

# PREAVA MASTER SERVICE AGREEMENT

This Master Service Agreement effective as of the execution date of the applicable Order Form (the “Effective Date”), is by and between Preava, Inc., a Delaware corporation (“Preava”) and the customer identified in the applicable Order Form (“Client”; together with Preava the “Parties”, and each a “Party”).

WHEREAS, Preava provides an intelligent enterprise-grade data loss prevention solution that helps to stop emails from being sent to unwanted recipients;

WHEREAS, Preava has the capability and capacity to provide the services identified below and in the accompanying order form(s), if any; and

WHEREAS, Client desires to retain Preava to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## 1. Definitions

The following definitions apply for the purposes of this Master Service Agreement and the accompanying Order Form(s), if any (together, and including any Exhibits, the “Agreement”):

- 1.1. “Admin Dashboard” means the administrative dashboard component of the Preava Prevent Software where organization-wide configuration changes can be made.
- 1.2. “Anonymized Services Data” means anonymized (irreversibly de-identified) and aggregated data, including but not limited to metadata, aggregated usage data, and other information that is collected, derived, extracted, or created from Client’s Customer Data and generated by Client’s use of the Services. For the avoidance of doubt, Anonymized Services Data does not include Confidential Information, Personal Data, or data protected by Intellectual Property Rights.
- 1.3. “Applicable Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any court or tribunal of competent jurisdiction applicable to the Parties.
- 1.4. “Authorized Email Account” means the Microsoft Exchange, Microsoft Office 365, Google Workspace, or other email accounts authorized by Client to use the Services on up to five (5) Client Devices at any given time.

1.5. “Beta Testing Feedback” means evaluations, suggestions, commentary, and any other feedback regarding the Preava Prevent Software that is provided by Client in exchange for its receipt of Beta Testing Services.

1.6. “Beta Testing Services” means Services that may be provided by Preava as part of a beta testing program in which the Services, whether modified or in the then publicly available form, are made available at no cost to Client for a limited period of time in exchange for Beta Testing Feedback. Preava is under no obligation to provide Beta Testing Services and may make such Beta Testing Services available in its sole and absolute discretion.

1.7. “Client Device” means any desktop, laptop computer, or mobile device used by an Authorized Email Account for the internal business purposes of Client.

1.8. “Confidential Information” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as “confidential.” Without limiting the foregoing, all Preava Materials are the Confidential Information of Preava and the Customer Data are the Confidential Information of Client. Confidential Information does not include: (i) information that was publicly available at the time of disclosure or that becomes publicly available other than by a breach of the Agreement by the Receiving Party; (ii) information previously known by or developed by the Receiving Party without use of or access to the Confidential Information of the Disclosing Party; or (iii) information that the Receiving Party rightfully obtains without restrictions on use and disclosure.

1.9. “Customer Data” means the data collected by, from, or through Client’s Authorized Email Account using Preava Prevent Software, including all emails scanned by the Preava Prevent Software (including all recipient email addresses and email header data). For the avoidance of doubt, Customer Data does not include data shared between the Parties regarding their general business relationship.

1.10. “Exhibits” means any and all exhibits to this Master Service Agreement and any applicable Order Form, which are deemed integrated into and form a part of the Agreement.

1.11. “Force Majeure Event” means any act or circumstance beyond the affected Party’s reasonable control, including, without limitation: acts of God; flood, fire, pandemic (other than the Covid-19 pandemic and any variants thereon), earthquake, or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; actions, embargoes, or blockades in effect on or after the date of the Agreement; passage of law or any action taken by any governmental authority including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown; national or regional emergency; strikes, labor stoppages or slowdowns, or other industrial disturbances; and national or regional shortage of adequate power, telecommunications, or facilities.

- 1.12. “Indemnitee” means the Party who is indemnified by the other Party.
- 1.13. “Indemnitor” means the Party who is indemnifying the other Party.
- 1.14. “Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.15. “Order Form” means the order form or quote, including any subsequent ordering documents, titled “Preava Order Form” or using titles of similar import, such as “Statement of Work,” “Service Order,” or “Scope of Work,” which (i) is signed or otherwise executed by the Parties or (ii) following its issuance by Preava, is paid by Client. All applicable Order Forms are deemed integrated into and form a part of the Agreement.
- 1.16. “Personal Data” has the meaning given to it in the Preava Data Processing Addendum.
- 1.17. “Preava Data Processing Addendum” means the data processing addendum accessible at <https://preava.com/legal/data-processing-addendum>, as the same may be updated from time to time by Preava in its sole discretion.
- 1.18. “Preava Materials” means the Preava Prevent Software and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Preava or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Preava’s systems. For the avoidance of doubt, Preava Materials include Beta Testing Feedback and all information, data, or other content derived from Preava’s monitoring of Client’s access to or use of the Services, but does not include Customer Data.
- 1.19. “Preava Prevent Software” means the desktop email client add-ins, the web browser extension software applications, the Admin Dashboard, and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications of the foregoing, that Preava provides access to and use of, whether remotely or on premise, as part of the Services in accordance with the Agreement.
- 1.20. “Representatives” means, with respect to a Party, that Party’s affiliates and its and their employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors, as applicable.
- 1.21. “Services” means the use of the Preava Prevent Software, the Support Services, and any other services provided by Preava in accordance with or as contemplated by the Agreement. Services include but are not limited to Beta Testing Services.
- 1.22. “Subscription Fees” means all fees payable by Client to Preava for access to the Services as specified in an applicable Order Form.

1.23. “Subscription Term” means the period beginning on the date specified in the applicable Order Form and ending one calendar year (or such other period as may be specified in the applicable Order Form) thereafter.

1.24. “Support Services” means reasonably unlimited remote technical support provided to Client by Preava pursuant to Section 4 upon request (it being understood that the scope, duration, service level, and response time frame of such support shall be entirely within Preava’s sole discretion).

1.25. “Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Preava.

## **2. Agreement**

The Agreement is a legal agreement between Preava and Client. Except as agreed in a signed writing between Preava and Client, the Agreement governs the subscription to, acquisition of, and use of all Services, whether such Services are provided directly by Preava; indirectly, such as through an authorized reseller or distributor; or otherwise. By (i) signing an Order Form, (ii) paying any amount due under an Order Form, or (iii) signing this Master Service Agreement, as of that date, Client confirms its acceptance of the Services and agrees to be bound by and act in accordance with the Agreement.

## **3. Services**

During the Subscription Term: (i) Preava will provide the Services to Client; (ii) Client may access and use the Services for its own internal business purposes; (iii) Preava grants Client a limited, non-exclusive, non-sublicensable, non-transferable, worldwide license to use the Services for a limited number of Authorized Email Accounts in accordance with the terms of the Agreement, including any applicable Order Form, and with all other specifications and instructions provided by Preava; (iv) Preava grants Client a limited, non-exclusive, non-sublicensable, non-transferable, worldwide license to install the Preava Prevent Software on a limited number of Client Devices in accordance with the terms of the Agreement, including any applicable Order Form, and with all other specifications and instructions provided by Preava; and (v) Preava will use commercially reasonable efforts to notify Client in advance of any maintenance or update to the Services that is likely to cause disruption to Client’s use of the Services.

## **4. Support Services**

4.1. Provision of Support Services. During the Subscription Term: (i) as a part of the Services, Preava will use commercially reasonable efforts to provide Client with remote technical support and advice, such as assistance in deploying the Preava Prevent Software and any updates thereto, upon request via email to support@preava.com, or by such other communication method as Preava may designate from time to time; (ii) Preava may retrieve all diagnostic logs or other locally stored files, if any, as necessary to perform the Support Services from Client Devices—Preava may use these logs and files to resolve support issues and to improve the Services as a

whole; and (iii) Preava will have no obligation to provide Support Services following any violation of the Agreement by Client.

4.2. Availability. Preava will be available to provide Support Services on business days, excluding United States public holidays, between the hours of 9:00 a.m. and 5:00 p.m. United States Eastern Time. Preava will use commercially reasonable efforts to respond to general Support Service inquiries within one business day. Preava will use its best efforts to respond to urgent Support Service inquiries as soon as practicable, including outside of its standard business hours. The Parties may agree to different or additional levels of Support Services, availability, and response times, and the additional fee for such additional levels of Support Services, in any applicable Order Form.

## **5. Use of Data**

5.1. Preava's Use of Customer Data. Preava may use Customer Data and other data derived from Client's use of the Services to provide the Services, and Preava may use any insights drawn from Client's use of the Services to identify, analyze, and predict email security threats to Client's Authorized Email Account.

5.2. Preava's Use of Anonymized Services Data. Preava is entitled to use Anonymized Services Data for any legitimate business purpose, including to improve the Services as a whole. Anonymized Services Data may be shared with third parties. Anonymized Services Data are Preava Materials.

5.3. Data Protection. The Preava Data Processing Addendum is hereby integrated into and forms a part of the Agreement. By entering into the Agreement, Client also agrees to the applicable terms and conditions of the Preava Data Processing Addendum.

5.4. Lost or Damaged Data. Except as otherwise provided in the Agreement, Preava has no responsibility for making or retaining backup copies of Customer Data. Preava will use commercially reasonable efforts to restore any Customer Data that is lost or damaged by or on behalf of Preava. Preava will not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party except those third parties subcontracted by Preava to perform services on Preava's behalf or as otherwise required by Applicable Law.

## **6. Confidentiality**

6.1. Treatment of Confidential Information. In the event that any Party (in such capacity, the "Disclosing Party") discloses or makes available Confidential Information to the other Party (in such capacity, the "Receiving Party"), the Receiving Party will:

- (a) not access or use the Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 6.2, not disclose or permit access to Confidential Information other than to its Representatives who:

- i. need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement,
  - ii. have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6, and
  - iii. are bound by written confidentiality and restricted use obligations, or are otherwise legally bound to confidentiality and restricted use obligations, in either case, at least as protective of the Confidential Information as the terms set forth in this Section 6;
- (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6.

6.2. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by Applicable Law to disclose any Confidential Information then, to the extent permitted by Applicable Law, the Receiving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy (at the Disclosing Party's sole cost and expense) or waive its rights under this Section 6.2 and the Receiving Party shall provide reasonable assistance to the Disclosing Party (at the Disclosing Party's sole cost and expense) in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6.2, the Receiving Party remains required by Applicable Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

## **7. Client Obligations**

7.1. Required Conduct. Client will:

- (a) ensure that use of the Services by it, its Representatives, and by any third party who has access to its Authorized Email Account are in compliance with the requirements of the Agreement at all times;
- (b) ensure that its Authorized Email Account username and password are secure and confidential at all times;
- (c) promptly notify Preava in writing of any actual or suspected security breach, vulnerability, or exploit that Client becomes aware of and that relates to, impacts, or affects the Preava Prevent Software or Preava;

- (d) promptly notify Preava in writing of any unauthorized use or breach of customer-side configurations or the security and confidentiality of log-in details that are used for an Authorized Email Account;
- (e) use all reasonable efforts to prevent any unauthorized access to or use of the Services;
- (f) cooperate with Preava in the performance of the Agreement and provide access to all information that Preava requires in order to provide the Services;
- (g) comply with all laws and regulations applicable to its obligations under the Agreement;
- (h) comply with the requirements of the Preava Data Processing Addendum that are applicable to it;
- (i) obtain and maintain all necessary licenses, consents, and permissions necessary for Preava and its Representatives to perform their obligations under the Agreement, including without limitation for the Customer Data;
- (j) maintain all necessary internet connectivity required to use the Services and be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its internet connections;
- (k) be solely responsible for the lawfulness, accuracy, integrity, reliability, and quality of Customer Data;
- (l) be solely responsible for the acts and omissions of Client's users and anyone using Client log-in details to access or use the Services;
- (m) acquire and maintain all necessary rights, consents, and permissions to collect, share, and use Customer Data as contemplated in the Agreement, including granting Preava the rights in Sections 5 and 9, without violation or infringement of any third-party intellectual property, publicity, privacy, or other rights or any Applicable Laws, rules, or regulations; and
- (n) pay the Subscription Fees to Preava in accordance with the Agreement;
- (o) carry out all of its obligations under the Agreement in an efficient, timely, and fulsome manner; and
- (p) if Client receives Beta Testing Services as specified in an applicable Order Form, provide Beta Testing Feedback.

7.2. Prohibited Conduct. Client will not, nor will it encourage or permit its Representatives to, actually or attempt to:

- (a) access or use the Services if Client or its Representatives are a natural person under 18 years of age;

- (b) access or use the Services if Client or its Representatives are, represent, or otherwise work for a direct competitor of Preava, except as may be agreed between Client (or Client's Representatives) and Preava in a signed writing;
- (c) except as expressly permitted by Applicable Law, access or use all or any part of the Services in order to: (i) build a product or service which competes with the Services; (ii) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or (iii) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means except to the extent expressly permitted by the Agreement;
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party;
- (e) access or use the Services, whether in whole or in part, for benchmarking purposes, to determine whether they are in the scope of a patent, or to evaluate or monitor their functionality, availability, or performance; or
- (f) access or use the Services for any purpose that is unlawful or in any otherwise unauthorized manner, including in such a way that could damage, disable, interfere with, overburden, or impair any computer system, server, or network of Preava or any other person using the Services.

## **8. Fees and Payment**

8.1. Payment Schedule. All Subscription Fees will be specified on the applicable Order Form. Unless specified in the applicable Order Form or otherwise agreed in writing between Client and Preava, all Subscription Fees are fully earned, due, and payable on the later of (i) the first day of each Subscription Term and (ii) the date the Order Form applicable thereto is fully executed.

8.2. Excess Usage. Except as otherwise agreed to in any applicable Order Form, the pricing for any excess usage of the Preava Prevent Software will be managed as set forth in this Section. In the event that Client exceeds the number of Authorized Email Accounts set forth in any applicable Order Form, the Subscription Fees will be increased beginning on the first day of the month in which such excess usage occurs and continuing for the duration of the Subscription Term and for any renewal terms. The increase will be calculated by taking the initial Subscription Fees and dividing it by the number of Authorized Email Accounts, resulting in a per-account subscription fee. This per-account subscription fee will be multiplied by the number of Authorized Email Accounts in use that exceed the agreed upon number of Authorized Email Accounts. The result of this calculation is the increase in Subscription Fees. If Preava identifies a major deviation from the number of Authorized Email Accounts, Preava will contact Client to discuss Client's needs and future use expectations.

8.3. Late Payments. Subscription Fees which remain unpaid for more than thirty (30) days following their due date will accrue a late charge of 1.5% and, thereafter, the total amount outstanding will begin to accrue interest on a daily basis, compounding monthly, at a rate equal to the lesser of (i) 1.5% per month and (ii) the greatest amount then permitted by the governing

law applicable to the Agreement. In the event that Preava engages a collection agency to recover outstanding late payments, an additional collection fee of the lesser of (i) 20% of the total outstanding amount and (ii) the greatest amount then permitted by the governing law applicable to the Agreement, will be added to the total amount owed to Preava. Notwithstanding the foregoing, Preava may suspend any or all Services to Client if any undisputed amount remains outstanding for more than thirty (30) days.

8.4. Taxes. Subscription Fees are payable only in United States dollars, are not refundable (except as otherwise expressly provided in the Agreement, including any applicable Order Form), and do not include any Taxes. Client is responsible for payment of Taxes and any related interest and/or penalties from any payment made pursuant to the Agreement, other than any Taxes required by Applicable Law to be paid by Preava.

## **9. Intellectual Property Rights**

9.1. Preava Ownership. Preava owns and will retain all right, title, and interest in and to the Services, the Preava Materials, and all modifications made thereto, including all Intellectual Property Rights therein. Client has no right, license, or authorization with respect to any of the Services or Preava Materials (including Third-Party Materials) except as expressly set forth in Section 3 or the applicable third-party license, in each case subject to Client's compliance with Section 7. All other rights in and to the Services and Preava Materials (including Third-Party Materials) are expressly reserved by Preava and the respective third-party licensors.

9.2. Client Ownership. Client owns and will retain all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 5 and Section 6.

9.3. Suggestions and Feedback License. Client grants Preava a fully paid up, royalty free, worldwide, perpetual, irrevocable, transferable, sub-licensable (including through multiple tiers) right to use, modify, distribute, and incorporate into Preava products and services (without attribution of any kind) any suggestions, enhancement requests, recommendations, proposals, corrections, or other feedback or information provided by Client, Client's Representatives, or any of Client's users, but excluding any Client Confidential Information. To the extent Client obtains or has any Intellectual Property Rights associated with Beta Testing Feedback, such Beta Testing Feedback shall be included in the license granted in this Section 9.3.

9.4. Limited License for Marketing Purposes. Effective two weeks after the Effective Date, Client grants Preava a fully paid up, royalty free, worldwide, perpetual, limited, non-exclusive, license to use, copy, display, publish, and transmit any of Client's logos, trademarks, service marks, and name for the sole and limited purpose of allowing Preava to identify Client as a customer or client within Preava's marketing materials, including but not limited to on Preava's website. To the extent that any Client Representatives or other entities owned or controlled by Client use the Preava Prevent Software pursuant to this Agreement, the license granted in this Section shall also apply to all such Client Representatives or other entities. Client (or Client Representatives and other entities) may revoke this license at any time by emailing legal@preava.com with an instruction to that effect and specifying the scope of the revocation.

9.5. Anonymized Services Data License. To the extent Client obtains or has any Intellectual Property Rights associated with Anonymized Services Data, Client grants Preava a fully paid up, royalty free, worldwide, perpetual, irrevocable, transferable, sub-licensable (including through multiple tiers) right to use, modify, distribute, and incorporate Anonymized Services Data into Preava products and services (without attribution of any kind).

9.6. Equitable Relief. As a breach or threatened breach by one Party of any of its obligations under Section 5, Section 6, or this Section 9 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy, in the event of such breach or threatened breach the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

## **10. Term and Termination**

10.1. Subscription Term. The Agreement will apply starting on the Effective Date and continue until the end of the Subscription Term, unless otherwise terminated as provided for herein. If applicable, the specific operation of the Subscription Term and associated renewal terms for any Beta Testing Services, including the duration of Beta Testing Services and the transition from Beta Testing Services to Services being provided as a paid offering are specified in the applicable Order Form.

10.2. Renewal Subscription Term(s). EXCEPT AS MAY BE PROVIDED IN AN APPLICABLE ORDER FORM, THE AGREEMENT AND ALL OBLIGATIONS HEREUNDER WILL AUTOMATICALLY RENEW AND BE EXTENDED BY CONSECUTIVE RENEWAL SUBSCRIPTION TERMS OF THE SAME DURATION AS THE INITIAL SUBSCRIPTION TERM UNLESS, NO LATER THAN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN-CURRENT TERM, ONE PARTY PROVIDES THE OTHER PARTY WITH WRITTEN NOTICE OF NON-RENEWAL.

10.3. Termination. In addition to any other express termination right set forth elsewhere in the Agreement:

- (a) Preava may terminate the Agreement, effective on written notice to Client, if Client fails to pay any amount when due hereunder and such failure continues more than thirty (30) days thereafter, or if Client breaches any obligations under Sections 6 or 7;
- (b) either Party may terminate the Agreement, effective on written notice to the other Party, if the other Party materially breaches the Agreement and either such breach is incapable of cure or, being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;
- (c) either Party may terminate the Agreement, effective immediately upon written notice to the other Party, if the other Party:

- i. becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;
  - ii. files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;
  - iii. makes or seeks to make a general assignment for the benefit of its creditors; or
  - iv. applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;
- (d) either Party may terminate the Agreement for convenience, effective on the ninetieth (90<sup>th</sup>) day following written notice to the other Party, or such later date as may be elected in such notice;
- (e) the Parties acting together may terminate the Agreement at any time by written agreement; and
- (f) if Services are limited to Beta Testing Services, Preava may terminate the Agreement at any time for any reason whatsoever, effective immediately upon written notice to Client.

10.4. Effect of Expiration or Termination. Upon any expiration or termination of the Agreement, except as expressly otherwise provided herein:

- (a) all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate;
- (b) Preava shall immediately cease all use of any of Client's Customer Data or Confidential Information and promptly return to Client, or at Client's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client's Customer Data or Confidential Information and permanently erase all of Client's Customer Data and Confidential Information from all systems Preava directly or indirectly controls; provided that, for the avoidance of doubt, Preava's obligations under this Section 10.4(b) do not apply to any Anonymized Services Data;
- (c) Client shall immediately cease all use of any Services;
- (d) Client shall immediately cease all use of, and promptly return to Preava (or, at Preava's written request, destroy) all documents and tangible materials containing, reflecting, incorporating, or based on Preava Materials or Preava's Confidential Information, and Client shall immediately and permanently erase all Preava Materials and Preava's Confidential Information from all systems Client directly or indirectly controls;

- (e) notwithstanding anything to the contrary in the Agreement, the Receiving Party may retain the Disclosing Party's Confidential Information, Preava may retain Client's Customer Data, and Client may retain Preava Materials, each in their then-current state and each solely to the extent and for so long as required by Applicable Law;
- (f) Preava may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course;
- (g) all information and materials described in Sections 10.4(e) and 10.4(f) will remain subject to all confidentiality, security, and other applicable requirements of the Agreement;
- (h) Preava may disable all access to the Services and Preava Materials;
- (i) if Client terminates the Agreement pursuant to Sections 10.3(b) or 10.3(c), or if Preava terminates the Agreement pursuant to Section 10.3(d), Client will be relieved of any obligation to pay any Subscription Fees attributable to the period after the effective date of such termination and Preava will refund any Subscription Fees paid in advance for Services that Preava has not performed as of the effective date of termination;
- (j) if Preava terminates the Agreement pursuant to Sections 10.3(a), 10.3(b), or 10.3(c), or if Client terminates the Agreement pursuant to Section 10.3(d), all Subscription Fees that would have become payable had the Agreement remained in effect until expiration of the Subscription Term will become immediately due and payable; and
- (k) if the Parties agree to terminate the Agreement pursuant to Section 10.3(e), then the written agreement entered into by the Parties must address the treatment of Subscription Fees.

10.5. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the Parties to the Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: 5.2–5.3, 6, 7.1(d), 7.1(h), 7.2, 9, 10.4, 11.4, 12, 13, and 14.3–14.4.

## **11. Warranties and Disclaimers**

11.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) if applicable, it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under the Agreement;

- (c) if applicable, the execution of the Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such Party; and
- (d) the Agreement constitutes the legal, valid, binding, and enforceable obligation of such Party.

11.2. Additional Preava Representations, Warranties, and Covenants. Preava represents, warrants, and covenants that it will provide the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and will devote adequate resources to meet its obligations under the Agreement. Generally recognized industry standards for similar services shall take into account whether Services are being provided as a paid offering or as Beta Testing Services.

11.3. Additional Client Representations, Warranties, and Covenants. Client represents, warrants, and covenants to Preava that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Preava and processed in accordance with the Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law.

11.4. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND 11.2, ALL SERVICES AND PREAVA MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND PREAVA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND PREAVA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PREAVA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PREAVA MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH HEREIN, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## **12. Indemnification**

12.1. Indemnification by Client. Client will indemnify, defend, and hold harmless Preava and its Representatives and subcontractors, and each of its and their respective officers, directors, employees, agents, successors, and assigns, from and against any and all claims, liabilities, damages, losses, and expenses (including reasonable attorney’s fees and costs), in each case to the extent such claims arise out of or are in any way connected with any of the following,

whether actual or alleged: (i) Client's access to or use of the Services; (ii) Customer Data, including any processing of Customer Data, accessed or used by or on behalf of Preava in accordance with the Agreement; (iii) Client's breach or alleged breach of the Agreement; (iv) Client's violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property, or privacy right; (v) Client's violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental, regulatory, administrative, or legislative authority; or (vi) any misrepresentation made by Client.

12.2. Indemnification by Preava. Preava will indemnify, defend, and hold harmless Client and its Representatives and subcontractors, and each of its and their respective officers, directors, employees, agents, successors, and assigns, from and against any and all claims, liabilities, damages, losses, and expenses (including reasonable attorneys' fees and costs), in each case to the extent such claims are directly arising out of or relating to third-party claims based on Preava's actual infringement or misappropriation of third-party intellectual property rights. Except as provided in this Section 12.2, Preava has no indemnification obligations with respect to the Services or the Agreement.

12.3. Exercise of Indemnification Rights. In order to trigger the indemnity, an Indemnitee must provide the Indemnitor with prompt written notice of the action for which it believes it is entitled to be indemnified under this Section 12. Following such proper notice, the Indemnitor will cooperate as fully required under this Section 12 and otherwise as reasonably required by the Indemnitee in the defense of any claim. The Indemnitee shall have the right to assume the exclusive defense and control of any matter subject to indemnification by the Indemnitor, including by choosing reasonable and appropriate counsel, and the Indemnitor will not settle any claim without the Indemnitee's prior written consent. Notwithstanding the foregoing, the sole cost and any reasonable expenses associated with such defense will be borne solely by the Indemnitor. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4. No Indemnification by Preava During Beta Testing Services. During its provision of Beta Testing Services to Client, Section 12.2 shall not apply and Preava shall have no indemnification obligations whatsoever, including for any claim, liability, damage, loss, or expense (including reasonable attorneys' fees and costs) that is based on actions, events, circumstances, or conduct that occurred during the Beta Testing Services, regardless of the time at which such actions, events, circumstances, or conduct became known.

### **13. Limitations of Liability**

13.1. EXCLUSION OF DAMAGES. IN NO EVENT WILL PREAVA, ITS REPRESENTATIVES, OR ANY OF ITS OR THEIR LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, PROFIT, OR DIMINUTION IN VALUE; IMPAIRMENT, INABILITY TO USE, OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR

CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER PREAVA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PREAVA, ITS REPRESENTATIVES, AND ITS AND THEIR LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE VALUE OF THE FEES PAID, OR IF NOT PAID, PAYABLE BY CLIENT TO PREAVA DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY APPLIES TO PREAVA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12.2.

13.3. GENERAL LIMITATION OF LIABILITY. IN JURISDICTIONS THAT DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, PREAVA'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

13.4. NO MONETARY LIABILITY DURING BETA TESTING SERVICES. IN NO EVENT WILL PREAVA, ITS REPRESENTATIVES, AND ITS AND THEIR LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, HAVE ANY FINANCIAL LIABILITY TO CLIENT THAT IS BASED ON ACTIONS, EVENTS, CIRCUMSTANCES, OR CONDUCT THAT OCCURRED DURING THE BETA TESTING SERVICES, REGARDLESS OF THE TIME AT WHICH SUCH ACTIONS, EVENTS, CIRCUMSTANCES, OR CONDUCT BECAME KNOWN. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IF THE ABOVE MONETARY LIABILITY LIMITATION OF THIS SECTION 13.4 IS NOT ENFORCEABLE UNDER APPLICABLE LAW, SUCH FINANCIAL LIABILITY SHALL BE LIMITED TO \$1,000.00 USD.

## **14. Miscellaneous**

14.1. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any part of the Agreement, when and to the extent such failure or delay is caused by or results from a Force Majeure Event. The Party suffering a Force Majeure Event shall give notice as soon as reasonably possible to the other Party, stating the period of time the occurrence

is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

14.2. Notices. The Parties agree that each Party may provide the other Party with any communications in electronic format. In general, Preava will communicate with Client by sending email communications to the email address identified in any applicable Order Form. For communications related to the Agreement, Client must communicate with Preava by sending email communications to legal@preava.com. The Parties may designate new or alternative email addresses for communication by providing notice of the change via email; the Parties agree that such change will be effective five (5) business days after receipt of the notice.

14.3. Governing Law. The Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any state's choice-of-law rules that may require the application of the laws of another jurisdiction. Each Party, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdictions of the state and federal courts of the State of Delaware for any litigation which may arise out of or be related to the Agreement, or any other agreement related hereto. The Parties waive any objection based on forum non conveniens or any objection to venue of any such action. In any action to interpret or enforce the Agreement, the prevailing Party shall be entitled to seek an award of all court costs and reasonable attorneys' fees it incurs.

14.4. JURY TRIAL WAIVER. EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT OR ANY SERVICES PROVIDED BY PREAVA OR ITS REPRESENTATIVES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. EACH PARTY AGREES NOT TO INCLUDE ANY EMPLOYEE, CONTRACTOR, OFFICER, OR DIRECTOR OF THE OTHER AS A PARTY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM RELATING TO SUCH DISPUTE.

14.5. Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

14.6. Severability. The Parties intend that if any provision of the Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable and in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making the Agreement as modified, unless that modification is not permitted by law, in which case the provision will be disregarded. If an unenforceable provision is modified or disregarded in accordance with this Section 14.6, then the rest of the Agreement will remain in effect as written, and any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

14.7. Entire Agreement. The Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, and supersedes all prior and contemporaneous agreements, including

any applicable Proof of Concept Terms of Use, representations, and understandings between them relating thereto, except as may be expressly incorporated by reference into the Agreement.

14.8. Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No waiver of any provision of the Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

14.9. No Third-Party Beneficiaries. Except as expressly provided for herein, the Agreement is not for the benefit of any third party.

14.10. Assignment. Preava may at any time assign, delegate, novate, or otherwise transfer or part with any or all of its rights and obligations under the Agreement in connection with a sale of all or substantially all of its business or assets. In all other respects, neither Party will, without the prior written consent of the other Party (not to be unreasonably withheld or delayed), assign, transfer, charge, or deal in any other manner with all or any of its rights or obligations under the Agreement.

14.11. Amendment and Modification. No amendment, modification, rescission, termination, or discharge of the Agreement is effective unless it is in writing, identified as such, and signed or otherwise executed by an authorized representative of each Party.

14.12. Rights and Remedies. Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14.13. Headings. The headings used in this Master Service Agreement are for convenience only and do not alter or affect any terms or provisions.