



BETA SUBSCRIPTION SERVICES AGREEMENT

1. The Service is still under development and testing.
2. Prodly has not made the Service commercially generally available.
3. Customer should not use the Service for production purposes.
4. This Service is not complete, and the features and functionality may change, without notice.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS BETA SUBSCRIPTION SERVICE.

BY USING THE SERVICE OR CLICKING "AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

This Beta Subscription Services Agreement is between Prodly, Inc., a California corporation (**Prodly**), and the entity agreeing to these terms (**Customer**).

1. BETA SUBSCRIPTION SOFTWARE SERVICE.

This agreement provides Customer access to a beta version of the subscription software service including, without limitation, its features, functions, and user interface, at a unique URL within a hosted-server environment (**Service**).

2. USE OF SERVICES.

- a. **Feedback.** If Customer provides feedback or suggestions about the Service, then Prodly (and those it allows to use its technology) may use such information without obligation to Customer.
- b. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between Prodly and Customer (**Customer Data**). Customer grants Prodly the right to use the Customer Data solely for purposes of performing under this agreement.
- c. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to the Service, and notify Prodly promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.

3. WARRANTY DISCLAIMER.

THE SERVICE IS PROVIDED 'AS IS' AND IS NOT READY FOR PRODUCTION USE. PRODLY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE PRODLY TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, PRODLY DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

4. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Prodly's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information. Customer's Confidential Information includes, without limitation, the Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information

of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

5. PROPERTY

- a. **Reservation of Rights.** The Service is the proprietary property of Prodly, and all right, title, and interest in and to the Service, including all associated intellectual property rights, remain only with Prodly. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. Prodly reserves all rights not expressly granted in this agreement.
- b. **Customer Restrictions.** Customer *may not*: (i) use the Service beyond its internal evaluation of the Service; (ii) sell, resell, rent, or lease the Service; (iii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iv) interfere with or disrupt the integrity or performance of the Service; (v) reverse engineer, access, or copy any feature, function, or graphic of the Service to build a competitive product or service; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.
- c. **Statistical Information.** Prodly may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. Prodly retains all intellectual property rights in such information.

6. TERM, TERMINATION, RETURN OF DATA, AND SUSPENSION OF SERVICE.

- a. **Term.** This agreement continues until it is terminated by Prodly, the Service is released as commercially generally available, or Customer's access to the Service is terminated or expires (**Term**). After the Term, all Customer Data will be deleted.
- b. **Return Prodly Property Upon Termination.** Upon termination of this agreement for any reason, Customer must destroy or return all property of Prodly. Upon Prodly's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- c. **Suspension of Service for Violations of Law.** Prodly may immediately suspend the Service and/or remove applicable Customer Data if it in good faith believes that, as part of using the Service, Customer may have violated a law.

7. LIABILITY LIMIT.

- a. **Exclusion of Indirect Damages.** Prodly is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. **Limitation of Liability.** Prodly's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed \$100.

8. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for San Francisco County, California, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

9. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Prodlly.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the businesses or assets of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- f. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.

Last Revised August 27, 2019.