

SUBSCRIPTION AND SERVICES AGREEMENT

Version 7/2020

This Subscription and Services Agreement governs Customer's acquisition and use of the PROS Subscription and Professional Services. By signing this Agreement, or by executing an Order or SOW that references this Agreement, Customer agrees to the terms of this Agreement. This Agreement is dated to be effective as of the date the Customer accepts this Agreement (the "**Effective Date**")

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:

1. SUBSCRIPTION.

1.1 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.

1.2 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.

1.3 Customer Responsibilities. Customer is responsible for Users' compliance with this Agreement and for access to Customer 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 Customer Data uploading.

1.4 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.

1.5 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.

1.6 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.

1.7 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.

1.8 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.

2. FEES.

2.1 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.

2.2 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.

2.3 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.

2.4 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. If a resale certificate or other certificate or document of exemption is required in order to exempt the Application subscription 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. PROFESSIONAL SERVICES.

3.1 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 in, or failure to provide the Professional Services, to the extent caused by Customer or third parties other than PROS' agents and contractors.

3.2 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.

3.3 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.

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.

4. REPRESENTATIONS AND WARRANTIES.

4.1 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.

4.2 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.

4.3 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 Professional 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.

4.4 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.

5. INDEMNIFICATION.

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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 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.

5.6 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.

6. LIMITATION OF LIABILITY.

6.1 EXCLUSION. EXCEPT FOR BREACHES OF SECTION 1.4, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER 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.

6.2 **LIABILITY LIMIT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PROS' AGGREGATE LIABILITY FOR ANY DAMAGES 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 LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.**

7. PROPRIETARY INFORMATION.

7.1 **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.

7.2 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.

(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) 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.

(D) 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.

8. TERMINATION.

8.1 **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).

8.2 **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.

8.3 **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.

8.4 **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.

8.5 **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.

9. GENERAL.

9.1 Defined Terms.

(a) **"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.

(b) **"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.

(c) **"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.

(d) **"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.

(e) **"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.

(f) **"Customer Data"** means all electronic data or information submitted on behalf of Customer for use in the Application.

(g) **"Documentation"** means the online user guides made generally available for the Application, but excluding any marketing materials or demonstrations of the Application.

(h) **"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.

(i) **"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.

(j) **"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).

(k) **"Personal Data"** means any Customer Data relating to an identified or identifiable natural person.

(l) **"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.

(m) **"Professional Services"** mean the implementation, strategic consulting or other professional services (but excluding support) PROS may perform for Customer pursuant to an SOW.

(n) **"Scope"** means the scope of use for the Application as set forth in the applicable Order.

(o) **"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.

(p) **"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/SLA.

(q) **"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.

(r) **"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.

(s) **"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.

(t) **"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.

9.2 **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.

9.3 **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. 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.

9.4 **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.

9.5 **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.

9.6 **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. Except as provided above, neither Party will utilize the other's trademarks without express written permission.

9.7 **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 above, or as otherwise provided in writing to PROS.

(b) If to PROS, to: PROS, Inc., 3100 Main Street, Suite 900, Houston, Texas 77002 USA, Attn: Legal Department.

9.8 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.

9.9 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.

9.10 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.

9.11 Headings. The headings in this Agreement are provided for convenience only and will not control the interpretation of this Agreement.

9.12 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.

9.13 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.

9.14 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.