

SaaS Agreement

Last updated: July 18, 2024

This SaaS Agreement (this “**Agreement**”) is a binding contract between you (“**Customer**”, “**you**” or “**your**”) and Brevity Technologies Inc., a Delaware corporation (“**Brevity**”, “**we**” or “**us**”) upon Customer’s use of the Brevity software. It establishes the terms under which you may use certain Brevity SaaS services in connection with a services agreement between you and Brevity (the “**Services Agreement**”).

Services

Brevity shall provide to Customer the software-as-a-service offering described in the Services Agreement (the “**Services**”). Brevity shall provide the Services in accordance with the terms and subject to the conditions set forth in this Agreement. Any changes to the scope of Services must be agreed by the parties in a written amendment in accordance with Section 12.2 [Notice].

Access and Use

- **License Grant.** Subject to the terms and conditions of this Agreement, Brevity hereby grants Customer a non-exclusive, non-sub-licensable, and non-transferable right to access and use the Services during the Term solely for use by Authorized Users. Such use is limited to Customer’s internal use. “**Authorized User**” means Customer’s employees, consultants, contractors, and agents: (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (ii) for whom a seat has been purchased. The total number of Authorized Users will not exceed the number of seats set out in the Services Agreement except as expressly agreed to in writing by both parties and subject to any appropriate adjustment of the fees payable.
- **Documentation License.** Subject to the terms and conditions contained in this Agreement, Brevity hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Services. “**Documentation**” means Brevity’s user manuals, handbooks, and guides relating to the Services provided by Brevity to Customer either electronically or in hard copy form.
- **Use Restrictions.** Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify,

or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or that violates any applicable law.

Reservation of Rights

Brevity reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants by implication, waiver, estoppel, or otherwise to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Brevity IP (as defined below).

Suspension

Notwithstanding anything to the contrary in this Agreement, Brevity may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if Brevity reasonably determines that: (i) there is a threat or attack on any of the Brevity IP; (ii) Customer's or any Authorized User's use of the Brevity IP disrupts or poses a security risk to the Brevity IP; or (iii) Brevity's provision of the Services to Customer or any Authorized User is prohibited by applicable law (any such suspension, a "Service Suspension"). Brevity shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Brevity shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Brevity may also suspend Customer's and any Authorized User's access to the Services if Customer is past due on any fees pursuant to Section 5.1 [Fees]. Upon payment of all such past due fees, Brevity will restore Customer's and any Authorized User's access to the Services. Brevity 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 Service Suspension or suspension due to late payment.

Aggregated Statistics

Notwithstanding anything to the contrary in this Agreement, Brevity may monitor Customer's use of the Services and collect and compile Aggregated Statistics. "Aggregated Statistics" means data and information related to Customer's use of the Services that is used by Brevity in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. As between Brevity and Customer, all right, title, and interest in Aggregated Statistics and all intellectual property rights therein, belong to and are retained solely by Brevity. Customer agrees that Brevity may (i) make Aggregated Statistics publicly available in compliance with applicable law and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

Changes

Brevity reserves the right in its sole discretion to make any changes to the Brevity IP that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of the Brevity IP; (ii) the competitive strength of or market for Brevity's services; or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable law.

Maintenance

Brevity may interrupt Customer's access to and use of the Services at any time without liability to Customer to perform scheduled or emergency maintenance. Brevity will use reasonable commercial efforts to conduct scheduled maintenance during off-hours and to minimize disruptions and interruptions to Customer.

Support

During the Term, Brevity will provide support services in connection with Customer's use of the Services. Any technical information Customer provides to Brevity in connection with support services may be used for product support and development; provided, however, that Brevity will not use such technical information in a form that personally identifies Customer unless required to provide support hereunder.

Customer Responsibilities

- **Customer Obligations.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access through Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an

Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

- Promotion Assistance. Customer agrees to provide a commercially reasonable amount of time and resources to assist Brevity: (a) in developing a role play case study; (b) in preparing and distributing a press release and other promotional materials communicating the relationship between the parties; and (c) by serving as a reference for Brevity on Customer's and Brevity's website and in presentations, communications, and other promotional materials.

Fees and Payment Terms

- Fees. In consideration of the provision of the Services by Brevity and the rights granted to Customer under this Agreement, Customer shall pay the fees as set forth in the Services Agreement. If Customer fails to make any payment when due, without limiting Brevity's other rights and remedies (i) Brevity may charge interest on the past due amount at the rate of 1.5% per month or the maximum amount permitted by law, whichever is lower, from the date such payment was due until the date paid; and (ii) suspend performance for all Services until payment has been made in full.
- Fee Increases. Unless otherwise stated to the contrary in this Agreement, there will be no fee increases during the Initial Term or during any Renewal Term. However, on expiration of the Initial Term or any Renewal Term, fees may be increased on at least 30 days' advance written notice.
- 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, except for any taxes imposed on or with respect to Brevity's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

Term, Termination, and Survival

Term Renewal. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Initial Term"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated pursuant to this Agreement's express provisions or until either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term").

- Termination. In addition to any other express termination right set forth in this Agreement:
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 - Brevity may terminate this Agreement effective on written notice to Customer if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Brevity's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 2.3 [Use Restrictions] or Section 8 [Confidentiality];
 - either party may terminate this Agreement effective on written notice to the other party if the other party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or
 - either party may terminate this 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.
- Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Brevity IP and, without limiting Customer's obligations under Section 8 [Confidentiality], Customer shall delete, destroy, or return all copies of the Brevity IP and certify in writing to Brevity that the Brevity IP has been deleted or destroyed. No expiration or

termination will affect Customer's obligation to pay all fees that may have become due before such expiration or termination or entitle Customer to any refund.

Intellectual Property

- **Brevity IP.** Customer acknowledges that, as between Customer and Brevity, Brevity owns all right, title, and interest, including all intellectual property rights, in and to the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing (collectively, "Brevity IP"). For the avoidance of doubt, Brevity IP includes Aggregated Statistics and any information, data, or other content derived from Brevity's monitoring of Customer's access to or use of the Services.
- **Customer Data.** Brevity acknowledges that, as between Brevity and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to information, data, and other content in any form or medium that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services ("Customer Data"). Customer hereby grants to Brevity a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Brevity to provide the Services to Customer and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.
- **Feedback.** If Customer or an Authorized User sends any communications or materials to Brevity suggesting or recommending changes to the Brevity IP, including without limitation new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Brevity is free to use such Feedback for any purpose. Customer hereby assigns to Brevity on Customer's behalf and on behalf of its employees, contractors, and agents all right, title, and interest in the Feedback, and Brevity is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback for any purpose whatsoever, although Brevity is not required to use any Feedback.

Confidentiality

All non-public, confidential, or proprietary information of either party (“Confidential Information”), including, but not limited to, this Agreement and information about such party’s business affairs, products, software, methodologies, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, or otherwise learned by the Receiving Party in connection with this Agreement, and whether or not marked, designated, or otherwise identified as “confidential,” is confidential, solely for use in performing this Agreement, and may not be disclosed or copied unless authorized by the Disclosing Party in writing. The Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of the Receiving Party’s breach of this Agreement; (ii) is obtained by the Receiving Party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (iii) the Receiving Party establishes by documentary evidence was in its possession prior to the Disclosing Party’s disclosure hereunder; (iv) was or is independently developed by the Receiving Party without using any of the Disclosing Party’s Confidential Information; or (v) is required to be disclosed under applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction. Upon the expiration or termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Each party’s obligations with regard to Confidential Information will survive termination or expiration of this Agreement for a period of five (5) years, except for Confidential Information that constitutes a trade secret under any applicable law, in which case such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

Representations and Warranties

- Mutual. Each party represents and warrants to the other party that: (i) 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; and (ii) 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.

- **Brevity Limited Warranty; Warranty Disclaimer.** Brevity represents and warrants to Customer that: (i) the Services shall conform in all material respects with the Documentation; and (ii) to Brevity's knowledge, the Services and Customer's use thereof in accordance with the terms of this Agreement do not and will not infringe any registered or issued patent, copyright, or trademark of any third party arising under the law of the United States. Brevity does not make any representations or guarantees regarding uptime or availability of the Services. Brevity's sole liability and Customer's sole and exclusive remedy for Brevity's breach of this Section are Brevity's indemnification obligations under Section 10 [Indemnification]. The warranties set forth in this Section do not apply and become null and void if Customer breaches any provision of this Agreement or if Customer, any Authorized User, or any other person provided access to the Services by Customer or any Authorized User, whether or not in violation of this Agreement: (i) installs or uses the Services on or in connection with any hardware or software not specified in the Documentation; (ii) modifies or damages the Services; or (iii) misuses the Services, including any use of the Services other than as specified in the Documentation. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, THE BREVITY IP IS PROVIDED "AS IS" AND BREVITY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BREVITY 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. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, BREVITY MAKES NO WARRANTY OF ANY KIND THAT THE BREVITY IP, OR ANY PRODUCTS 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 SOFTWARE, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

Indemnification

- **General.** Each party ("Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its officers, directors, employees, agents, affiliates,

successors, and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs (collectively, "Losses"), arising out of or resulting from a third-party claim arising out of or occurring in connection with Indemnifying Party's negligence, willful misconduct, or material breach of this Agreement, including but not limited to the material breach of any representation or warranty made by Indemnifying Party in this Agreement.

- Intellectual Property Infringement. Brevity shall defend, indemnify, and hold harmless Customer from and against any Losses arising out of a third-party claim that any of the Brevity IP, or Customer's receipt or use thereof in accordance with this Agreement, infringes such third party's United States intellectual property rights, provided that Customer promptly notifies Brevity in writing of the claim, cooperates with Brevity, and allows Brevity the sole authority to control the defense and settlement of such claim. Brevity shall have no obligation under this Section with respect to claims to the extent arising out of (i) any instruction, information, designs, specifications, or other materials provided by Customer in writing to Brevity; or (ii) any modifications or changes made to the Services other than by Brevity. If such a claim is made or appears possible, Customer agrees to permit Brevity, at Brevity's sole discretion, to (a) modify or replace the Services, or Documentation, or component or part thereof, to make it non-infringing, or (b) obtain the right for Customer to continue use. If Brevity determines that none of these alternatives is reasonably available, Brevity may terminate this Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

Limitation of Liability

IN NO EVENT WILL BREVITY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES; (ii) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (iii) COST OF REPLACEMENT SOFTWARE, IN EACH CASE REGARDLESS OF WHETHER BREVITY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL BREVITY'S AGGREGATE LIABILITY ARISING

OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO BREVITY BY CUSTOMER UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Miscellaneous

- **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, including the Service Agreement, Terms of Use, Privacy Policy, and all related Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and the Privacy Policy or Terms of Use, this Agreement shall control.
- **Notices.** Whenever under this Agreement one party is required or permitted to give notice to the other, such notice must be in writing and sent by registered or certified mail, return receipt requested, or by facsimile or electronic mail (receipt confirmed) to the contact information provided in the Service Agreement (or to such other address that a party may designate from time to time in accordance with this Section).
- **Amendment and Modification, Waiver.** This Agreement may be amended, modified, or supplemented by Brevity upon publication on the Brevity website. No failure to exercise any rights, remedy, power, or privilege (“Right(s)”) arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any Right hereunder precludes any other or further exercise thereof or the exercise of any other Right.
- **Severability.** No invalidity, illegality, or unenforceability of any provision herein in any jurisdiction shall affect any other term or provision of this Agreement or invalidate or render such provision unenforceable in any other jurisdiction. If any provision is determined to be invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.
- **Assignment.** Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation

of law, or otherwise, without the prior written consent of Brevity. Brevity may assign this Agreement to its subsidiary, affiliate, or an entity that acquires all or substantially all of the business or assets of Brevity, whether by merger, reorganization, acquisition, sale, or otherwise. Any purported assignment or delegation in violation of this Section will be null and void.

- **Governing Law, Submission to Jurisdiction, Venue.** The parties agree that any disputes or controversies relating to or arising under this Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Minnesota (without regard to its conflicts of laws provisions), and both parties consent to the exclusive personal jurisdiction of the federal and state courts located in Minneapolis, Minnesota, with respect to any disputes relating hereto. Each party shall bear its own attorneys' fees, expert fees, and other expenses associated with the resolution of any dispute under this Agreement.
- **Non-Exclusivity.** The relationship between Customer and Brevity hereunder is nonexclusive, and nothing herein shall prevent Brevity from offering the Services and other Brevity IP to competitors of Customer.
- **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- **Equitable Relief, Cumulative Remedies.** Each party acknowledges that a breach of Section 7 [Intellectual Property Rights] or Section 8 [Confidential Information] may cause the non-breaching party irreparable damages for which an award of damages would not be adequate compensation. In the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief. Except as expressly set forth in this Agreement, the right and remedies under this Agreement are cumulative and in addition to any other rights or remedies available at law, or in equity, or otherwise.
- **Force Majeure.** In no event shall Brevity be liable to Customer or be deemed to have breached this Agreement for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments) if and to the extent such failure or delay is caused by any circumstances beyond Brevity's reasonable control, including but not limited to, acts of God, flood, fire, earthquake, epidemic, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, unavailability or interruption or delay in telecommunications, denial of service attacks, hacking,

viruses, or passage of law, or any action taken by a governmental or public authority, including imposing an embargo.

- **Export Regulation.** The Services may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Customer shall not directly or indirectly export, re-export, or release the Services to, or make the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Services available outside the US.