

Professional Services Agreement

Version: 07/2020

This Professional Services Agreement governs Customer's acquisition of PROS Professional Services. By signing this Agreement or by executing an SOW that references this Agreement, Customer agrees to the terms of this Agreement. This Agreement is dated to be effective the date the Customer accepts this Agreement.

1. Professional Services

- 1.1 **Professional Services.** Subject to the terms and conditions of this Agreement, PROS will provide the Professional Services described in the applicable SOW. No SOW is binding upon either Party unless signed by both Parties, and neither Party will be liable to the other with respect to any unsigned SOW (except to the extent a Purchase Order is issued in accordance with Section 1.4). PROS is not responsible for any delay in, or failure to provide, the Professional Services to the extent caused by Customer or third parties (other than PROS' agents and contractors).
- 1.2 **Change Orders.** Following execution of an SOW, any change to the scope of the project, requirements document, schedule and/or charges specified in the applicable SOW must be accepted by Customer and PROS in writing and documented as a change order to the applicable SOW.
- 1.3 **Work Product.** An SOW may identify any work product to be prepared as a result 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, nonsublicensable, non-transferable license to use, execute, reproduce, display, perform and distribute the Work Product, solely during the term of this Agreement and for Customer's own internal business purposes. Customer will reproduce any copyright notices or ownership legends on any copies made under the license granted in this Section 1.3.
- 1.4 **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.

2. Terms and Conditions

2.1 Fees and Expenses.

- (A) **Professional Service Fees.** Customer will pay all fees as set forth in the applicable SOW. Except as otherwise specified herein or in an SOW, payment obligations are non-cancellable and fees paid are non-refundable.
- (B) **Fee Estimates.** PROS may, from time-to-time, provide Customer with an assessment of the number of hours or days which PROS believes will be required to complete Professional Services under a particular SOW. Customer understands that such assessments are estimates only. PROS makes no representation that the actual amount of Professional Services performed or the actual hours charged will be equal to, or will approximate, any estimate presented to Customer.
- (C) **Invoices.** 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 SOW.
- (D) **Payment.** Unless otherwise specified in the applicable SOW, all fees are due and payable within thirty (30) days from the date of invoice. If Customer is delinquent in paying any amounts due to PROS, PROS will have the right upon prior written notice to Customer to cancel or delay any Professional Services until Customer is no longer delinquent. 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 Professional Services fees for any reason.
- (E) **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, 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.

- 2.2 **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 will 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. If a resale certificate or other certificate or document of exemption is required in order to exempt the Professional Services from any tax liability, Customer will furnish such certificate or document to PROS within thirty

(30) days of the Effective Date. Customer will promptly provide PROS with any changes in the status of such resale certificate.

3. Representation and Warranty

- 3.1 **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.
- 3.2 **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 Professional Services, Customer notifies PROS that Professional Services were not performed as warranted in this Section 3.2 and provides details regarding such deficiency, then PROS will re-perform deficient Professional Services at no additional charge to Customer. Such re-performance will be Customer's sole and exclusive remedy and PROS' sole obligation for breach of this Professional Services warranty.
- 3.3 **WARRANTY DISCLAIMER.** THE WARRANTY EXPRESSLY STATED ABOVE IN THIS SECTION 3 IS A LIMITED WARRANTY AND IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY PROS. TO THE EXTENT ALLOWED BY APPLICABLE LAW, PROS DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NON-INFRINGEMENT.

4. Indemnification

- 4.1 **Indemnity.** Each Party will indemnify and hold the other Party harmless from Losses resulting from any claims brought by unaffiliated third parties against the other Party, arising from or relating to bodily injury or damage to physical property caused by the indemnifying Party.
- 4.2 **Conditions Precedent.** Each Party's indemnification obligations hereunder 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.
- 4.3 **NO ADDITIONAL LIABILITY.** THIS SECTION 4 STATES EACH PARTY'S ENTIRE LIABILITY WITH RESPECT TO THIRD PARTY CLAIMS DESCRIBED IN SECTION 4.1.

5. Limitation of Liability

- 5.1 **EXCLUSION OF DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY 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 EXCLUSION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

- 5.2 **LIABILITY LIMIT.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PROS' LIABILITY TO CUSTOMER FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE PROFESSIONAL SERVICES FEES PAID BY CUSTOMER TO PROS UNDER THE APPLICABLE SOW IN CONNECTION WITH WHICH LIABILITY ARISES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6. Proprietary Information

- 6.1 **Intellectual Property.** PROS retains all right, title and interest in and to its intellectual property and proprietary rights in and to Professional Services, including all copies and derivative works thereof (by whomever produced), any and all suggestions, recommendations, enhancement requests, or other feedback, and all other materials created or generated by PROS in connection with the performance of this Agreement. Customer will not acquire any rights therein by implication, estoppel or otherwise. Without limiting such prohibition, Customer hereby assigns and agrees to assign to PROS all right, title and interest in and to any and all derivative works of any intellectual property or other materials created or generated, or any suggestions, enhancement requests, recommendations or other feedback provided by Customer in connection with this Agreement.

6.2 Confidentiality

- (A) 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. Either Party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers bound by confidentiality obligations at least as restrictive as those in this section.
- (B) 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.

- (C) Notwithstanding anything to the contrary in this Agreement relating to the return of Confidential Information, Receiving Party will 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.

7. Term

This Agreement continues from the Effective Date until all SOWs have expired or otherwise been terminated.

- 7.1 **Termination.** Either Party may terminate an SOW if the other 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 SOW issued hereunder and not terminated pursuant to this Section 7.1 shall remain in full force and shall continue for the term stated therein (unless otherwise terminated in accordance with this Agreement).
- 7.2 **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; or (iv) the other Party ceases to conduct business in the normal course.
- 7.3 **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 2.2, 4, 5, 6, and 8 will survive the termination or expiration of this Agreement:

8. General Provisions

8.1 Defined Terms.

- (A) **"Agreement"** means this Professional Services Agreement, any SOWs executed by the Parties hereunder, and any exhibits hereto or thereto. In the event of a conflict between the terms of any SOW and this Agreement, the SOW will be controlling but solely with respect to the subject matter of such SOW. In the event of a conflict or additional term

between the terms of any Purchase Order issued by Customer and this Agreement, this Agreement will be controlling.

- (B) “**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, or (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).
- (C) “**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.
- (D) “**Party**” or “**Parties**” means PROS and Customer, as the case may be.
- (E) “**Professional Services**” means the strategic consulting or other professional services (but excluding support) PROS may perform pursuant to an SOW.
- (F) “**Purchase Order**” has the meaning assigned to such term in Section 1.4.
- (G) “**SOW**” or “**Work Order**” means a work order for Professional Services executed by the Parties, or any change order referencing the applicable SOW 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.
- (H) “**Taxes**” mean 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.
- (I) “**Work Product**” has the meaning assigned to such term in Section 1.3.

8.2 **Governing Law/Venue.** This Agreement will be exclusively governed and construed in accordance with the laws of the state of Texas without regard to the conflicts of law principles. The state and federal courts located in Houston, Texas 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.

- 8.3 **Injunctive Relief.** The Parties agree that a breach or threatened breach of Section 6.2 (Confidentiality) 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.
- 8.4 **Force Majeure.** Neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of circumstances beyond such Party's reasonable control, including, without limitation, strikes, labor conditions, shortages, riots, insurrection, civil unrest, fires, flood, storm, explosions, acts of God, war or terrorism, governmental action, earthquakes, 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.
- 8.5 **Publicity.** Neither Party will disclose the terms of this Agreement without prior written consent of the other Party.
- 8.6 **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.
- (A) If to Customer, to the address specified on any applicable SOW.
- (B) If to PROS, to: PROS, Inc., 3100 Main Street, Suite 900, Houston, Texas 77002 USA, Attn: Legal Department.
- 8.7 **No Assignment.** Neither Party may assign, sublicense or otherwise transfer this Agreement or the rights and obligations granted hereunder without the prior written consent of the other Party (which will not be unreasonably withheld). Subject to the foregoing, this Agreement will be binding upon, inure to the benefit of, and be enforceable by and against the Parties and their respective successors and permitted assigns.
- 8.8 **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.
- 8.9 **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.
- 8.10 **Headings.** The headings in this Agreement are provided for convenience only and will not control the interpretation of this Agreement.

- 8.11 **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.
- 8.12 **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.
- 8.13 **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.