



Prism PPM Terms of Service

Last Updated: July 8th, 2025

By executing an Order Form with **WorkOtter, Inc., DBA Prism PPM**, a Delaware corporation (“**Provider**”), that references or incorporates this Terms of Service (“**TOS**”), the entity entering into such Order Form (“**Customer**”, together with Provider the “**Parties**”, and each a “**Party**”) accepts and agrees to be bound by the terms of this TOS as of the effective date of the initial Order Form between the Parties (“**Effective Date**”).

WHEREAS, Provider is in the business of providing its proprietary portfolio and project management system and application and other software under a software-a-as-a-service model as well as related services (collectively, “**Services**”); and Customer desires to retain Provider to provide such Services upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. DEFINED TERMS

Capitalized terms shall have the meanings ascribed to them in this TOS or in the **Definitions Schedule (Schedule A)**. Other Schedules or Order Forms may have specific terms defined relevant to the service and scope governed by that Schedule or Order Form.

2. SERVICES

2.1 Professional Services

Provider may provide certain professional services related to the SaaS in accordance with the **Professional Services Schedule (Schedule B)** and provisions of the applicable Order Forms entered hereunder.

2.2 SaaS

SaaS and related Services will be provided to Customer as specified in the applicable Order Form.

2.2.1 Access. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable (under the terms of this Agreement) right to access the SaaS ordered pursuant to an Order Form during the Order Term, solely for the use by Customer’s Authorized Users for Customer’s internal business purposes.

2.2.2 Usage Restrictions. Customer shall not: (a) use the SaaS except as expressly authorized in this Agreement; (b) decompile, disassemble or reverse engineer the Software, or otherwise attempt to learn the source code, structure or algorithms underlying the Software; (c) copy, modify, distribute, adapt, or create derivative works of the SaaS; (d) rent, lease, loan, sublicense, assign, distribute, resell or otherwise commercially exploit the SaaS or make the SaaS available to any third party (other than Authorized Users); (e) use the SaaS to provide processing services to third parties, or otherwise use the SaaS on a “service bureau” or “timesharing” or subscription basis; (f) access the SaaS to build a competitive product or service, or copy any ideas, features, functions, graphics of the SaaS; (g) interfere with or disrupt the integrity or performance of the SaaS; (h) remove or obscure

any proprietary or other notices contained in the SaaS; (i) disclose to any third party the results of any benchmark tests or other evaluation of the SaaS; (j) upload, transmit, or distribute to or through the SaaS any computer viruses, worms, or any software intended to damage or alter a computer system or data; (k) violate of any law, regulation, rule, applicable standards, or third-party rights in its use of the SaaS, including but not limited to violating U.S. export control laws; or (l) authorize or enable any third parties to do any of the above.

2.2.3 Audit and Monitoring. During the term of this Agreement, Provider shall have the right to monitor and audit Customer's usage of and logs in the SaaS and related Services, including Client Material used with the Services, as necessary to verify Customer's compliance with the terms of the Agreement. Customer agrees to provide reasonable cooperation in such audits where requested by Provider.

2.2.4 Suspension. Provider may temporarily suspend Services and/or Customer's and any Authorized User's access to any portion or all of the Services if Provider reasonably determines that: (a) there is a threat or attack on any of the Provider IP; (b) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (c) Customer, or any Authorized User, is using the SaaS in violation of this Agreement, including but not limited to the Usage Restrictions in Section 2.2.2; (d) Provider's provision of the Services to Customer or any Authorized User as contemplated under this Agreement becomes prohibited by applicable law; (e) Customer is delinquent in its payment obligations; or (f) there is a Force Majeure Event. Provider shall use commercially reasonable efforts to provide written notice of any suspension to Customer and to provide updates regarding resumption of access to the Services following any suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a suspension under this section.

2.3 Service Levels and Support

2.3.1 Support, Maintenance, and Updates. During the Order Term, Provider will provide support and maintenance services for the SaaS in accordance with the **Support and Maintenance Schedule (Schedule C)**. Provider may make Updates to the Software and SaaS from time to time at its discretion and expense.

2.3.2 Service Levels. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the SaaS available in accordance with the service levels set out in the **Service Level Agreement (SLA) Schedule (Schedule D)**.

2.4 Subcontractors and Suppliers

Provider shall not be restricted in its normal practice of engaging its Affiliates, subcontractors, suppliers, or vendors for portions of the Services, so long as Provider remains responsible for performance and compliance of the terms and conditions of this Agreement.

2.5 Third-Party Solutions

The SaaS may make use of software, code, or related materials created by third parties, including, without limitation, open source or freeware software ("**Third-Party Solutions**"), which may be subject to license terms in addition to the Agreement. Customer acknowledges and agrees that these accompanying license terms govern their use. Nothing in the Agreement limits Customer's rights under, or grants Customer's rights that supersede, the license terms that accompany any Third-Party Solutions. Provider shall pass through to Customer any warranty or other rights it receives for any Third-Party Solution and reasonably cooperate with Customer in enforcing such rights, at Customer's expense.

3. CUSTOMER RESPONSIBILITIES

3.1 Cooperation for Professional Services

Customer shall provide Provider with all information, cooperation, and access to Customer personnel and Customer Materials requested by Provider in furtherance of its provision of Professional Services.

3.2 SaaS Usage

Customer shall: (a) limit access to, and use of, the SaaS to its Authorized Users; (b) remain responsible for any and all acts or omissions of action of any of its Authorized Users; (c) promptly notify Provider of any known actual or suspected unauthorized access or use of the SaaS; (d) safeguard and remain responsible for the security of all usernames, credentials, passwords, and other account information required for the Authorized Users to access the SaaS; and (e) Customer's information provided in creating its account, including information about Authorized Users, is and will remain true, accurate, and up to date.

3.3 Cooperation for Support

Customer shall make best efforts in cooperating with the Provider to resolve Errors and provide other information, access, Customer personnel, and Customer Materials as requested by Provider. Customer shall designate no fewer than two primary Customer personnel to be Provider's contacts for Support Services. Such Customer personnel designated as contacts for Support Services must be knowledgeable in all aspects of the Customer's operating environment in which the SaaS is being used. Should one or more of the Customer personnel so designated become unavailable for whatever reason for a period of more than forty-five (45) days, Customer shall immediately nominate one or more replacement(s) and notify Provider of the new contact and email address of the designated Customer personnel.

4. FEES AND PAYMENT

4.1 Fees and Expenses

Provider shall invoice and Customer shall pay all fees and expenses as set forth in the applicable Order Forms. Except as otherwise set forth in the Order Form, invoices will be due upon receipt. All payments made hereunder shall be in United States currency. Should Client wish to dispute an invoice, Client shall: (a) make such dispute in writing providing sufficient detail of the reason for the dispute within seven (7) days of the date of the invoice; (b) make best efforts to resolve such dispute in a timely manner; and (c) timely pay the full amount of any undisputed amounts in the invoice. All payments are non-refundable except as explicitly provided for in this Agreement.

4.2 Late Payment

Time is of the essence with respect to all payments to be made under this Agreement, and payments not timely made shall be subject to a late charge equal to one percent (1.5%) per month or the maximum allowed by applicable law, whichever is less, on the overdue balance. Customer shall reimburse Provider for any expenses, including but not limited to legal fees, related to the collection of past due invoices.

4.3 Taxes

Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Provider's income, revenues, gross receipts, personnel or real or personal property or other assets.

5. INTELLECTUAL PROPERTY

5.1 Provider and Third-Party IP

Except as may be explicitly provided for in an Order Form for work products covered under such Order Form: (a) Provider owns the Software, Documentation, SaaS, Services, any work products, and inventions and innovations by Provider, all derivatives thereof, and all worldwide Intellectual Property Rights, property and confidential information rights in or associated with the foregoing (collectively, “**Provider IP**”); (b) no ownership rights in Provider IP are transferred to Customer as a result of this Agreement; and (c) THIS AGREEMENT IS NOT A WORK-FOR-HIRE AGREEMENT. The applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Solutions.

5.2 Feedback

In the event that Customer or any of its employees, contractors, or agents provides Provider with any suggestions, ideas, improvements or other feedback with respect to the Software or Services (“**Feedback**”), the Feedback will not be considered confidential information of the Customer. Provider shall be free to use any part of the Feedback without limitation, without any attribution or compensation to any party, and for any purpose. Customer hereby assigns, and shall cause its employees, contractors, and agents to assign to Provider all right, title, and interest in, any ideas, know-how, concepts, techniques, or other Intellectual Property Rights contained in the Feedback.

5.3 Customer Data and Customer Materials

5.3.1 Ownership and License to Customer Materials. Customer and Customer's suppliers own all rights, title, and interest, including Intellectual Property Rights to Customer Materials. Customer hereby grants to Provider the non-exclusive and sublicensable (to Provider's contractors, suppliers, and vendors engaged in the provision of Services where applicable) right and license to receive, retrieve, process, and transmit any Client Materials necessary to perform Services under this Agreement.

5.3.2 Customer Responsibility. Customer acknowledges and agrees that Customer shall be solely responsible for and shall have all liability for and with respect to all Customer Materials, including Customer Data. Provider shall have no responsibility or liability in any way for or in connection with Customer Materials including, without limitation, with respect to any copyright infringement or violation, or the violation of any third party rights, or the violation any legal requirements, including, without limitation, any legal requirements relating to infringement or misappropriation of Intellectual Property Rights, privacy or other property rights of any third party arising from, or relating to, the Client Materials.

5.3.3 Customer Compliance. Customer agrees to fully comply with all legal requirements, as well as with all requirements imposed by this Agreement with respect to all Client Materials.

5.4 Aggregated Data

Customer agrees that Provider may collect, retain, process, and create derivative works of Customer Materials for the purpose of creating Aggregated Data. As between the Parties, Provider shall own all right, title, and interest in and to the Aggregated Data and shall have the right to use such Aggregated Data for any purpose consistent with applicable laws.

6. CONFIDENTIALITY AND NON-DISCLOSURE

6.1 Non-Disclosure Obligations

The Receiving Party shall: (a) safeguard such Confidential Information by using at least the same degree of care and discretion that the receiving Party uses with its own like information that it regards as confidential and using no less than the industry standard of care to protect the confidentiality of the information; (b) keep any Confidential Information in strict confidence and prevent disclosure, publication, or dissemination of such except as otherwise expressly permitted in this section; (c) only use the Disclosing Party's Confidential Information to fulfill its obligations under this Agreement; (d) only disclose the Disclosing Party's Confidential Information to Receiving Party's employees, Affiliates, subcontractors, suppliers, consultants, and legal and financial advisors who

have a “need to know”, who have been apprised of the confidential nature of the information, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this section; (e) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party not listed in Section 6.1(d) without the prior written consent of the Disclosing Party; and (f) promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

6.2 Compelled Disclosure

Notwithstanding the foregoing, if the Receiving Party is compelled by Law to disclose any Confidential Information it shall provide the Disclosing Party with prompt written notice (where legally permissible), and if requested, reasonably cooperate with the Disclosing Party to obtain a protective order or other appropriate remedy. If Parties cannot obtain a protective order, other appropriate remedy, or otherwise fail to quash the legal process requiring disclosure, the Receiving Party shall disclose the requested Confidential Information only to the extent necessary to satisfy the request. In addition, Receiving Party may disclose the other Party's Confidential Information to the extent reasonably necessary to establish its legal rights and enforce the terms of this Agreement.

6.3 Return or Destruction

At termination, the Receiving Party shall either return or destroy the Disclosing Party's Confidential Information no later than thirty (30) days of the Termination, at Disclosing Party's direction with certification by an officer of the Receiving Party that the Receiving Party retains no Confidential Information in any form whatsoever, except for any Confidential Information that the Receiving Party is required to maintain in accordance with its recordkeeping policies to fulfill its legal, bookkeeping, or audit purposes. Any such retained Confidential Information shall be destroyed as soon as retention is no longer necessary to fulfill such purposes and all confidentiality obligations shall continue to apply to any such retained Confidential Information.

6.4 Non-Disclosure of Terms and Publicity

Neither Party shall without the prior written consent of the other Party, publicize or disclose the terms of this Agreement to any third party, including but not limited to the Party's agents or subcontractors, except to the extent legally required or where that disclosure is made to a Party's Affiliates, attorneys, investors, potential investors, investment bankers, lenders, accountants, employees, and other representatives (in each case only where such persons or entities are under appropriate non-disclosure obligations) and solely to the extent reasonably necessary. Provider shall have the right to describe in general terms the work done for Customer under this Agreement on Provider's website and marketing materials. Provider may identify Customer by its name or logo as a customer of Provider's Services in Provider's advertising, marketing materials, media notifications, and customer lists so long as nothing therein contains any representations by Customer.

7. PRIVACY AND SECURITY

7.1 Privacy

Except as explicitly stated in an Order Form, Customer shall not include any Personal Data in its Customer Data provided under this Agreement. Customer acknowledges that Provider's use of Customer Data, insofar as it amounts to Personal Data, is subject to Provider's Privacy Policy, available at <https://www.PrismPPM.com/privacy/>, which may be updated from time to time by Provider. Customer shall use and ensure its Authorized Users use no less than industry standard measures in maintaining the physical, technical, and administrative safeguards in its use of the Services and for all Customer Materials.

7.2 Security

Customer agrees that its use of the Services shall be commercially reasonable with respect to avoidance of Malware and agrees to make good faith, diligent efforts to avoid compromising Services and Customer Materials. Provider shall implement and maintain commercially reasonable

virus protection technologies and processes with respect to the Services to minimize the risk of Provider's systems supporting the Services being vulnerable to Malware, or Provider transmitting Malware to Customer's systems through the Services.

8. TERM, TERMINATION, AND SURVIVAL

8.1 Term

This Agreement shall commence as of the Effective Date and unless sooner terminated pursuant to this section, shall continue in effect until the termination or expiration of all Order Forms entered hereunder.

8.2 Termination for Breach

Either Party may terminate this TOS or any or all Order Forms entered hereunder upon providing the other Party written notice of the other Party's material breach of any terms of this Agreement, and such Party does not cure said breach within thirty (30) days of its receipt of the written notice.

8.3 Effects of Termination

Upon notice of termination, Customer shall immediately, but no later than the termination date, pay all accrued and unpaid fees and expenses outstanding under the terminated Order Forms, including the fees and expenses due Provider for the Services to be delivered or provided through the termination date. Upon termination of this TOS or Order Form, Customer's access to any SaaS and Services covered under the applicable Order Form will also be terminated as of the termination date.

8.4 Survival of Termination

The expiration or termination of this Agreement for any reason shall not release either Party from any obligation or liability to the other Party, including any payment obligation that has already accrued hereunder. The provisions that in order to give proper effect to its intent, should survive expiration or termination of this Agreement, will survive such expiration or termination, including the provisions on: intellectual property, confidentiality and non-disclosure, survival of termination, equitable remedies, indemnification, limitation of liability, notice, dispute resolution, assignment and delegation, severability, entire agreement, and modifications will remain enforceable and are intended to survive the termination of the Agreement.

9. REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties

Each Party represents and warrants that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party; and (d) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

9.2 Customer Limited Warranties

Customer represents and warrants that: (a) Customer Materials does not and will not infringe upon or otherwise violate the rights of any third party; (b) Customer Materials and Customer's use of the Services does not and will not violate any Law; (c) Customer and its Authorized Users are the legal custodian of the Customer Data and it has the right and authority to use the SaaS in connection with Customer Materials; (c) anyone submitting Customer Data to Provider for use in connection with the SaaS or Services has the legal authority to do so, either through ownership of the Customer Materials or by obtaining appropriate authorizations therefor, and that submission of Customer Materials does not violate any contracts, agreements, or any applicable Law.

9.3 Disclaimer

EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 9, THE SERVICES ARE PROVIDED "AS IS". EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, UNDER THIS AGREEMENT. PROVIDER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'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, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. CUSTOMER SHALL NOT GIVE OR MAKE WARRANTIES OR REPRESENTATIONS ON BEHALF OF PROVIDER AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR ANY OTHER FEATURES OF THE SERVICES.

9.4 Beta Versions

During the term of this Agreement, Provider may from time to time permit Customer to access and use Beta Versions of Provider's Software or Services for evaluation purposes, such as for testing, confirming, or training. CUSTOMER UNDERSTANDS AND AGREES THAT BETA VERSIONS ARE STILL IN ITS TESTING PHASE AND IS BELIEVED TO CONTAIN DEFECTS. A PRIMARY PURPOSE OF THE BETA VERSIONS IS TO OBTAIN FEEDBACK ON PERFORMANCE AND THE IDENTIFICATION OF DEFECTS. CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE BETA VERSIONS OR ACCOMPANYING MATERIALS OR DOCUMENTATION. ANY BETA VERSIONS MADE AVAILABLE BY PROVIDER TO CUSTOMER WILL BE MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS: (A) WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY (TO THE FULLEST EXTENT PERMITTED BY LAW); (B) WITHOUT ANY OBLIGATION OF PROVIDER TO PROVIDE ANY SUPPORT SERVICES OR SERVICE LEVEL AGREEMENTS INCLUDING ANY SERVICE CREDITS, AND THEREFORE SECTION 2.3 OF THIS TOS AND THE SUPPORT AND MAINTENANCE SCHEDULE (SCHEDULE C) AND SERVICE LEVEL AGREEMENT (SCHEDULE D) WILL NOT APPLY; AND (C) WITHOUT ANY RIGHT TO INDEMNITY FOR CUSTOMER'S ACCESS TO, AND USE OF, THE BETA VERSION, AND THEREFORE SECTION 12.1 WILL NOT APPLY.

10. FORCE MAJEURE

No failure, delay or default in performance of any obligation of a Party (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other Party) and without negligence or willful misconduct of the Party otherwise chargeable with failure, delay or default. Either Party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other Party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other Party. This section shall in no way limit the right of either Party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a Party under this Agreement is postponed or extended pursuant to this section for longer than ninety (90) calendar days, the other Party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

11. EQUITABLE REMEDIES

Parties acknowledge that breach or threatened breach by the other Party of its obligations under the provisions on intellectual property or confidentiality and non-disclosure would give rise to irreparable harm for which monetary damages would not be an adequate remedy. In such instances,

Parties acknowledge that the non-breaching Party is entitled, in addition to any and all other rights and remedies available to the Party at law, equity, or otherwise, in respect to such breach, to equitable relief without any requirement to: (a) post a bond or security, (b) prove actual damages, or (c) prove that monetary damages will not afford an adequate remedy. Notwithstanding the Dispute Resolution provisions in this TOS, either Party may bring suit in any court of competent jurisdiction for equitable relief as provided for herein.

12. INDEMNIFICATION

12.1 Indemnification by Provider

12.1.1 General Indemnification. Provider shall defend, indemnify and hold harmless Customer from and against all Losses awarded against a Customer Indemnitee in a final judgment arising out of any third-party Action for bodily injury, death of any person, or damage to real or tangible personal property, to the extent and resulting from the willful, fraudulent, or grossly negligent acts or omissions of Provider.

12.1.2 IP Infringement Indemnification. Provider shall defend, indemnify and hold harmless Customer from and against all Losses awarded against a Customer in a final judgment based on a third party claim that the SaaS or Customer's receipt or use of such in accordance with this Agreement infringes, misappropriates, or otherwise violates an Intellectual Property Right of a third party arising under the Laws of the United States; provided, however, that Provider shall have no obligations under this section with respect to such claims to the extent arising out of: (a) any Customer Materials or any instruction, information, designs, specifications or other materials provided by Customer in writing to Company; (b) use of the Services in combination with any materials or equipment not supplied to Customer or specified by Provider in writing, if the violation would have been avoided by the use of the Services not so combined; (c) any modifications or changes made to the Services by or on behalf of any person or entity other than Provider; (d) third party products or services, including Third-Party Solutions; or (e) a force majeure event.

12.1.3 IP Infringement Mitigation. If such a claim for indemnification for third-party IP infringement or violation under the foregoing, is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to: (a) modify or replace the Services or component or part thereof, to make it non-infringing, or (b) obtain the right for Customer to continue use. If Provider determines that none of these alternatives is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

12.1.4 SOLE REMEDY. THIS SECTION 12.1 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES, INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 12.1 EXCEED THE CAP ON MONETARY LIABILITY AS STATED IN SECTION 13.

12.2 Indemnification by Customer

Customer shall defend, indemnify, and hold harmless Provider, Provider's Affiliates, and their officers, directors, employees, agents, successors and permitted assigns from and against all Losses arising out of or resulting from a third party Action resulting from: (a) bodily injury, death of any person, or damage to real or tangible personal property, resulting from the negligent or willful acts or omissions of Customer; (b) Customer's breach of any representation, warranty, or obligation of Customer in this Agreement; (c) actual or alleged wrongful use of any trade secret or Confidential Information of a third party; (d) Customer's or an Authorized User's: (i) negligence or willful misconduct in relation to the use of the SaaS; (ii) use of the SaaS in a manner not authorized or contemplated by this Agreement; (iii) use of the SaaS in combination with data, software, hardware, equipment or technology not provided by Provider or authorized by Provider in writing; (iv) modifications to the SaaS not made by Provider; or (v) use of any version other than the most current release of the SaaS made available to Customer; or (e) Customer Materials, including where

Customer Data infringes, misappropriates, or violates a third party's Intellectual Property Rights, privacy, or other rights.

12.3 Indemnification Procedures

Indemnitee shall promptly notify the Indemnitor in writing of any Action, provided, that failure to give such notice will only relieve the Indemnitor of liability hereunder to the extent the Indemnitor has suffered actual material prejudice by such failure. The Indemnitor may assume, at its sole option, control of the defense and investigation of such Action at the Indemnitor's expense, including Attorneys' fees, costs, and disbursements. Should Indemnitor assume control of the defense, Indemnitee shall cooperate with the Indemnitor in the defense and the Indemnitor shall not settle any Action in a manner that adversely affects the rights of the Indemnitee without the Indemnitee's prior written consent. Such consent shall not be unreasonably withheld or delayed. The Indemnitee may participate in and observe the proceedings at its own cost and expense.

Should Indemnitor not assume control of the defense and investigation, Indemnitor shall reimburse Indemnitee promptly and periodically for the reasonable costs properly incurred in defending against the Action, including reasonable attorneys' fees, expenses, and costs. In cases where the Provider is the Indemnitor, if Provider chooses not to assume control of the defense, the aggregate reimbursement by Provider for any Losses shall be limited to and subject to the cap on monetary liability under Section 13.

13. LIMITATION OF LIABILITY

13.1 Exclusion of Indirect Damages

EXCEPT AS OTHERWISE PROVIDED AS AN EXCEPTION HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA, OR FOR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13.2 Exceptions to Exclusion

The exclusions of indirect damages set out in the foregoing section, shall not apply to the following:

(a) Losses arising out of or relating to a Party's failure to comply with its obligations under the section on Intellectual Property Rights; (b) Losses arising out of or relating to a party's failure to comply with its obligations under the section on Confidentiality and Non-Disclosure; (c) a Party's obligations under the section on Indemnification; (d) Losses arising out of or relating to a Party's gross negligence or willful misconduct; (e) a Party's obligation to pay attorneys' fees and court costs under this Agreement; and (f) Customer's obligation to pay interest, expenses, and costs in relation to late payments.

13.3 Cap on Monetary Liability

PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO PROVIDER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. WITH RESPECT TO ANY SERVICES PROVIDED TO CUSTOMER FREE OF CHARGE (WHICH MAY INCLUDE BETA VERSIONS), NEITHER PROVIDER NOR ANY OF ITS AFFILIATES OR SUPPLIERS WILL BE LIABLE FOR DIRECT DAMAGES.

14. NOTICE

Unless otherwise agreed to by the Parties in a writing signed by both Parties, all notices required under this Agreement shall be deemed effective when made in writing and sent to the other Party, by either: (a) a reputable overnight courier, specifying next day delivery to the address specified

below, which address may be updated where communicated to the other Party in writing; or (b) email to the email address in the applicable Order Form, which email address may be updated where communicated to the other Party in writing, without receipt of a notice of failed delivery.

If to Provider:

WorkOtter, Inc., DBA Prism PPM
1111B S Governors Ave STE 21066
Dover, DE 19904

If to Customer: *address in the Order Form*

15. DISPUTE RESOLUTION AND GOVERNING LAW

15.1 First Level Resolution: *Executive Level Negotiation*

Parties shall first attempt to resolve any disputes arising out of this Agreement by negotiation of Party representatives at the senior executive levels.

15.2 Second Level Resolution: *Mediation*

If the Parties are unable to resolve the dispute by negotiation, the Parties shall attempt resolution by mediation with a neutral third-party mediator acceptable to both Parties. Mediation expenses will be shared equally by the Parties.

15.3 Third Level Resolution: *Arbitration*

If Parties are not able to resolve the dispute by mediation within forty five (45) days from the date of the written notice of the dispute, Parties shall settle the dispute by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration shall be held in Saint Louis, Missouri. Any decision by the arbitration panel must be accompanied by a written opinion setting forth the findings of fact and conclusions of law, supported by evidence, that were relied upon in reaching the decision.

15.4 Attorneys' Fees

The prevailing Party in the arbitration is entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the proceeding, including reasonable attorneys' fees, expenses, and costs.

15.5 Governing Law

This Agreement, and any disputes arising out of this Agreement, shall be governed by and construed in accordance with the laws of the State of New York.

16. ASSIGNMENT AND DELEGATION

Customer shall not assign its rights or delegate its obligations under this Agreement without Provider's prior written consent, and, absent such consent, any purported assignment or delegation by Customer shall be null, void and of no effect. This Agreement shall be binding upon and inure to the benefit of Provider and Customer and their successors and permitted assigns.

17. INDEPENDENT CONTRACTOR RELATIONSHIP

Parties are independent contractors and neither Party may act as the agent for nor bind the other to any obligation. Nothing in this Agreement constitutes nor creates a partnership, joint venture, employer/employee relationship, affiliation, or an agency relationship between the Parties.

18. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement

or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated be consummated as originally contemplated to the greatest extent possible.

19. ENTIRE AGREEMENT

This TOS together with all Schedules and Order Forms incorporated herein, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained, and supersedes all prior and contemporaneous oral and written understandings, agreements, representations, and warranties, with respect to the subject matter. In the event of any direct and irreconcilable conflicts between the provisions of this TOS, the Schedules, or Order Form, the following order of precedence shall govern: (i) the Order Form, but only for the scope and services covered under such Order Form; (ii) the Schedules but only for the subject matter and scope of services covered under such Schedule; (iii) and the terms of this TOS.

20. MODIFICATIONS

Provider has the right to modify the terms of this TOS at any time, solely with prospective effect, and to change, delete, discontinue, or impose conditions on use of the Services by posting the modified terms or changes at <https://www.PrismPPM.com/terms/>. Provider will provide Customer with notice of any changes via email at the email address linked to Customer's account, by posting on Customer's account, or through other reasonable means. The modifications shall come into effect thirty (30) days after Provider posts the changes. Customer's continued use of the Services more than thirty (30) days after Provider publishes any such changes constitutes Customer's acceptance of the terms of the modified TOS; provided however, for any modifications that have a material impact on the Customer, Customer may send a notice of objection to the modification ("**Objection Notice**") in writing (email to suffice) within such thirty (30) day period, and Parties shall make good faith efforts to find mutually agreeable terms related to the proposed modification and enter into a written amendment signed by both Parties reflecting the mutually agreed upon terms. Where Parties are unable to find mutually agreeable terms and enter into said amendment within 45 days from Customer's Objection Notice despite both Parties' good faith efforts, either Party may terminate this Agreement by written notice. Customer's continued use of the Services more than thirty (30) days after Provider publishes any modifications or changes without sending an Objection Notice during such thirty (30) days constitutes Customer's acceptance of the terms of the modified TOS. Customer can access a copy of the current terms of this TOS on Provider's website at any time. Customer can find out when this TOS was last changed by checking the "Last Updated" date at the top of the TOS. Except as stated above, no other amendment to an Order Form or this TOS (including any schedules) shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties.

SCHEDULE A

DEFINITIONS SCHEDULE

"**Access Type**" means the type of access credential an Authorized User has to the SaaS (i.e., Manager Access, Team Access, Timesheet Only, or Reports), as ordered under an Order Form.

"**Action**" means a claim, suit, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of an entity means another entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such entity. The term "control" (including the terms "controlled by" and "under common control with") means the ownership, beneficially or of record, of more than fifty percent (50%) of the voting securities of an entity.

“Agreement” means this TOS and Schedules, together with all Order Forms entered into by the Parties under this TOS.

“Aggregated Data” means data and information related to Customer’s or its Authorized User’s use of the Services, including data or information deriving from Customer Materials, which is used by Provider in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“Authorized User(s)” means an employee or contractor of Customer who Customer permits access to and use of the SaaS pursuant to Customer’s rights to access under the terms of this Agreement.

“Beta Version” means early access, beta versions, or quality assurance copies of the SaaS.

“Confidential Information” means any information that is designated or marked as confidential or would reasonably be understood to be confidential by the circumstances of disclosure or nature of the information. Confidential Information does not include any information that at the time of disclosure, as proved by the written records of the contesting party: (a) is now or which at any time in the future becomes generally known by the public through no fault of the receiving Party, (b) was in the receiving Party’s lawful possession before receipt from the disclosing Party, (c) was independently developed by either Party by lawful means, or (e) was rightfully received from a third party without a duty of confidentiality.

“Customer Data” means all data and information submitted by Customer or Authorized Users for the Services, including through the SaaS.

“Customer Materials” means any documents, data (including Customer Data), content, software, computer programs, reports, specifications, and other materials supplied by Customer for the purposes of receiving Services under this Agreement.

“Disclosing Party” means a party to whom the Confidential Information belongs to under this Agreement.

“Documentation” means Provider’s user manuals, specifications, and guides relating to the SaaS provided to Customer under this Agreement for use in conjunction with the SaaS, including but not limited to the Prism PPM PM User Guide.

“Error” means a reproducible failure of the Software, to perform in substantial conformity with the specifications set forth in the Documentation, whose origin can be isolated to a single cause. An Error does not include variable performance caused by particularities and limitations of the Customer’s own internet access.

“Fix” means a change, modification, or addition to Software or the Documentation that when made, resolves or substantially mitigates an Error.

“Implementation Services” means the services provided to Customer under the Agreement to configure and implement the SaaS for Customer’s use as further described under the *Professional Services Schedule (Schedule B)* and applicable Order Form.

“Indemnitee” means the Party seeking indemnity.

“Indemnitor” means the indemnifying Party.

“Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, and (e) all other similar or equivalent intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, binding guidance, and other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction, which is applicable to a Party.

“Losses” means damages, interest, awards, penalties, fines, costs, disbursements, expenses, attorneys’ fees, the cost of enforcing any right under this Agreement, and the cost of pursuing any insurance providers.

“Malware” means a virus, worm, unauthorized cookie, Trojan horse, trap door, back door, timer, clock, counter, malicious software, or other program, routine, subroutine, or data, which is designated to disrupt the proper operation of the applicable network and system.

“Order Form” or **“Order”** means the order form entered into by the Parties under the TOS setting forth additional details of the applicable Service to be provided.

“Order Term” means the term of the Order Form as set forth in the applicable Order Form.

“Personal Data” means “personally identifiable information,” “personal data,” “personal health information,” “nonpublic personal information,” or the like, as such terms are defined under the applicable data privacy laws.

“Professional Services” means the implementation, consulting, and other professional services as described under the *Professional Services Schedule (Schedule B)*.

“Provider IP” has the meaning set forth in Section 5.1 of the TOS.

“Provider Personnel” means all employees, Affiliates’ employees, and subcontractors, if any, engaged by Provider to perform the Services.

“Receiving Party” means a party that receives or acquires the Confidential Information of the other Party directly or indirectly under this Agreement.

“Reports” means the outputs derived from Customer Materials and Customer’s and its Authorized User’s use of the SaaS displayed as a dashboard through the SaaS.

“SaaS” means the Software and related Documentation provided under a software-as-a-service model.

“Service Period” has the meaning set forth in the applicable Order Form for such Order Form.

“Software” means Provider’s proprietary portfolio and project management system and application, referred to as the Prism PPM.

“Support Hours” means the hours available to Customer for Support Services as referenced in the applicable Order Form.

“Support Services” means the support and maintenance (including hosting) services as described under the *Support and Maintenance Schedule (Schedule C)*.

“Updates” means new versions, improvements, modifications, upgrades, updates, fixes, and additions to Software that Provider makes available to Customer or to Provider’s end users generally during the Order Term to correct errors or deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules or re-platformed Software.

SCHEDULE B

PROFESSIONAL SERVICES SCHEDULE

Provider will provide Professional Services in accordance with this Professional Services Schedule as ordered under an Order Form. Capitalized terms used in this Schedule that are not defined herein shall have the meaning given to them in the *Definitions Schedule (Schedule A)* of the TOS.

1. HOURS AND RATES

2. Implementation Services Hours and Rate.

Customer may purchase a block of hours under an Order Form to be used for Implementation Services under the Implementation Services rate identified in the Order Form. Where further hours are required for Implementation Services after the purchased block of hours are used, Customer will need to purchase additional hours under the same Implementation Services rate and the same terms of the applicable Order Form. Implementation Services hours must be used within the first six (6) months following the Order Start Date or they will be subject to forfeit.

Where hours remain upon completion of the Implementation Services, any purchased hours remaining may be applied towards the following category of Services: (a) additional training, (b) post-implementation configurations. Remaining hours may not be applied to other professional service categories.

2. Usage.

Use of purchased Professional Service hours will be calculated in thirty (30) minute increments. All hours must be utilized within the same Service Period during which it is purchased. Any purchased hours not utilized during the applicable Service Period are forfeited and may not be carried over into the subsequent Service Period.

SCHEDULE C

SUPPORT AND MAINTENANCE SCHEDULE

As part of the SaaS offering, Provider will provide support and maintenance services during Support Hours for the Order Term in accordance with this Support and Maintenance Schedule. Capitalized terms used in this Schedule that are not defined herein shall have the meaning given to them in the *Definitions Schedule (Schedule A)* of the TOS.

1. ERROR REPORTING

Customer agrees to have its designated Customer personnel report any support requests by emailing Provider's support email at support@PrismPPM.com or through the web-based support portal within the SaaS (see help menu). Customer understands and acknowledges that support requests submitted by individuals who have not been designated as primary Customer personnel for Support Services according to the TOS may not be evaluated. Provider may update support request communication methods from time to time at its discretion by providing Customer notification of the update (email to suffice). Customer must provide any relevant information including changes to its networks, as well as a reasonably detailed description of Error(s), including screenshots or relevant logs, time and day the behavior was experienced, name of the user experiencing the behavior, and other information reasonably requested by Provider in order for Provider to verify and reproduce the Error reported by Customer.

1. SUPPORT LOCATION AND METHOD

Customer understands and acknowledges that: (a) Provider will provide support and maintenance services under this Schedule remotely through electronic communications; and (b) Provider does not provide support and maintenance services onsite at Customer's locations, except as may be agreed to separately in writing between the Parties, and which may incur additional fees or expenses.

1. RESPONSE AND RESOLUTION

Customer agrees to work with Provider's support personnel during the problem isolation and resolution process, as reasonably requested. With respect to any Errors in the SaaS which are

reported by Customer and which are confirmed by Provider, Provider will make commercially reasonable efforts to Fix such Error in accordance with the Response and Resolution Times found in the *Support Schedule table (Table A)* below. Provider may reclassify Criticality Levels as it learns information about such Errors during the resolution process. Provider may elect to Fix the Error by updating or upgrading the applicable component of the SaaS to a new build or version. Customer understands and acknowledges that suggestions and feature enhancement requests are outside the scope of Support Services.

1. SUPPORT EXCLUSIONS

Although Provider may elect to, Provider is not obligated to provide support or maintenance services under the following circumstances: (1) in connection with any errors, defects, or problems that result in whole or in part from any alteration, revision, change, enhancement, or modification of any nature of the SaaS or from any error or defect in any configuration of any component of the SaaS, which activities in any such case were undertaken by any party other than Provider or a party retained by Provider; (2) in connection with any error or defect or problem in any component of the SaaS if Provider has previously made available corrections for an error or defect which Customer fails to implement; (3) in connection with any errors, defects or problems which have been caused by errors, defects, problems, alterations, revisions, changes, enhancements, or modifications in any software, hardware or system or networking which is not a part of the SaaS; (4) if any party other than Provider, or an authorized subcontractor specifically selected by Provider, has provided any services in the nature of support to Customer with respect to the SaaS; (5) in connection any errors, defects or problems caused by misuse or abuse, including without limitation, the failure to operate the SaaS in accordance with Documentation; (6) any failure of the SaaS caused by Customer Materials, including Customer Data; (7) the SaaS has been damaged in any manner due to the fault or negligence of any person or entity other than Provider or Provider Personnel; (8) Customer fails to reasonably assist Provider in verifying, reproducing and correcting Error conditions, or Provider is unable, after using reasonable efforts, to verify and reproduce the Error reported by Customer; (9) to the extent an error, defect or problem is caused by a Third-Party Solution, including but not limited to Customer's combining or merging the SaaS with any hardware or software not identified as compatible by Provider; or (10) any Force Majeure Event.

SCHEDULE D

SERVICE LEVEL AGREEMENT (SLA)

Capitalized terms used in this Schedule that are not defined herein shall have the meaning given to them in the *Definitions Schedule (Schedule A)* of the TOS.

1. SERVICE AVAILABILITY

Subject to the terms and conditions of the Agreement, Provider will use commercially reasonable efforts to meet the **"Availability Requirement"**, which shall mean that the SaaS is Available at least **99.9%** of the time as measured over the course of each Service Period under the applicable Order Form, excluding unavailability as a result of any of the Uptime Exceptions described below.

"Available" means the SaaS is available for access and use by Company and its Authorized Users over the internet and operating in material conformance with the Documentation. **"Percentage Uptime"** means the percentage of time the SaaS was Available during the Service Period based on the Calculation Formula (*see Table A: Support Schedule*).

 Support Schedule

1. SERVICE CREDITS

In the event of a material failure of the SaaS to meet the Availability Requirement (**"Service Level Failure"**), where Customer provides a notice of such Service Level Failure within five (5) days from such failure with reasonably requested information and documentation evidencing such Service Level Failure, Provider will evaluate the information without undue delay. Where Provider determines that in fact a Service Level Failure has occurred, Provider shall issue a credit to Customer in the amount equal to one percent (1%) of the fee for the SaaS for each one percent (1%) loss of

Availability below the Availability Requirement up to a maximum of ten percent (10%) of the SaaS fees as provided for in the applicable Service Order due for the Service Period (such credit referred to as “**Service Credit**”). Service Credits will be issued to Customer in the invoice following the Service Period in which the Service Level Failure occurred as a credit against such invoice. Customer’s sole and exclusive remedy and Provider’s sole liability for any unavailability or non-performance of the SaaS is the receipt of a Service Credit in accordance with the terms of this Schedule.

1. **UPTIME EXCEPTIONS**

The following circumstances will constitute “**Uptime Exceptions**” under which the SaaS not being Available will not count against the Availability Requirement: (1) acts or omissions by Customer, Authorized User, or by someone using Customer’s or Authorized User’s access credentials, that does not comply with this Agreement, including the Documentation; (2) Customer’s delay in performing or failure to perform any of its obligations under this Agreement; (3) Customer’s or its Authorized User’s internet connectivity; (4) force majeure event; (5) failure, interruption, outage, or other problem with any third-party software, hardware, system, network, facility or other matter, including any Third-Party Solutions; (6) scheduled downtime; (7) disabling, suspension, or termination of the Services pursuant to this Agreement; or (8) Service Level Failure caused solely as a result of Customer Materials.

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