



Predictive Response Inc. - Master Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on August 14, 2020. It is effective between You and Us as of the date of You accepting this Agreement.

1. Definitions. As used in this Agreement:

"Customer Data" means any electronic data, information, or material provided or submitted by Customer to Provider for use in connection with the Service.

"Service" means the Provider's online provision of the "Predictive Response" services, as may be modified by Provider from time to time.

"Users" means Customer's employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Provider at Customer's request).

"Provider," "We," "Us," or "Our" means Predictive Response, Inc. a California Corporation.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have signed Order Forms.

"Order Form" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us, including any addenda and supplements thereto.

Pricing – All values are in United States Dollars.

Annual – Payment is expected on the anniversary of the Agreement Effective Date.
Pricing may be subject to change; packages paid in advance will not be affected by any price changes.

2. Use of Services and Access to Content

2.1 Subscriptions

Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Provider regarding future functionality or features.

2.2 Usage Limits

Services and Content are subject to usage limits specified in Order Forms and Documentation. If Customer exceeds a contractual usage limit, Provider may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding PROVIDER's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon PROVIDER's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

2.3 Customer Responsibilities

Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-PROVIDER Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify PROVIDER promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-PROVIDER Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in PROVIDER's judgment threatens the security, integrity or availability of PROVIDER's services, may result in PROVIDER's immediate suspension of the Services, however PROVIDER will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

2.4 Usage Restrictions

Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-PROVIDER Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-PROVIDER Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of PROVIDER intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise

for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

2.5 Free Trial

You may install Our Applications and We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s), or (c) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE APPLICABLE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD

Please review the applicable Service's Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

2.6 Provider Responsibilities

Subject to the terms and conditions of this Agreement, Provider shall: (i) use commercially reasonable efforts to prevent the unauthorized access to the Customer Data; (ii) not use, edit, or disclose Customer Data except as necessary to fulfill its obligations under this Agreement; and (iii) use commercially reasonable efforts to make access to and use of the Service generally available 24/7 (24 hours a day, 7 days a week), except for: (a) planned down time, which shall be any period outside of normal business hours for which Provider gives twenty-four (24) hours or more notice that the Service will be unavailable; or (b) down time caused by circumstances beyond Provider's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures or delays involving hardware or software not within Provider's possession or reasonable control, virus network intrusions or denial of service attacks.

2.7 License Grants

Subject to the terms and conditions of this Agreement, Provider grants Customer a non-exclusive, non-transferable, non-sublicenseable right to access and use the Service for Customer's internal business purposes and solely by the Users. Customer grants to Provides a non-exclusive, non-sublicenseable license to use, copy, store, modify and display any Customer Data and any other electronic data, information, or material provided or submitted by Customer to Provider solely so that Provider may fulfill the services provided to Customer, including accessing Customer's User accounts and Customer Data, to respond to service or technical problems. CUSTOMER MAY NOT RENT, LEASE, SUBLICENSE, SELL, ASSIGN, LOAN, OR OTHERWISE TRANSFER OR SHARE ANY OF ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT. Customer may not download, reverse engineer, decompile, or disassemble the Provider's software associated with the Service, except to the extent the foregoing restriction is expressly prohibited by applicable law. Customer may not use any trademarks of the Service, documentation, or Provider names used in this Agreement.

2.8 Ownership of Service

Except for the limited right to use and access the Service provided herein, Provider retains all right, title, and interest in and to the Service and related software, including all intellectual property rights therein. The rights

granted hereunder do not constitute a license, transfer or sale of Provider's ownership rights in or to the Service and related software. The Service and related software are protected by applicable intellectual property laws, including United States copyright laws and international treaties.

2.9 Ownership of Customer Data

As between Provider and Customer, any Customer Data remains the sole property of Customer. Customer Data shall be considered confidential, subject to the terms of this Agreement. Notwithstanding any other provision in this Agreement, Provider may provide certain User registration and statistical information such as usage or User traffic patterns in aggregate form to third parties, provided that such information does not identify Customer.

3. Fees and Payment for Purchased Services

3.1 Fees

You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, payment obligations are non-cancelable and fees paid are non-refundable, and quantities purchased cannot be decreased during the relevant subscription-term.

3.2 Invoicing and Payment

You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

3.3 Overdue Charges

If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue a late fee of \$25 per month and late interest at the rate of 2% of the outstanding balance per month or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 3.2 (Invoicing and Payment).

3.4 Suspension of Service

If an invoice issued pursuant to Section 3.2 above is thirty (30) days or more overdue, in addition to any of its other rights or remedies, Service Provider reserves the right to suspend the Service provided to Customer, without liability to the Customer, until the outstanding balance is paid in full. Notwithstanding any such suspension, Provider shall have the right to continue to collect and maintain Customer Data.

3.5 Confidentiality

As used herein, "Confidential Information" means all information of a Party ("Disclosing Party"), which the Disclosing Party designates in writing as being confidential when it discloses such information to the other Party ("Receiving Party"), whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually. Provider's software for the Service and customer's data shall be deemed Confidential Information regardless written designation. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party. The

Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.

3.6. Taxes

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 3.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

3.7. Future Functionality

You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

4. Warranty and Disclaimers

Each Party represents and warrants that it has the legal power to enter into this Agreement. Provider represents and warrants that it will provide the Service hereunder in a professional and workmanlike manner. EXCEPT AS SET FORTH ABOVE, PROVIDER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY AND FITNESS FOR CUSTOMER'S PURPOSE WITH RESPECT TO THE SERVICE. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICE OR AGAINST INFRINGEMENT. THERE IS NO WARRANTY THAT THE SERVICE, THE INFORMATION THEREIN, OR PROVIDER'S EFFORTS WILL FULFILL ANY OF CUSTOMER'S PARTICULAR PURPOSES OR NEEDS.

5. Limitation of Liability

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

5.1 Exclusion of Consequential and Related Damages

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6. Mutual Indemnification

6.1 Indemnification by Service Provider

Subject to this Agreement, Service Provider shall defend and settle any claims (“Claims”) made or brought against Customer by a third party alleging that the Customer’s use of the Service as provided herein on a stand-alone basis infringes the intellectual property rights of a third party; provided, that Customer (a) promptly gives written notice of the Claim to Service Provider; (b) gives Service Provider and its agent sole control of the defense and settlement of the Claim (provided that Service Provider may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Service Provider, at Service Provider’s cost, all reasonable assistance. Subject to the terms and conditions of this Agreement, Service Provider shall indemnify Customer for any final judgments or settlement approved by Service Provider in writing.

6.2 Indemnification by Customer

Subject to this Agreement, Customer shall defend and settle any claims (“Claims”) made or brought against Provider (i) by a third party alleging that the Customer Data infringes, violates or misappropriates the intellectual property rights of a third party (including the rights of publicity and privacy) or (ii) Customer’s breach of Provider’s User Policy or applicable law; provided, that Provider (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of a third party Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Provider of all liability); and (c) provides to Customer, at Customer’s cost, all reasonable assistance in connection with the defense of third party claims. Subject to the terms and conditions of this Agreement, Customer shall indemnify Provider for any final judgments or settlement approved by Customer in writing.

7. Term and Termination

7.1 Term of Agreement

This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

7.2 Term of Purchased Subscriptions

The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Provider’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term’s per-unit pricing.

7.3 Termination

A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination or expiration of this Agreement, Customer’s outstanding payment obligations shall survive and Customer’s access to the Service shall cease. Upon thirty (30) days prior notice to Customer, Provider shall destroy any Customer Data in its possession. Upon such notice, Customer may, at its option, request return of such Customer Data at Provider’s then-current price for such data transfer services; provided however, it is understood and agreed that Provider shall have no obligation to make such Customer Data accessible in connection with the Service.

8. General Provisions

8.1 Relationship of the Parties

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

8.2 No Benefit to Others

The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

8.3 Assignment

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party. Notwithstanding the foregoing, Provider may assign this Agreement without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this Section 8.3 shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.

8.4 Governing Law

In connection with any action arising under this Agreement this Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Customer agrees to the exclusive jurisdiction of and venue the courts of the state and federal courts located in jurisdiction of County of the current location of the Service Provider.

8.5 Severability

This Agreement is the entire agreement between the Parties and supersedes any other communications with respect to the Service, except for financial terms and payments agreed upon with an authorized Predictive response Reseller. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.

8.7 Waiver and Cumulative Remedies

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

9. Questions

Should Customer have any questions concerning this Agreement, or if Customer desires to contact Provider for any reason, please contact legal@predictiveresponse.com