

Prysm Inc. (“Prysm”) is a provider of a web-based software-as-a-service platform, including the Prysm Application Suite and Prysm Mobile, that enable real-time, multi-site collaboration among users (the “Cloud Services”). These Terms of Service outline the terms and conditions on which Prysm will provide access to its Cloud Services to you or your organization (the “Subscriber” and, together with Prysm, the “Parties”).

The Cloud Services to be provided to Subscriber will be set forth in a proposal issued by Prysm or an authorized reseller of Prysm to Subscriber that is accepted by Subscriber by either countersigning the proposal, issuing a purchase order referencing the proposal or by clicking “accept” or “proceed” in the case of an online proposal (any such accepted proposal is referred to herein as an “Order”). By accepting the proposal, Subscriber agrees that these Terms of Service, as updated from time to time, shall apply to all current and future use of the Cloud Services by Subscriber and its users; and the representative of Subscriber accepting the proposal and these Terms of Service represents and warrants that he/she has the right, power, and authority to accept these Terms of Service on behalf of Subscriber.

1. Subscription to Prysm Cloud Services

- a. **Subscription Grant.** Prysm hereby grants to Subscriber a non-exclusive, non-transferable right to access and use the Cloud Services on the terms set forth herein. The right to access and use the Cloud Services is limited to the subscription term set forth in the Order (the “Subscription Term”). The Subscription Term will commence upon delivery to Subscriber of access to the Cloud Services. Subscriber shall pay the subscription fees applicable to the Cloud Services as set forth in the Order (the “Subscription Fees”), which will be due upon invoice net 30. Subscriber is responsible for payment of all taxes and duties of every kind imposed in connection with the sale to Subscriber of the Cloud Services. Subscriptions to the Cloud Services are subject to limitations on the number of users as set forth in the Order. If Subscriber does not purchase a subscription renewal within 30 days of the expiration of the Subscription Term, Prysm shall be entitled to remove and delete Subscriber data from the Cloud Services. The Parties understand and agree that subscriptions to the Cloud Services as set forth in an Order are firm commitments that are non-cancellable for the Subscription Term.
- b. **Subscriber’s Responsibilities.** Subscriber will (a) be responsible for users’ (including guest users’) compliance with these Terms of Service, (b) be responsible for the accuracy, quality and legality of Subscriber’s data, the means by which Subscriber acquired Subscriber’s data and Subscriber’s use of the data in connection with the Cloud Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Services, and notify Prysm promptly of any such unauthorized access or use, (d) use the Cloud Services only in accordance with these Terms of Service, the Order Form and applicable laws and government regulations, and (e) comply with terms and conditions of any non-Prysm applications, software or services with which Subscriber uses the Cloud Services. Subscriber will not (a) make any Cloud Services available to, or use any Cloud Services for the benefit of, anyone other than (i) Subscriber; or (ii) its users and its permitted guests, (b) access the Cloud Services in order to build a competitive product or service, or (c) reverse engineer the Cloud Services. Subscriber is responsible for meeting the then-current hardware, operating system, browser and other technical requirements necessary to properly access and use the Cloud Services. Subscriber acknowledges and agrees that Prysm may impose limits on the amount of storage space per Subscriber and per user. Subscriber may designate a member of Subscriber’s organization to serve as administrator of Subscriber’s accounts (the “Administrator”) and such Administrator will manage Subscriber’s content, user accounts and permissions. The Administrator may be a representative of Subscriber or Prysm.
- c. **Proprietary Rights.** Subscriber acknowledges that in providing the Cloud Services, Prysm utilizes technology and the Prysm website, and any other software and services (collectively, “Prysm Technology”). Subject to the express limited rights granted to Subscriber hereunder, as between Prysm and Subscriber, Prysm retains all rights, title and interest, including all intellectual property rights, in and to the Prysm Technology, and any and all modifications, enhancements, customizations or improvements to any of the foregoing, and nothing herein shall be deemed or interpreted to grant or transfer any such rights, whether by implication, estoppel, or otherwise. Subscriber owns and shall retain all right, title and interest, including all intellectual property rights, in and to the Subscriber data provided or generated by Subscriber in using the Cloud Services.
- d. **Grant of License to Display/Control Software.** If Subscriber has purchased Prysm hardware, Prysm grants to Subscriber a license to use the Prysm software installed on such Prysm hardware in accordance with the Prysm End User License Agreement available at prysm.com/legal.
- e. **Privacy Policy.** Subscriber acknowledges and agrees that the Cloud Services are subject to the terms of Prysm’s Product Privacy Policy available at www.prysm.com/legal.

2. Compliance

- a. Government End-Users. Subscriber hereby agrees that the software qualifies as "commercial" computer software. Government technical data and software rights related to the software include only those rights customarily provided to the public as defined in these Terms of Service. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).
- b. Export Compliance. Subscriber represents and warrants that neither it nor any of its employees is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action.

3. Disclaimer

- a. For so long as (a) Subscriber is current with its payment of the Subscription Fees, and (b) Subscriber complies with these Terms of Service, Prysm shall use commercially reasonable efforts to maintain the availability of the Cloud Service during the Subscription Term; provided that Prysm reserves the right to alter, delete, or replace the functionality of the Cloud Services over time. Except as set forth above, Prysm disclaims all warranties of any kind, whether express or implied, relating to the Cloud Services, including: (a) any implied warranty of merchantability, fitness for a particular purpose, title or quiet enjoyment; (b) any warranty arising out of course of dealing, usage, or trade; and (c) any warranty arising out of the use of third-party service providers. In no event will Prysm be liable to Subscriber for any indirect, incidental, special, consequential or punitive damages (including damages for loss of profits, goodwill, or any other intangible loss) arising out of or relating to Subscriber’s access to or use of, or Subscriber’s inability to access or use, the Cloud Services, whether based on warranty, contract, tort (including negligence), statute, or any other legal theory, and whether or not Prysm has been informed of the possibility of damage. Subscriber agrees that the maximum aggregate liability of Prysm to Subscriber for all claims arising out of or relating to the use of or any inability to use the Cloud Services, whether in contract, tort, or otherwise, is limited to price paid by Subscriber for the Cloud Services for the six (6) month period immediately preceding the date a claim is made by Subscriber.

4. Feedback and Promotion

- a. If Subscriber provides Prysm with reports of defects in the Cloud Services, reports on the operation of the Cloud Services or any improvements, enhancements or other changes or modifications proposed or suggested by Subscriber to the Cloud Services (collectively, “Feedback”), Prysm shall have all right, title and interest Feedback including, but not limited to the incorporation of such suggested changes or modifications into Prysm products, services and the right to assign, license or to otherwise transfer to third parties the products and services so changed or modified without obligation to or recourse of Subscriber. If Subscriber has purchased a Prysm subscription, Subscriber agrees that Prysm may refer to Subscriber as a customer and use Subscriber’s logo in Prysm’s marketing materials and on its website.

5. Miscellaneous

- a. Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party’s prior written consent (not to be unreasonably withheld); provided, however, either Party may assign its rights and obligations in their entirety (together with all Orders), without the other Party’s consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if Subscriber is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of Prysm, then Prysm may terminate all Orders and the Services based upon these Terms of Service upon written notice to Subscriber. Subject to the foregoing, these Terms of Service will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- b. Force Majeure. Except for the obligation to pay money, neither Party will be liable for any delay or failure to perform any obligation under these Terms of Service where the delay or failure results from any cause beyond its reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic, electrical, telecommunications, or utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, cyber-attacks or war, hosting or similar services outages or denial of service (such as Microsoft Azure or Amazon Web Services), worms, bots, or similar malware (“Force Majeure”).

- c. Governing Law; Jurisdiction and Venue. These Terms of Service shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof. Any dispute, controversy or claim arising out of or relating to these Terms of Service, or the breach, termination or invalidity thereof, shall be finally settled by binding arbitration conducted in the English language in Santa Clara County, California under the commercial arbitration rules of the American Arbitration Association (“AAA”). The award of the arbitrator shall be the sole and exclusive remedy of the Parties and shall be enforceable in any court of competent jurisdiction, subject only to revocation on grounds of fraud or clear bias on the part of the arbitrator. Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement.
- d. Entire Agreement. These Terms of Service, together with the Order and the EULA, contain the entire agreement of the Parties with respect to the purchase and sale of the Cloud Services, and supersede all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter. To the extent of any conflict or inconsistency between these Terms of Service and any Order, SOW or any other document related to the Parties obligations hereunder, these Terms of Service shall govern unless otherwise expressly agreed by the Parties in writing. By accepting these Terms of Service, Subscriber understands and agrees that Prysm shall be relying on the terms set forth herein in providing the Cloud Services and Prysm shall be entitled to enforce the terms set forth herein.

Updated November 1, 2017