SUBSCRIPTION AND SERVICES AGREEMENT

This Subscription and Services Agreement is dated to be effective as of \_\_\_\_\_\_\_\_\_\_\_, 201\_ (the “***Effective Date***”) by and between **PROS, Inc.**, a Delaware corporation, with a principal place of business at 3100 Main Street, Suite 900, Houston, Texas 77002, United States of America[[1]](#footnote-2) (“***PROS***”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Customer***”), each referred to herein as a “***Party***” and collectively as the “***Parties***.” In consideration of the mutual promises and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, PROS and Customer hereby agree as follows:

2. **SUBSCRIPTION.**
   1. Subscription. Subject to the terms and conditions of this Agreement, PROS grants to Customer and its Users web-based access to the Application for use for Customer’s own internal business purposes during the Subscription Term in accordance with the Scope. Customer Affiliates may become a party to this Agreement by purchasing additional subscriptions for access to the Application through the execution of Orders. Upon full execution of any such Orders, (a) this Agreement will apply between PROS and such Customer Affiliate with respect thereto, and (b) all references to ‘Customer’ and ‘Party’ hereunder will be regarded as references to such Customer Affiliate.
   2. Maintenance and Support. During the Subscription Term, PROS will provide support for the Application as set forth in each Order and subject to the terms and conditions set forth in the ‘Support Guide’ section of the Service Level Agreement.
   3. Customer Responsibilities. Customer is responsible for Users' compliance with this Agreement and for access to Data or the Application by other persons as a result of Customer’s failure to use reasonable precautions to secure its own systems or credentials for access to the Application. Customer will: (i) use its best efforts to prevent unauthorized access to or use of the Application, and notify PROS immediately of any such unauthorized access or use; (ii) cooperate with any reasonable investigation by PROS of any outage, security problem or suspected breach of the Agreement; and (iii) comply with all PROS instructions relating to Customer’s access to or use of the Application, including, but not limited to, instructions specifying specific windows of time for certain types of Data uploading.
   4. Use Restrictions. Customer will not: (i) use the Application outside the Scope or for other than its own internal business purposes; (ii) use or access the Application in violation of applicable laws, rules and regulations, including data privacy laws and regulations; (iii) sell, resell, license, lease, transfer, redistribute, assign or otherwise commercially exploit or make the Application available to any third party, other than to Users; (iv) send, store, submit or upload libelous, unlawful or tortious material on or to the Application; (v) send, store, submit or upload malicious or harmful code on or to the Application; (vi) save to the extent necessary for the operation of the Application, send, store, submit or upload any Personal Data on or to the Application; (vii) interfere with or disrupt the integrity or performance of the cloud environment where the Application is deployed; (viii) attempt to circumvent security restrictions or protocols for the cloud environment where the Application is deployed; (ix)  duplicate or reverse engineer the Application, in whole or in part; (x) disclose the results of any benchmarking test; or (xi) remove or modify any proprietary markings or notices on the Documentation, Work Product or other materials delivered by PROS in the performance of this Agreement.
   5. Use Verification. During the Subscription Term, PROS will have the right, at its own expense, to monitor the use of the Application for purposes of measuring and reporting on usage, and Customer will respond to any reasonable inquiries from PROS to assess the Scope.
   6. Security. During the Subscription Term, PROS will maintain security measures designed to protect the integrity of, and to prevent unauthorized access to, the Application and the Customer Data stored therein. Such security measures will conform to the Security Policy. PROS will maintain administrative, technical and physical controls as part of a documented information security program in compliance with and certified under SOC 2 Type 2 and ISO 27001 or similar established industry standard. As a data processor, PROS will implement the technical and organizational measures referenced in our Data Processing Addendum attached hereto as Exhibit A to secure Personal Data processed by PROS as part of the subscription in accordance with Data Protection Laws.
   7. Suspension of Access. PROS may, on written notice, suspend access to the Application without liability if: (i) PROS reasonably believes that the Application is being used in violation of this Agreement; (ii) Customer does not cooperate with reasonable investigation by PROS of any suspected violation of this Agreement; (iii)  the Application or Customer Data are accessed or manipulated by a third party without Customer consent; (iv) PROS is required by law, or a regulatory or government body to suspend access to the Application; (v) if any undisputed invoiced amounts remain unpaid by Customer for more than thirty (30) calendar days past the due date; or (vi) there is another event for which PROS reasonably believes that the suspension of access to the Application is necessary to protect the cloud environment in which Customer’s instance of the Application is deployed.
   8. Audit. Customer agrees that PROS’ then-current SOC 2 audit report (or comparable industry-standard successor report) and/or PROS’ ISO 27001 Certification will be used to satisfy any audit or inspection requests by or on behalf of Customer, and PROS will make such reports available to Customer upon Customer’s written request.
3. **FEES.**
   1. Fees. Customer will pay all fees for the subscription to the Application and Professional Services as set forth herein or on the applicable Order(s) and/or SOW(s). Payment obligations are irrevocable and non-cancellable, and any fees paid are non-refundable, except as set forth in Sections 5.4 and 8.3.
   2. Invoices. PROS will invoice Customer for Application subscription fees for the first year of the Subscription Term on or after the effective date of the relevant Order, and for any subsequent year of the Subscription Term, in advance of each such annual period on a date which will cause such fees to become due and payable the week prior to the commencement of such annual period. PROS will invoice Customer for Professional Services fees as set forth in the applicable SOW. Invoices will be issued electronically to the ‘invoicing contact’ identified in the applicable Order or SOW.
   3. Payment. Invoices are payable upon receipt and are past due if not paid within thirty (30) days from the date of invoice. Late payments will be subject to interest of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is less. Customer will pay any reasonable legal fees or other costs incurred by PROS to collect any such delinquent amounts. Customer may not withhold (except as a result of a reasonable and good faith dispute of invoiced amounts communicated to PROS in writing prior to the due date) or offset fees due to PROS for any reason.
   4. Taxes. Fees are exclusive of Taxes, and Customer will be solely responsible for the payment of all such Taxes (other than Taxes computed on the basis of the net income of PROS). If any applicable law requires Customer to withhold amounts from any payments to PROS hereunder, (i) Customer will effect such withholding and remit such amounts, and (ii) the sum payable by Customer upon which the deduction or withholding is based may be increased to the extent necessary to ensure that, after such deduction or withholding, PROS receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount PROS would have received and retained in the absence of such required deduction or withholding. Upon request, Customer will provide PROS evidence that any withheld amounts have been remitted to the applicable governmental authority.
4. **PROFESSIONAL SERVICES.**
   1. Professional Services. During the Subscription Term, PROS will provide the Professional Services as described in an applicable SOW.PROS is not responsible for any delay caused by Customer or third parties other than PROS’ agents and contractors retained by PROS for the provision of Professional Services.
   2. Expenses. Customer will reimburse PROS for all reasonable travel and subsistence expenses computed at the rates specified in the applicable SOW for non-local travel, and airfare, meals and other out-of-pocket expenses. Customer agrees that business class airfare is reasonable for all required travel by PROS personnel that is over eight (8) hours.
   3. Work Product. A SOW may identify any work product to be prepared as a result of the performance of the Professional Services (“***Work Product***”). All right, title and interest in and to any Work Product will remain in PROS. PROS grants Customer a non-exclusive, non-sublicensable, non-transferable license to use, execute, reproduce, display, perform and distribute the Work Product, solely during the applicable Subscription Term and for Customer’s own internal business purposes. Customer will reproduce the copyright notice and any other legend of ownership on any copies made under the license granted in this Section 3.3.
   4. Purchase Orders. Where the Professional Services do not require the creation of Work Product, Customer may purchase such Professional Services from PROS by issuing a purchase order that (i) references this Agreement, and (ii) is accepted by PROS (a “***Purchase Order***”). All accepted Purchase Orders will be deemed to be SOWs hereunder, any additional or conflicting terms or conditions contained in Purchase Orders will be disregarded, null and void, and the terms of the Agreement will govern all Purchase Orders.
5. **REPRESENTATIONS AND WARRANTIES.**
   1. Authorization; Execution. Each Party hereby represents to the other that (a) it has full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; (b) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms; and (c) its execution, delivery and performance of this Agreement will not result in a breach of any material agreement or understanding to which it is a party.
   2. Application.  PROS warrants that the Application will conform in all material respects to the specifications set forth in the Documentation. Customer’s sole and exclusive remedy under this warranty will be limited to PROS using commercially reasonable efforts to correct any non-conformance and deploy a corrected version of the Application at issue under the Subscription. If PROS is unable to correct such non-conformance, Customer may terminate the applicable Order within the following two months, in accordance with Section 8.
   3. Professional Services. PROS warrants that all Professional Services will be performed in a professional manner. If within thirty (30) days of the completion of any Services, Customer notifies PROS that Professional Services were not performed as warranted in this Section 4.3 and provides details regarding such deficiency, then PROS will re-perform deficient Professional Services at no charge to Customer. Such re-performance will be Customer’s sole and exclusive remedy and PROS’ sole obligation under this warranty.
   4. Warranty Disclaimers. The warranties expressly set forth in this Section 4 are the sole and exclusive warranties given by PROS and to the extent allowed by applicable law, PROS makes no other warranties, express, implied or statutory, and expressly disclaims any implied warranties of merchantability, fitness for a particular purpose, satisfactory quality and non-infringement. PROS does not warrant that (A) the Application is error free, (B) Customer will be able to use the Application without problems or interruptions, or (C) the Application and the cloud environment where the Application is deployed are not susceptible to intrusion, attack or computer malware infection.
6. **INDEMNIFICATION.**
   1. PROS Indemnification.  PROS will indemnify and hold Customer harmless from Losses resulting from any claims brought by unaffiliated third parties against Customer alleging that use of the Application as permitted herein infringes any intellectual property rights of any third party.
   2. Customer Indemnification. Customer will indemnify and hold PROS harmless from Losses resulting from any claims brought by unaffiliated third parties against PROS (i) alleging that Customer Data, or Customer’s use of the Application in breach of this Agreement, infringes any intellectual property rights of any third party, or (ii) related to any acts or omissions of Customer or the Users in breach of Section 1.4 of this Agreement.
   3. Conditions Precedent. Each Party’s obligations under Sections 5.1 and 5.2 are expressly conditioned on the Party subject to a claim (a) providing prompt notice of the claim; (b) giving sole control of the defense and settlement of the claim to the other Party; (c) reasonably cooperating with the Party in charge of the defense; and (d) not having compromised or settled such claim in any way or having made any admissions with respect to such claim without the defending Party’s prior written consent.
   4. Remedies. Should the Application become (or in the opinion of PROS, be likely to become) the subject of a claim of infringement of any third party's intellectual property rights, PROS may at its option and at no cost to Customer (a) procure for Customer the right to continue to use the Application, (b) replace or modify the Application to make it non-infringing and functionally equivalent, or, only if neither of the foregoing remedies can be provided under commercially reasonable terms, (c) terminate the subscription to such Application and refund to Customer any pre-paid subscription fees prorated to the remainder of the pre-paid term.
   5. Exceptions. PROS will have no liability for any claim based on (a) use of the Application in combination with any software, hardware, network or system not supplied or approved by PROS where the claim relates to such combination, (b) Customer Data, (c) any modification or alteration of the Application (other than by PROS or its subcontractors), (d) Customer continuing any infringing activity after being informed of alleged infringement, or (e) use of the Application not in accordance with the Documentation.
   6. No Additional Liability. This Section 5 states each Party’s entire liability with respect to third party claims described in Sections 5.1 and 5.2.
7. **LIMITATION OF LIABILITY.**
   1. **Exclusion. Except for breaches of section** **1.4, in no event will either** **Party be liable to the other with respect to its obligations under this** **Agreement or otherwise under any theory, including contract and tort, for any loss of profits, cost of cover, indirect, special or incidental, consequential, exemplary, or punitive damages, including (but not limited to) damages for loss of** **data, loss of use, loss of goodwill or loss of business, even if such** **Party has been advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by law.**
   2. **Liability Limit. Notwithstanding anything to the contrary in this** **Agreement****, PROS’ liability to** **Customer arising out of or related to this** **Agreement will be limited to the fees paid by** **Customer to** **PROS under the applicable Order or** **SOW in connection with which liability arises during the twelve (12) month period preceding the incident giving rise to liability. The foregoing disclaimer will not apply to the extent prohibited by law.**
   3. The exclusions in Sections 4.4, 6.1 and 6.2 will apply to the fullest extent permissible at law, but nothing in this Agreement will exclude or limit either Party's liability for: (i) death or personal injury caused by its (or its agent's or sub‑contractor's) negligence; (ii) fraud or fraudulent misrepresentation; or (iii) breach of PROS’ obligations implied by Section 12 of the [Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980)][[2]](#footnote-3).
8. **PROPRIETARY INFORMATION.**
   1. Intellectual Property. Customer retains all right, title and interest in and to all Customer Data. Customer grants PROS a worldwide, non-exclusive, irrevocable, royalty-free, perpetual license to (i) aggregate Customer Data with other data to create Anonymous Aggregated Data; and (ii) use, modify, distribute, and create derivative works of Anonymous Aggregated Data. PROS will utilize Anonymous Aggregated Data to benchmark, operate and improve PROS business, and market its products and services. PROS retains all right, title, interest and intellectual property and proprietary rights in and to the Application, Operational Data, Documentation and Professional Services, including all copies and derivative works thereof (by whomever produced), any and all suggestions, recommendations, enhancement requests, or other feedback provided by Customer in connection with this Agreement. Customer will not acquire any rights therein by implication, estoppel or otherwise.
   2. Confidentiality.
9. Receiving Party will use Confidential Information solely in performance of this Agreement and will not disclose any Confidential Information other than as permitted or required for discharging its obligations under this Agreement, except with Disclosing Party’s prior written permission. Receiving Party will protect the confidentiality of Confidential Information by exercising the same degree of care with which it protects its own information of a similar nature, but no less than a reasonable degree of care, and will limit the use of, and access to, Confidential Information to those individuals whose use or access is necessary in order to perform under this Agreement.
10. Confidential Information will not be deemed proprietary or confidential, and Receiving Party will have no obligation with respect to such information, where the information: (i) was known to Receiving Party prior to receiving any Confidential Information from Disclosing Party as evidenced by written documentation; (ii) is or becomes publicly known through no wrongful act or omission of Receiving Party; or (iii) was received by Receiving Party without breach of this Agreement from a third party without restriction as to the use and disclosure of the information. Receiving Party may also disclose Confidential Information if, in the opinion of Receiving Party’s counsel, disclosure is required by governmental order, decree, regulation, or rule; provided, however, that Receiving Party will provide prompt written notice of any such obligation, and reasonable assistance to Disclosing Party prior to disclosure of any Confidential Information to allow Disclosing Party to seek an appropriate protective order or other equitable relief.
11. Upon request by Customer made within thirty (30) days after the effective date of termination of this Agreement or expiration of any Subscription Term, PROS will make available to Customer for download a file of Customer Data in the current format in which it is stored in the Application. After such 30-day period, PROS will have no obligation to maintain or provide any Customer Data and will thereafter (unless legally prohibited) delete all Customer Data in its systems or otherwise in its possession or under its control.
12. Notwithstanding anything to the contrary in this Agreement relating to the return of Confidential Information, Receiving Party shall be entitled to retain (i) one secure copy for legal archival purposes to evidence its compliance with the terms of this Agreement and (ii) copies of electronically exchanged Confidential Information held in backup systems in accordance with its routine information technology backup process; provided that, in each case, such retained Confidential Information remains subject to the confidentiality obligations set forth herein.
13. **TERMINATION.**
    1. Termination. An Order or SOW issued hereunder will terminate if either Party (i) fails to perform any of its material obligations thereunder and (ii) fails to cure such breach within thirty (30) days after written notice from the non-breaching Party (or if such breach cannot be corrected through the exercise of reasonable diligence within such thirty (30)-day period, if the breaching Party does not commence to correct such failure within such thirty (30)-day period and thereafter diligently prosecute same to completion). Such written notice shall specify in detail the alleged material breach. For the avoidance of doubt, any Order or SOW issued hereunder and not terminated pursuant to this Section 8.1 shall remain in full force and shall continue for the term stated therein (unless otherwise terminated in accordance with this Agreement).
    2. Immediate Termination. Either Party may immediately terminate this Agreement by giving written notice of such termination to the other Party on the occurrence of the following events: (i) the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any petition for similar relief; (ii) the appointment of a receiver or liquidator for the other Party’s property; (iii) an assignment by the other Party for the benefit of its creditors or the acknowledgment by the other Party that it is unable to meet its obligations on the maturity thereof; (iv) the other Party ceases to conduct business in the normal course; or (v) any breach of Section 1.4.
    3. Effect of Expiration or Termination. Upon termination or expiration of an Order, all Application subscription(s) granted thereunder will terminate immediately and, where an Order is terminated as a result of an uncured breach by PROS, PROS will also refund to Customer any pre-paid subscription fees prorated to the remainder of the pre-paid term.
    4. Termination Assistance Professional Services. Except where the subscription is terminated by PROS for cause attributable to Customer, PROS will make available to Customer, during any applicable notice period and for a reasonable period of time after the expiration or termination of the subscription, such termination assistance Professional Services as may be reasonably requested by Customer to facilitate the orderly transition of PROS responsibilities hereunder to Customer or its designee. Such Professional Services will be provided pursuant to an SOW under then-current fees for similar Professional Services.
    5. Survival. Except to the extent expressly provided to the contrary herein, the obligation of Customer to pay in full any outstanding fees and other monies due and Sections 1.4, 2.4, 5, 6, 7, 9.2 and 9.3 will survive the termination or expiration of the Agreement.
14. **GENERAL.**
    1. Defined Terms.
15. “***Agreement***” means this Subscription and Services Agreement, together with all Orders, SOWs and the Policies. The terms of the Agreement will control over any different or additional terms of any purchase order submitted by Customer. The terms of an SOW or Order will have precedence over any conflicting terms in this Agreement, but only with respect to the subject matter of such SOW or Order.
16. “***Anonymous Aggregated Data***” means Customer Data that has been aggregated with other data and anonymized to exclude data that would enable the identification of any individual, company, or organization. Anonymous Aggregated Data will not include Customer Confidential Information or otherwise be in any way linked to or reference Customer.
17. “***Application***” means the PROS software-as-a-service platform specified in the applicable Order, together with the accompanying Documentation made available by PROS to Customer pursuant to the subscription.
18. “***Confidential Information***” means any data or information in any form that is disclosed to either Party (“***Receiving Party***”) by or on behalf of the other Party (“***Disclosing Party***”) and that either (i) relates to Disclosing Party’s proprietary software, information technology, business plans, forecasts, customer information, marketing information, trade secrets and/or financial performance, (ii) is identified as proprietary or confidential in writing at the time of disclosure (or is so identified at the time of oral disclosure and subsequently confirmed in writing), or (iii) is Customer Data.
19. “***Customer Affiliate***” means any company or legal entity that controls, is controlled by, or is controlled by an entity that controls Customer. All derivatives of the word “***control***” mean the ownership directly or indirectly of more than fifty percent (50%) of the voting rights representing the right to vote in the election of directors or other managing authority in a company or other legal entity.
20. “***Customer Data***” means all electronic data or information submitted on behalf of Customer for use in the Application.
21. “***Documentation***” means the online user guides made generally available for the Application, but excluding any marketing materials or demonstrations of the Application.
22. “***Losses***” means in connection with an indemnified claim, defense costs, the amount of a final judgement (including any award of fees and expenses) rendered against the indemnitee, and/or the amount of a settlement entered into by the indemnifying Party, or with the indemnifying Party’s consent.
23. “***Operational Data***” means data derived from the performance, use, and operation of the Application, including the number of records in the Application, and the number and types of transactions, configurations, and reports processed in the Application.
24. “***Order***” means the order for a subscription to the Application in written form executed by both Parties (or, if applicable, submitted online by Customer to PROS).
25. “***Personal Data***” means any Customer Data relating to an identified or identifiable natural person and processed by PROS on Customer’s or a Customer Affiliate’s behalf.
26. “***Policies***” means the policies and additional terms that are in effect as of the effective date of the relevant Order located at [pros.com/SaaS](http://pros.com/SaaS/).
27. “***Professional Services***” mean the implementation, strategic consulting or other professional services (but excluding support) PROS may perform for Customer pursuant to an SOW.
28. “***Scope***” means the scope of use for the Application as set forth in the applicable Order.
29. “***Security Policy***” means the PROS cloud security Policy that is in effect as of the effective date of the relevant Order located at: [pros.com/SaaS/security](http://www.pros.com/SaaS/security).
30. “***Service Level Agreement***” means the service level agreement that is in effect as of the effective date of the relevant Order located at [pros.com/SaaS/](http://www.pros.com/SaaS/SLA)[SLA](http://www.pros.com/SaaS/SLA).
31. “***SOW***” or “***Work*** ***Order***” means a work order for Professional Services (or an Order that includes Professional Services) executed by the Parties, or any change order referencing an SOW or a Work Order and executed by the Parties. No SOW or Work Order is binding upon either Party unless signed by both Parties, and neither Party will be liable to the other with respect to unsigned SOWs or Work Orders.
32. “***Subscription Term***” means the period during which Customer has paid for and is entitled to receive the subscription to the Application. The Subscription Term commences on the effective date of the relevant Order (unless otherwise specified therein) and continues for the period specified in such Order.
33. “***Taxes***” means any and all of the following: sales, use or privilege taxes, excise or similar taxes, value added taxes, import and export taxes, duties or assessments, shipping, handling, insurance, brokerage, and other related charges levied by any jurisdiction (including penalties and interest) and any costs associated with the collection and withholding of any of the foregoing items.
34. “***Users***” mean individuals who are authorized by Customer to use the Application, subject to the terms of this Agreement, and have been supplied user identifications and passwords by Customer.  Where applicable, the number of Users authorized to use the Application will be set forth on the relevant Order.
    1. Export Control Laws. The Application and associated technical data are subject to U.S. export control laws and regulations, and may be subject to export or import laws and regulations in other countries. Customer represents that Customer is not (i) on the U.S. Department of Treasury, Office of Foreign Asset Controls list of Specially Designated Nationals and Blocked Persons or on any other U.S. Government lists of denied or sanctioned parties and (ii) otherwise a person to whom PROS is legally prohibited to provide access to the Application and associated technical data or provide Professional Services. Customer is responsible for obtaining any U.S. and non-U.S. governmental authorizations to export, re-export, import, use or access, directly or indirectly, including via remote access, the Application, any portion of the Application, any data added by the Customer to the Application, and any Application outputs, as may be required under applicable laws and regulations.
    2. Governing Law; Venue. This Agreement will be exclusively governed and construed in accordance with the laws of [Ireland without regard to the conflicts of law principles. The Parties agree that the courts of Ireland][[3]](#footnote-4) will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, and each Party consents to such exclusive jurisdiction. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. In the event any proceeding is commenced to enforce this Agreement or otherwise relating to this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and costs incurred in connection therewith. The United Nations Convention on Contracts for the International Sale of Goods (UNCISG) and the Uniform Computer Information Transactions Act (UCITA) are specifically disclaimed in their entirety.
    3. Injunctive Relief. The Parties agree that a breach of Sections 1.4 or 7.2 would result in irreparable and continuing damage for which there will be no adequate remedy at law, and each Party will be entitled to injunctive relief without the need for posting bond and/or a decree for specific performance, and such other relief as may be proper.
    4. Force Majeure. Neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder, other than for payment obligations hereunder, on account of circumstances beyond such Party’s reasonable control, including, without limitation, strikes, labor conditions, shortages, riots, insurrection, civil unrest, war or terrorism, governmental action, fires, flood, earthquakes, storms, explosions, acts of God, denial of service attacks, telecommunications, computer, internet service provider or hosting facility failures or hardware or software or power systems not within such Party’s possession or control.
    5. Publicity. Neither Party will disclose the terms of this Agreement without prior written consent of the other Party. PROS may refer to Customer as PROS’ customer and use Customer’s logo in communications and presentations given to individual third parties, as well as in communications and customer lists generally distributed or made available provided that the use of such logo will be subject to Customer’s corporate logo guidelines. In addition, Customer agrees, at PROS’ sole cost and expense, to the issuance of a mutually agreed upon press release and sharing of solution overview concerning Customer’s Application subscription with individual third parties. Except as provided above, neither Party will utilize the other’s trademarks without express written permission.
    6. Notices. All notices under this Agreement must be sent in a manner that confirms delivery to the Party to receive such notice at the addresses specified below or at such other address as either Party may specify from time to time by written notice in accordance herewith. Notices given hereunder will be deemed to have been received as of the date shown on the confirmation of delivery.
       1. If to Customer, to the address specified above, or as otherwise provided in writing to PROS.
       2. If to PROS, to: PROS, Inc., 3100 Main Street, Suite 900, Houston, Texas 77002 USA, Attn: Legal Department.
    7. No Assignment. Neither Party may assign this Agreement, by operation of law or otherwise, in whole or in part, without the other Party’s prior written consent (which will not be unreasonably withheld). Subject to the foregoing, the Agreement will be binding on, inure to the benefit of, and enforceable by and against the Parties and their respective successors and permitted assigns.
    8. Relationship of the Parties. This Agreement is not intended nor will be construed to confer upon or give to any party other than Customer and PROS any rights, remedies or other benefits. The Parties are independent contractors. Nothing in this Agreement is intended, or should be construed, to create a partnership, agency, joint venture or employment relationship between the Parties.
    9. No Waiver*.* No waiver, implied or expressed, by either Party or any right or remedy for any breach by the other Party of any provision of this Agreement will be deemed or construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
    10. Headings. The headings in this Agreement are provided for convenience only and will not control the interpretation of this Agreement.
    11. Severability. If any of the provisions of this Agreement are determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provisions will be severed from the Agreement, and the remaining provisions will remain in full force and effect.
    12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Telecopy and electronic signatures will be relied upon as original signatures in all respects.
    13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and all other prior or contemporaneous agreements, understandings, representations, warranties, and writings are superseded hereby. An amendment to this Agreement will only be effective if reduced to writing and executed by authorized officers of the Parties.[[4]](#footnote-5)

IN WITNESS WHEREOF, PROS and Customer have each caused this Subscription and Services Agreement to be signed and delivered by its duly authorized officer, effective as of the Effective Date.

CUSTOMER: PROS:

**[Customer Name] PROS, Inc.**

a Delaware corporation

By: By:

Name: Name:

Title: Title:

Date: Date:

**Exhibit A**

**DATA PROCESSING ADDENDUM**

This Data Processing Addendum ("**Addendum**") is made effective as of \_\_\_\_\_\_\_\_\_\_\_, 201\_ ("**Effective Date**") and forms part of the Main Agreement. Subject to section 12.1 below, all terms of the Main Agreement apply hereto.

**BETWEEN**

1. **[PROS, Inc.**, a Delaware, USA corporation with its principal place of business at 3100 Main St., Suite 900, Houston, TX 77002, USA] [**PROS France SAS**, a French company registered at the Toulouse Registry of Trade with its principal place of business at 185 rue Galilée, 31670 Labége, France] ("**PROS**")][[5]](#footnote-6);

and

1. **[Insert customer name]** a [country] [corporation] with its principal place of business at [insert address] ("**Customer**," and together with PROS, the “**Parties**”).

**RECITALS**

1. Customer has entered into a Subscription and Services Agreement (“**Main** **Agreement**”) with PROS pursuant to which PROS provides to Customer certain software products and related services (the “**Products and Services**”). In connection with the Products and Services, the Parties anticipate that PROS may process Customer Personal Data (as defined below) under the Data Protection Laws (as defined below).
2. To the extent that the provision of such Products and Services involves the processing of Personal Data, the Parties have agreed to enter into this Addendum for the purposes of ensuring compliance with the applicable Data Protection Laws.

**THEREFORE**, the Parties have agreed as follows:

**1. DEFINITIONS[[6]](#footnote-7)**

* 1. Terms such as "**(sub)process/(sub)processing**", "**data subject**", "**data protection impact assessment**", "**appropriate technical and organisational measures**" shall have the same meaning ascribed to them in the Data Protection Laws; Terms defined in the Main Agreement will have the same definition in this Addendum.
  2. "**Data Breach**" means any security incident that leads or may lead to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data;
  3. "**Data Protection Laws**" means in relation to any Personal Data which is processed in the performance of the Main Agreement, the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") together with all laws implementing or supplementing the same;
  4. "**EEA**" means the European Economic Area;
  5. "**Personal Data**" means the data described in Annex 1 (Details of Processing of Personal Data) and any other personal data processed under this Addendum that falls within the scope of GDPR;
  6. ["**Standard Contractual Clauses**" means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission which amends, replaces or supersedes these];[[7]](#footnote-8)
  7. "**Subprocessors**" means (a) those subprocessors set out in Annex 3 (*Authorised Subprocessors and Authorised Transfers of Personal Data*); and (b) any additional subprocessors engaged by PROS in accordance with section 5.2; and
  8. "**Supervisory Authority**" means (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws.

**2. PROCESSING OF THE PERSONAL DATA**

2.1 PROS shall process Personal Data for the purposes of the Main Agreement and for the specific purposes in each case as set out in Annex 1 (*Details of Processing of Personal Data*) and as otherwise directed by Customer.

2.2 For the purposes set out in section 0. above, Customer hereby instructs PROS to transfer Personal Data to the Subprocessors in the countries listed in Annex 3 (*Authorised Subprocessors and Authorised Transfers of Personal Data*), as may be updated in accordance with section 5.2.

**3. SUPPLIER PERSONNEL**

3.1 PROS shall take reasonable steps to ensure that its employees who may have access to Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

**4. SECURITY**

4.1 Without prejudice to any other security standards agreed upon by the Parties, PROS shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing of Personal Data as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures are further detailed in the PROS Security Policy.

**5. SUBPROCESSING**

5.1 Customer hereby authorizes PROS to subcontract the processing of Personal Data to Subprocessors, who in each case are subject to data protection obligations referred to in this Addendum.

5.2 PROS will inform Customer of any intended changes concerning the addition or replacement of Subprocessors by sending an alert to Customer’s designated contact(s) through PROS customer portal, PROS Connect and thereby give Customer the opportunity to object to such changes. If Customer does not object in writing within 5 business days of receipt of the notice, Customer is deemed to have accepted the new Subprocessor. If Customer has reasonable grounds to object in writing within 5 business days of receipt of the notice, PROS and Customer will discuss commercially reasonable resolutions. If no commercially reasonable resolution can be reached within 30 additional days and Customer continues to object to the change concerning the Subprocessors, notwithstanding anything in the Main Agreement, PROS may by written notice to Customer with immediate effect terminate the Main Agreement to the extent that it relates to the Products and Services that require the use of the proposed Subprocessor.

5.3 An up-to-date list of Subprocessors is maintained on PROS’ customer portal, PROS Connect.

**6. DATA SUBJECT RIGHTS**

6.1 PROS shall promptly, and in any case within 10 business days, notify Customer if it receives a request from a data subject under any Data Protection Laws in respect of Personal Data, including requests by a data subject to exercise rights in Chapter III GDPR, and shall provide full details of that request.

6.2 PROS shall co‑operate as requested by Customer to enable Customer to comply with any exercise of rights by a data subject under Chapter III GDPR in respect of Personal Data.

**7. INCIDENT MANAGEMENT**

7.1 Without prejudice to any other incident response requirements agreed upon by the Parties, PROS shall notify Customer immediately of, and in any case within 48 hours upon becoming aware of a Data Breach, providing Customer with sufficient information to enable Customer to meet its obligations to report a Data Breach in accordance with the Data Protection Laws, including Article 33 and 34 GDPR.

**8. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**

8.1 PROS shall provide reasonable assistance to Customer with relevant data protection impact assessments that are required under Article 35 GDPR and with any prior consultations to any Supervisory Authority of Customer or any of its affiliates that are required under Article 36 GDPR, in each case in relation to processing of Personal Data by PROS on behalf of Customer and taking into account the nature of the processing and information available to PROS.

**9. DELETION OR RETURN OF PROS PERSONAL DATA**

9.1 Upon PROS no longer providing the Products and Services that involve the processing of Personal Data, PROS shall promptly, and in any event within any period required under the Main Agreement, either (i) return a copy of the Personal Data to Customer and delete any other copies of Personal Data processed by PROS; or (ii) delete Personal Data processed by PROS, unless, in either case, Member State law requires retention of the Personal Data.

**10. AUDIT RIGHTS**

10.1 Without prejudice to any other provisions of this Addendum, PROS will, on Customer’s reasonable request and at Customer’s expense, provide to Customer relevant and reasonable information, and/or contribute to inspections and audits by Customer, to demonstrate compliance with PROS' obligations hereunder.

10.2 Customer will give PROS reasonable notice of any audit or inspection and shall avoid causing any damage, injury or disruption to PROS' equipment, personnel and business in the course of such an audit or inspection. Further, the audit or inspection must be conducted during regular business hours, no more than once per calendar year (unless required or requested by a Supervisory Authority) and in conformity with PROS policies. Reports following from the audit or inspection will be treated as PROS' Confidential Information and subject to the confidentiality obligations of the Main Agreement.

**11. INTERNATIONAL TRANSFERS OF PERSONAL DATA**

11.1 [Customer authorizes PROS to process Personal Data in the United States][[8]](#footnote-9). Save as agreed herein (including in Annex 3 (*Authorised Subprocessors and Authorised Transfers of Personal Data)* as such list may be updated from time to time pursuant to section 5.2) or as Customer may otherwise agree in writing, Customer does not permit PROS to process Personal Data in any country outside of the EEA without an “adequate level of protection”, as defined in Data Protection Laws.

11.2 [If requested by Customer, PROS shall promptly enter into an agreement with Customer including or on such provisions as those set out in Annex 2 (*Standard Contractual Clauses*) and/or such variation as Data Protection Laws might require, in respect of any processing of Personal Data in a country outside of the EEA without an “adequate level of protection.][[9]](#footnote-10)[[10]](#footnote-11)

**12. MISCELLANEOUS****[[11]](#footnote-12)**

12.1 With regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the Parties, including but not limited to the Main Agreement, the provisions of this Addendum shall prevail with regard to the Parties' data protection obligations with respect to Personal Data. [In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.][[12]](#footnote-13)

12.2 As of the Effective Date, Customer acknowledges the applicability of the terms of PROS' Privacy Notice, to be found at PROS customer portal, PROS Connect.

**IN WITNESS WHEREOF,** this Addendum is entered into and becomes a binding part of the Main Agreement with effect from the Effective Date first set out above.

[signature page follows]

|  |  |
| --- | --- |
| **EXECUTED** by and on behalf of:  **PROS, INC.[[13]](#footnote-14)**  a Delaware, USA corporation  By:  Name:  Title:  Date: | **EXECUTED** by and on behalf of:  **[*insert Customer name*]**  By:  Name:  Title:  Date: |

**ANNEX 1: DETAILS OF PROCESSING OF PERSONAL DATA**

This Annex 1 includes certain details of the processing of Personal Data as required by Article 28(3) GDPR.

***The nature and purpose of the processing***

PROS will process Personal Data for the purposes of providing the Products and Services as specified in the Main Agreement. The processing will be carried out in accordance with the Main Agreement, this Addendum and any instructions given by Customer.

***Duration of the processing***

PROS will process Personal Data for the duration of the Main Agreement, unless otherwise agreed in writing.

***Types of Personal Data***

Customer may submit Personal Data to the Products and Services, the extent of which is determined and controlled by Customer in its sole discretion.

Depending on the use case, this may include, but is not limited to, the following categories of Personal Data:

*The types of Personal Data to be processed*

[Include description here]

***Categories of data subjects***

Customer may submit Personal Data to the Products and Services, the extent of which is determined and controlled by Customer in its sole discretion.

Depending on the use case, this may include, but is not limited to, Personal Data relating to the following categories of data subjects:

[Include description here]

**[[14]](#footnote-15)ANNEX 2: STANDARD CONTRACTUAL CLAUSES**

**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: [TO BE COMPLETED]

Address: [TO BE COMPLETED]

……………………………………………………………  
(the data **exporter**)

And

Name of the data importing organisation: **PROS, Inc.**

Address: 3100 Main St., Suite 900, Houston, TX 77002, USA

…………………………………………………………………  
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1*

***Definitions***

For the purposes of the Clauses:

(a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) '*the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) '*the applicable data protection law****'*** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

*Clause 2*

***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

*Clause 3*

***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

*Clause 4*

***Obligations of the data exporter***

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

*Clause 5*

***Obligations of the data importer***

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorised access, and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

*Clause 6*

***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter -** [TO BE COMPLETED]

Name (written out in full):

Position:

Address: [TO BE COMPLETED]

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

**On behalf of the data importer – PROS, Inc., a Delaware USA corporation:**

Name (written out in full):

Position:

Address: 3100 Main St., Suite 900, Houston, TX 77002, USA

Other information necessary in order for the contract to be binding (if any): n/a

Signature……………………………………….

**Appendix 1 to the Standard Contractual Clauses**

This Appendix forms part of the Standard Contractual Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

**Data exporter**

The data exporter is:

The entity that has executed the Standard Contractual Clauses as Data Exporter, together with any Customer Affiliates established within the EEA that have purchased Products and Services under an Order Form.

**Data importer**

The data importer is:

PROS, Inc.

**Data subjects**

The personal data transferred concern the following categories of data subjects:

Data exporter may submit personal data to the Products and Services, the extent of which is determined and controlled by data exporter in its sole discretion.

Depending on the use case, this may include, but is not limited to, personal data relating to the following categories of data subjects:

[To be completed]

**Categories of data**

The personal data transferred concern the following categories of data:

Data exporter may submit personal data to the Products and Services, the extent of which is determined and controlled by data exporter in its sole discretion.

Depending on the use case, this may include, but is not limited to, the following categories of personal data:

[To be completed]

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

Not applicable

**Processing operations**

The personal data transferred will be subject to the following basic processing activities:

Processing activities will be limited to those necessary to provide the Products and Services pursuant to the Main Agreement.

DATA EXPORTER

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATA IMPORTER – **PROS, Inc., a Delaware USA corporation**

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix 2 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):**

The applicable Security Policy is available at pros.com/SaaS/security.

DATA EXPORTER

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATA IMPORTER – **PROS, Inc., a Delaware USA corporation**

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX 3: AUTHORISED SUBPROCESSORS AND AUTHORISED TRANSFERS OF PERSONAL DATA**

**PROS Cloud Services Subprocessors**

The list of authorised Subprocessors and authorised transfers of Personal Data is available at:

<https://connect.pros.com/cloud-services-subprocessors>

1. **FOR SmartCPQ only (with no PricingPRO)**: If agreement is with PROS France, change this to: “**PROS FRANCE SAS.**, a French corporation registered at Toulouse Registry of Trade under number [341 081 743](https://www.infogreffe.fr/societes/entreprise-societe/341081743-pros-france-sas-310297B006810000.html), whose headquarters are located at 185 rue Galilee, 31670 Labege, France. [↑](#footnote-ref-2)
2. If under **UK law**, replace the bracketed text with: ‘Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982’ [↑](#footnote-ref-3)
3. If **UK law** replace the text in square brackets with the following: ‘England and Wales without regard to the conflicts of law principles. The Parties agree that the courts of London, England’ [↑](#footnote-ref-4)
4. Add new subsection if UK law governed:

   9.15 Contracts Rights of Third Parties. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto. [↑](#footnote-ref-5)
5. Delete entities other than PROS entity that is a party to the Main Agreement. [↑](#footnote-ref-6)
6. Add the following definitions if EU Access option is selected in Section 11.3:

   “**European Subprocessor**” means a Subprocessor that is physically processing Personal Data in the EEA or other countries that the European Commission deems to provide an “adequate level of protection;”

   “**Go-Live**” means first use of the Products and Services by Customer in a production environment;

   “**PROS European Employee**” means a PROS employee that is physically processing Personal Data in the EEA or other countries that the European Commission deems to provide an “adequate level of protection;” [↑](#footnote-ref-7)
7. Delete definition of SCCs and all references thereto if (i) Customer has purchased EU Access Model; or (ii) PROS France is the signatory [↑](#footnote-ref-8)
8. Text to be deleted if PROS France is the signing party or EU Access only Model. [↑](#footnote-ref-9)
9. Section 11.2. to be deleted if PROS France is the signing party. [↑](#footnote-ref-10)
10. if Customer has purchased EU Access Mode add the following:

    “*11.3 Subject to section 11.4, unless otherwise agreed by Customer, as of Go-Live, PROS will: (a) use only PROS European Employees and/or European Subprocessors to provide support requiring access to or otherwise processing of Personal Data; and (b) host the production instance of the Products and Services and Personal Data solely in data centers specified by PROS in the relevant Order (as defined in the Main Agreement), which will be within the EEA.*

    *11.4 The following Personal Data is not subject to the requirements in section 11.3:*

    *(a) Personal Data in non-production systems;*

    *(b) contact details of the sender of a support ticket;*

    *(c) any other Personal Data submitted in a support ticket. Customer may choose not to transmit Personal Data when filing a support ticket. If it is necessary to submit Personal Data for the incident management process, Customer may choose to anonymize that Personal Data before submitting the support ticket to PROS*”. [↑](#footnote-ref-11)
11. Text to be included as a new section 12.3 ONLY if Addendum is co-signed by Customer's affiliate(s): “For the avoidance of doubt, the limitations of liability set forth in section [XXX] of the Main Agreement will apply to this Addendum. By signing this Addendum, Customer's affiliate(s) acknowledge and understand the content thereof.” [↑](#footnote-ref-12)
12. Delete this sentence if (i) Customer has purchased EU Access Model, or (ii) PROS France is the signing party [↑](#footnote-ref-13)
13. Replace with PROS France SAS depending on the signatory party. [↑](#footnote-ref-14)
14. Delete this Annex 2 if (i) Customer has purchased EU Access Model; or (ii) if PROS France is signatory, and update Annex numbering throughout. [↑](#footnote-ref-15)