose to try such Beta Service(s) or not at its sole discretion. Any use of Beta Service(s) is subject to the Beta Service(s) these terms. We, in Our sole discretion, shall terminate the Service(s) and Customer's right to use the Service(s) at any time for any reason, without being liable to Customer.

3.2 The Service(s) may temporarily be unavailable due to scheduled downtime for upgrades and maintenance in which case We shall use commercially reasonable endeavors to notify Customer in advance.

3.3 Updates: Any enhancements, new features, or updates ("Updates") to the Service(s) are also subject to this Terms of Service and We reserve the right to deploy Updates at any time.

**4. INTELLECTUAL PROPERTY RIGHTS:** Except for the rights granted to Customer under clause 1, all rights, title and interest in and to all intellectual property and/or proprietary rights, title and interest in or related to the Service(s), including patents, inventions, copyrights, trademarks, domain names, trade secrets or know-how shall belong to and remain exclusively with Prescinto. All rights not expressly provided to Customer herein are reserved. Prescinto shall have a right and license to incorporate into the Service(s) or otherwise use any suggestions, enhancement requests, recommendations, or other feedback the Customer chooses to provide Prescinto. Customer owns the rights to the Customer Data. Prescinto does not claim ownership over such Customer Data. Customer grants Prescinto a royalty-free license and right to use Customer Data solely to provide, support, maintain and improve the Service(s). Customer also grants Prescinto a royalty-free license and right to aggregate, collect and analyze Customer Data relating to the provision, use, and performance of the Service(s) and to use (during and after the Subscription Term) such Customer Data to develop and improve the Service(s) and other Prescinto offerings, including disclosure of such Customer Data to third parties in an aggregated and anonymized format such that the Customer cannot be identified.

**5. THIRD PARTY SERVICES:** Customer acknowledges and agrees that Customer's use of Third-party Services will be subject to the terms and conditions and privacy policies of such third-party and that Prescinto shall not be liable for those Third-Party Service(s).

### **6. CHARGES AND PAYMENT:**

6.1 Charges: All charges associated with Customer's Account shall be based on the plan Customer has subscribed to as per the prices mentioned in the Order Form or Master Services Agreement ("Charges"). The Charges are due in full and payable in advance in accordance with clause 6.2, when Customer subscribes to the Service(s).

6.2 Payment: Customer hereby authorize Us or Our authorized agents, as applicable, to bill Customer upon its subscription to the Services (and any renewal thereof). Unless otherwise stated in an Order Form or Master Services Agreement, Customer's payment is due within thirty (30) days of our invoice date.

6.3 Refunds: Unless otherwise specified in an Order Form or Master Services Agreement, all Subscription Charges are non-refundable. No refunds shall be issued for partial use or non-use of the Service(s).

6.4 Late Payments/Non-payment of Charges: We will notify Customer if We do not receive payment towards the Charges within the due date for Customer's Account. Customer shall make payments within a maximum of thirty (30) days from the date of Our notice. If We do not receive the payment within the foregoing time period, in addition to Our right to other remedies available under law, We may (i) charge interest for late payment @ eighteen (18) % per annum; (ii) suspend Customer's access to and use of the Service(s) until We receive Customer's payment towards the Charges as specified herein and/or; (iii) terminate Customer's Account.

6.5 Applicable Taxes: Unless otherwise stated, the Charges do not include any taxes, levies, duties, or similar governmental assessments, including value-added, sales, use, or withholding taxes assessable by any local, state, provincial, or foreign jurisdiction (collectively "**Taxes**").

**7. TERM, TERMINATION, AND SUSPENSION:** The Subscription Term shall be as set forth in relevant Order Form or Master Services Agreement. The Agreement shall be renewed automatically unless either Party gives written notice to the other at least sixty (60) days prior to the expiration of this Agreement. Either Party may terminate this Agreement in the event a) of a material breach of this Agreement by the other Party and such breach is not cured within thirty (30) days of a written notice notifying the breach ("Cure Period") or b) the other Party files for insolvency or bankruptcy, except involuntary bankruptcies which are dismissed within sixty (60) days. In the event of termination by the Customer for material breach of this Agreement by Prescinto, Prescinto shall refund on a pro-rata portion any Charges paid in advance for the unused portion of the Service(s). Following the termination of this Agreement either by Prescinto or by the Customer, Customer's access and use of the Services shall cease. Prescinto shall retain all Customer Data in Prescinto's possession for thirty (30) days from the date of effective termination ("**Data Retention Period**"). Beyond the Data Retention Period, Prescinto reserves the right to delete all the Customer Data in its possession.

## **8. CONFIDENTIALITY, SECURITY AND DATA PRIVACY:**

8.1 Customer chooses, or Customer is provided with, a user identification code, login, password, or any other piece of information as part of Prescinto's security procedures Customer must treat such information as confidential. Customer must not disclose it to any third party. Prescinto has the right to disable any user identification code or password, whether chosen by Customer or allocated by Prescinto, at any time, if in Prescinto's reasonable opinion, Customer has failed to comply with any of the provisions of this Terms of Service or Master Service Agreement or Order Form. Prescinto will not be responsible for any activities, including any attempted or actual access or loss of data occurring under Customer's Account as a result of Customer's non-compliance with its obligations under clause 8.

8.2 Each Party will not disclose to third parties any Confidential Information of the other Party and protect the other Party's Confidential Information from any unauthorized use, access, or disclosure in the same manner as each Party protects their own Confidential Information, and in any event, no less than reasonable care. The provisions of this subsection shall supersede any non-disclosure agreement by and between the Parties entered prior to the Master Service Agreement that would purport to address the confidentiality of Customer Data and such agreement shall have no further force or effect with respect to Customer Data.

8.3 Prescinto shall process such Personal Data forming part of Customer Data only for the purposes of providing, maintaining, operating, supporting, and improving the Service(s) and in accordance with the terms of the Master Service Agreement, Data Processing Agreement (if applicable) and this Terms of Service, and any other applicable data privacy laws and as part of the direct relationship between Prescinto and Customer. Prescinto shall not process Customer Data for any purposes other than what is mentioned in this Terms of Service, Master Service Agreement and Data Processing Agreement. Prescinto certifies that it understands the restrictions in this clause 8.3 and will comply with such restrictions.

8.4 Customer acknowledges and agrees that Prescinto and its group companies may access or disclose information about Customer, Customer's Account, Users, including Customer Data, in order to (a) comply with the law or respond to lawful requests or legal process; or (b) prevent any infringement of Prescinto's or its group companies customers' proprietary rights. Further, at Prescinto's sole discretion, any suspected fraudulent, abusive, or illegal activity by Customer may be referred to law enforcement authorities.

**9. DISCLAIMER OF WARRANTIES:** EXCEPT AS SET FORTH IN CLAUSE 3, THE SERVICE(S), INCLUDING ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THE ACCESS TO SERVICES BE UNINTERRUPTED OR ERROR-FREE ARE HEREBY EXCLUDED.

**10. LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS TERMS OF SERVICE OR THE MASTER SERVICE AGREEMENT OR ANY OTHER AGREEMENT, NEITHER PARTY SHALL BE LIABLE, UNDER ANY THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION CONTRACT, TORT WARRANTY, BREACH OF STATUTORY DUTY, NEGLIGENCE, OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF EITHER PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE FORESEEN SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE CHARGES PAID OR PAYABLE BY THE CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

## **11. INDEMNIFICATION:**

11.1. Prescinto will, at its own expense, defend Customer in respect of any action brought against the Customer by a third party, and indemnify and hold harmless Customer against and pay damages finally awarded against Customer in connection therewith, including the reasonable fees and expenses of the attorneys in any and all claims, actions or suits alleging that the Service(s) provided under this Terms of Service or the Master Service Agreement constitutes an infringement of any valid intellectual property rights of such third party. Prescinto shall have no indemnity obligation for claims of infringement to the extent resulting or alleged to result from (i) Customer's use of the Prescinto's Software along with programs not provided by Prescinto; (ii) modification to the Software made by a party other than Prescinto; (iii) Customer's failure to install the updates or upgrades provided by Prescinto; (iv) continued use of allegedly infringing Service(s) after being notified thereof or after being informed of modifications that would have avoided the alleged infringement. Prescinto's sole obligation to Customer and

Customer's sole and exclusive remedy shall be as set forth in this clause 11.1. of this Terms of Service for intellectual property infringement claims.

11.2. Customer will indemnify and hold Prescinto harmless against any claim brought by a third party against Prescinto, and its respective employees, officers, directors, and agents arising from Customer's acts or omissions in connection with clause 2 of this Terms of Service. The Customer will have no obligation or liability with respect to any such claim arising out of the gross negligence or willful misconduct of Prescinto.

11.3 The indemnity obligations under clause 11.1 and 11.2 is subject to the indemnitee: (i) providing prompt written notice to the indemnifying Party of the indemnity claim; (ii) allowing the indemnitor sole control over the defense or settlement of the claim, and (iii) providing the indemnitor reasonable support and cooperation with regard to the defense.

## **12. MISCELLANEOUS:**

**12.1 Entire Terms of Service and Revisions:** This Terms of Service, including all agreements such as the Master Service Agreement, Data Processing Agreement, corresponding schedules, annexures and online policies incorporated herein by reference, contains the entire agreement and understanding of the Parties and supersedes all prior communications, discussions, negotiations, proposed agreements, and all other agreements between them, whether written or oral, concerning the subject matter herein.

**12.2 Relationship of the Parties:** The parties are independent contractors. This Terms of Service or the corresponding Master Service Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship among the Parties.

**12.3 Assignment:** Except to its affiliates/within its group companies, the Parties may not, directly or indirectly, assign all or any part of this Terms of Service or its respective rights under this Terms of Service or the Master Service Agreement or delegate performance of its respective duties under this Terms of Service or the Master Service Agreement without the prior consent, which consent shall not be unreasonably withheld, of the other Party.

**12.4 Force Majeure:** Notwithstanding anything to the contrary contained elsewhere, Prescinto shall not be liable for unavailability of the Service(s) caused by circumstances beyond its reasonable control, such as but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond the Prescinto's reasonable control (including, without limitation, inability to access the internet, unauthorized loss, distribution or dissemination of Customer Data), or acts undertaken by third parties, including without limitation, distributed denial of service attacks.

**12.5 Governing Law and Dispute Resolution:** The Terms of Service shall be governed by the jurisdiction as stated in the Master Service Agreement.

**12.6 Publicity Rights:** Customer hereby grants Prescinto a royalty-free, worldwide, transferable license to use Customer's trademark or logo to identify the Customer as Prescinto's customer on Prescinto's websites and/or marketing collateral. The Parties also agree to collaborate, in good faith, to enable press releases, case studies, and customer testimonials related to Customer's use of the Service(s).

**12.7 Notices and Consent to Electronic Communications:** All notices to be provided by under this Terms of Service or Master Service Agreement may be delivered in writing to the contact mailing address provided in the Master Service Agreement; or by electronic mail to the e-mail address of Prescinto and the Customer. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, two (2) business days after being deposited in the mail or with a Courier as permitted above.

**12.8 Survival:** All clauses which, by their nature are intended to survive, including without limitation Clauses 4 (*Intellectual Property Rights*), 6 (*Charges and Payment*), 7 (*Effect of Termination*), 8 (*Confidentiality; Security and Data Privacy;*), 9 (*Disclaimer of Warranties*), 10 (*Limitation of Liability*), 11 (*Indemnification*), 12 (*Miscellaneous*) and 13 (*Definitions*) shall survive any termination of Prescinto's agreement with respect to use of the Service(s) by the Customer. Termination shall not limit either Party's liability for obligations accrued as of or prior to such termination or for any breach of this Terms of Service or the Master Service Agreement.

### **13. DEFINITIONS**

When used in this Terms of Service with the initial letters capitalized, in addition to terms defined elsewhere in this Terms of Service, the following terms have the following meanings:

**Account:** means any accounts or instances created by or on behalf of Customer for access and use of any of the Service(s).

**API:** means the application programming interfaces developed, enabled by, or licensed to Us that permit access to certain functionality provided by the Service(s).

**Confidential Information:** means all information disclosed by one Party to the other Party which is in tangible form and labeled "confidential" (or with a similar legend) or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure. For purposes of this Terms of Service, Customer Data shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information which (a) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is, at the time of disclosure, already in the possession of the receiving party without any obligation of confidentiality; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (e) is independently developed by the receiving party without the use of or reference to the disclosing party's Confidential Information; or (f) is required by law to be disclosed by the receiving party, provided that the receiving party shall, to the extent legally permitted, notify the disclosing party of such requirement.

**Customer Data:** means all electronic data, text, messages, or other materials, including Personal Data transmitted by Customer or provided or obtained on Customer's behalf for the purpose of performance of the Service(s) under these Terms.

**Documentation:** means any written or electronic documentation, images, video, text, or sounds specifying the functionalities of the Service(s) provided or made available by Us to Customer or Customer's Users through the Service(s) or otherwise.

**Mobile Apps:** means any Prescinto-branded Software applications provided by Us to enable access and use of the Service(s) through mobile or other handheld devices (such as apps on iOS or Android devices).

**Personal Data:** means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.

**Order Form or Master Services Agreement:** means any service order Form or master services agreement or statement of work specifying the Service(s) subscribed to, particular features and functionalities in the Service(s) that Customer wishes to avail in the Subscription Term.

**Processing/To Process:** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**Service(s):** means the cloud-based asset management platform proprietary to Us that acquires data from remote devices provided by Customer, analyzes such data to provide alerts, monitor real-time status, operate asset management or any new services that We may introduce to which the Customer may subscribe and any updates, modifications or improvements to the services, including individually and collectively, Software, the API and any Documentation.

**Software:** means software provided by Us (either by download or access through the internet) that allows Customer to use any functionality in connection with the Service(s).

**Subscription Term:** means the period during which Customer has agreed to subscribe to the Service(s).

**Third-party Service(s)** shall mean third-party application(s) or service(s) integrating with the Service(s) through APIs or otherwise and that are not licensed by Us under these Terms.

**User:** means those who are designated users within the Service(s), including an Account administrator, agents, and other designated users.