

# MASTER SUBSCRIPTION AGREEMENT

Version: 10/2022

This Master Subscription Agreement (these “**Terms**”) govern Customer’s access to and use of PROS Subscription Service or Free Trial Service. By executing an Order or SOW that references these Terms, Customer agrees to the terms and conditions hereof. If Customer accesses or uses any Free Trial Service, the applicable provisions of these Terms will also govern that Free Trial Service.

## 1. SUBSCRIPTION.

### 1.1 PROS Responsibilities.

(a) **Provision of Subscription Service.** PROS will make the Subscription Service available to Customer and its Users pursuant to the terms and conditions in this Agreement.

(b) **Support.** PROS will provide support to Customer in accordance with the applicable SLA for the Subscription Service as identified in the Order.

(c) **Compliance with Laws.** PROS will comply with the laws and government regulations applicable to PROS as a provider of software as a service to its customers generally (without regard to the Customer’s particular use of the Subscription Service).

(d) **Updates.** PROS may update the Documentation and SLA from time to time, provided however that no updates to the Documentation will materially diminish the functionality and/or performance of the Subscription Service and no update to the SLA will materially diminish PROS’ responsibilities under the SLA or result in any diminishment of the Availability metric (as defined in the SLA). Notifications of updates are made through the PROS Connect customer portal.

### 1.2 Customer Responsibilities.

(a) **User Accounts.** Customer is responsible for all activity occurring under its User accounts. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service and notify PROS promptly of any such unauthorized access or use; and (ii) cooperate with any reasonable investigation by PROS of any outage, security problem or suspected breach of this Agreement.

(b) **Affiliate Users.** Customer may provide access and use of the Subscription Service to its Affiliate’s Users or allow them to receive the Professional Services purchased under a SOW; provided that, all such access, use and receipt by Affiliates’ Users is subject to and in compliance with this Agreement and Customer will at all times remain liable for its Affiliates’ compliance with this Agreement.

(c) **Use Restrictions.** Customer will not (i) use or access the Subscription Service in violation of applicable laws, rules and regulations, including data privacy laws and regulations; (ii) sell, resell, license, lease, redistribute, or otherwise commercially exploit or make the Subscription Service available to any third party other than to Users, or as otherwise expressly stated in an Order; (iii) use the Subscription Service to send or store infringing, libelous, or otherwise unlawful or tortious material, or to store or submit malicious or harmful code; (iv) intentionally interfere with or disrupt the integrity or performance of the Subscription Service or the data contained therein; (v) attempt to gain unauthorized access to the Subscription Service or its related systems or networks; or (vi) duplicate or reverse engineer the Subscription Service, in whole or in part.

(d) **Usage Limits.** The Subscription Service is subject to usage limits specified in the Order. PROS may review Customer’s use of the Subscription Service to verify compliance with such usage limits. As may be reasonably requested from time to time, Customer agrees to verify or provide evidence that its use of the Subscription Service is within applicable usage limits.

1.3 **Security Audit.** Audit Report(s) will be used to satisfy any audit or inspection requests by or on behalf of Customer.

PROS will make Audit Report(s) available to Customer upon request. PROS will promptly remediate any material weaknesses or significant control deficiencies identified in any Audit Report(s). In the event that an audit opinion is qualified and the qualification has not been remediated by the date of the Audit Report(s), PROS shall (i) provide Customer with PROS remediation plan; and (ii) execute such plan in accordance with its terms.

## 2. CUSTOMER DATA.

2.1 **Customer Ownership.** Customer retains all right, title and interest in and to all Customer Data. Customer is responsible for the acquisition, accuracy and legality of Customer Data. This Agreement does not grant PROS any ownership rights to Customer Data.

2.2 **Protection of Customer Data.** PROS shall maintain a security program that (i) meets or exceeds the controls set forth in the Audit Report(s) and the PROS Security Exhibit, and (ii) is designed to protect the security, confidentiality, and integrity of Customer Data. PROS shall not diminish the overall level of security provided by the controls set forth in the Audit Report(s) and the PROS Security Exhibit. Except with respect to a Free Trial Service, to the extent Customer Data includes Personal Data from the European Economic Area (EEA), the United Kingdom, or Switzerland, PROS will implement the technical and organizational measures referenced in the applicable Controller to Processor Standard Contractual Clauses incorporated by reference in the Order. Customer’s execution of the Order shall be treated as its execution of the Standard Contractual Clauses and Appendices.

2.3 **Retrieval on Termination.** For a period of 30 days following expiration of the Subscription Term, PROS will, upon request, make available to Customer for download a file of Customer Data in the current format in which it is stored in the Subscription Service. 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.

2.4 **Statistical Information.** PROS will collect and use quantitative data derived from the performance, use, and operation of the Subscription Service, together with Customer Data on an anonymized basis, to provide, maintain, support, develop, and improve the Subscription Service and for PROS machine learning, artificial intelligence technologies and analytics; provided that in no event will PROS (a) disclose Customer Data in a non-aggregated form, or (b) incorporate Customer Data in a form that could identify Customer, Customer Data or any individual.

## 3. FEES.

3.1 **Fees.** Customer shall pay fees as set forth in each Order. Unless otherwise specified in the Order, (a) all fees are due and payable within 30 days from the invoice date, (b) payment obligations are non-cancelable, and (c) fees paid are non-refundable.

3.2 **Disputed Payments.** Customer may withhold any portion of an invoiced amount that is subject to a bona fide dispute, provided Customer: (a) gives PROS written notice setting forth the reason for the dispute before the invoice is past due; (b) works in good faith with PROS to resolve the dispute promptly after such notice; and (c) pays the disputed fees, if legitimate, promptly after resolution of the dispute.

3.3 **Late Payment.** Customer may not withhold (except as set forth in Section 3.2) or offset fees due to PROS. If Customer

fails to timely pay any undisputed invoiced amounts, PROS may, without limiting its other rights and remedies, temporarily suspend access to the Subscription Service without liability until such amounts are paid in full. Before suspending access, PROS will give Customer at least 30 days' prior notice that its account is overdue, in accordance with the "Notices" section below for billing-related notices.

**3.4 Taxes.** Invoiced fees do not include, and may not be reduced to account for, any Taxes. Customer is responsible for paying all Taxes imposed on the Subscription Service, Professional Services and any other services provided by PROS. PROS is responsible for paying all Taxes imposed on PROS' income, property, and employees. If PROS has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address listed on the Order or SOW, and invoiced to and paid by Customer, unless Customer provides PROS with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **4. REPRESENTATIONS, WARRANTIES.**

**4.1 Authorization; Execution.** Each party 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 to which it is a party.

**4.2 Subscription Service.** PROS warrants that during the Subscription Term, the Subscription Service will conform in all material respects to the functional specifications set forth in the Documentation. In case of non-conformity, Customer's remedy will be the deployment of a corrected version of the PROS software application that is the object of the Subscription Service, or provision of a workaround. If PROS fails to provide such remedy after using commercially reasonable efforts, Customer may exercise its rights herein, including, but not limited to, termination pursuant to Section 9.2.

**4.3 Warranty Disclaimers.** THE WARRANTY SET FORTH IN THIS SECTION 4 IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY PROS AND, TO THE EXTENT PERMITTED 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 AND NON-INFRINGEMENT. PROS DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICE WILL BE ERROR FREE OR UNINTERRUPTED.

#### **5. INDEMNIFICATION.**

**5.1 PROS Indemnification.** PROS will defend, indemnify and hold Customer harmless from Losses resulting from any claims brought by third parties against Customer and its Affiliates alleging that the Subscription Service as provided by PROS infringes any intellectual property rights of any third party.

**5.2 Customer Indemnification.** Customer will defend, indemnify and hold PROS harmless from Losses resulting from any claims brought by third parties against PROS and its Affiliates related to Customer Data.

**5.3 Conditions Precedent.** The indemnifying party's obligations under Section 5.1 or 5.2, as applicable, are expressly conditioned on the indemnified party (a) providing prompt notice of the claim (provided that the indemnifying party shall only be excused from its obligations under this Section 5 to the extent it was prejudiced by the failure of the indemnified party to give such prompt notice); (b) giving sole control of the defense and settlement of the claim to the indemnifying party (provided that the indemnifying party may not settle any claim that requires the indemnified party to admit any liability or incur any financial obligations without its consent, which consent shall not be unreasonably withheld); (c) cooperating with the

indemnifying party in such defense and settlement at the indemnifying party's cost; and (d) not having compromised or settled such claim in any way or having made any admissions with respect to such claim without the indemnifying party's prior written consent.

**5.4 Remedies.** Should the Subscription Service 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 Subscription Service; (b) replace or modify the Subscription Service 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 Service and refund to Customer any pre-paid Subscription Service fees prorated to the remainder of the pre-paid term.

**5.5 Exceptions.** PROS will have no liability for any claim or Losses to the extent arising from (a) use of the Subscription Service 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 Subscription Service (other than by PROS or at PROS' direction); (d) Customer continuing any infringing activity after being notified of the alleged infringement in accordance with the "Notices" section below ; or (e) use of the Subscription Service not in accordance with the Documentation or in breach of this Agreement.

**5.6 No Additional Liability.** THIS SECTION 5 STATES THE ENTIRE LIABILITY OF EACH PARTY WITH RESPECT TO THIRD PARTY CLAIMS DESCRIBED IN SECTIONS 5.1 AND 5.2.

#### **6. LIMITATION OF LIABILITY.**

**6.1 LIMITATION OF LIABILITY.** THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ITS RESPECTIVE AFFILIATES' ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBSCRIPTION SERVICES OR PROFESSIONAL SERVICES PROVIDED HEREUNDER (WHETHER IN CONTRACT, TORT OR OTHERWISE), WILL NOT EXCEED THE FEES PAID UNDER THE ORDER OR SOW IN CONNECTION WITH WHICH LIABILITY ARISES DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY FEES LEGALLY OWED UNDER THIS AGREEMENT.

IN CASE OF (I) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, OR (II) EITHER PARTY'S BREACH OF ITS DATA PROTECTION OBLIGATIONS; OR (III) PROS' BREACH OF ITS SECURITY OBLIGATIONS THAT RESULT IN AN UNAUTHORIZED DISCLOSURE OF PERSONAL DATA, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ITS RESPECTIVE AFFILIATES' WILL NOT EXCEED THE HIGHER OF (1) US\$1,000,000, AND (2) 300% OF THE FEES PAID UNDER THE ORDER OR SOW IN CONNECTION WITH WHICH LIABILITY ARISES DURING THE TWELVE-MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

**6.2 EXCLUSIONS.** NEITHER PARTY SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO 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 USE, LOSS OF GOODWILL, OR LOSS OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.3 UNLIMITED LIABILITY.** NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL LIMIT A PARTY'S LIABILITY FOR:

- (A) DEATH OR PERSONAL INJURY CAUSED BY EITHER PARTY'S NEGLIGENCE;
- (B) ITS FRAUD OR FRAUDULENT MISREPRESENTATION;
- (C) LOSSES UNDER SECTION 5.1 AND SECTION 5.2;
- (D) ITS WILLFUL MISCONDUCT OR GROSS NEGLIGENCE;
- (E) BREACH OF THE OBLIGATIONS IMPLIED BY SECTION 12, SALE

**OF GOODS ACT 1893 (AS AMENDED BY THE SALE OF GOODS AND SUPPLY OF SERVICES ACT 1980); OR**

**(F) ANY LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW.**

**7. PROPRIETARY RIGHTS.**

**7.1 PROS Ownership.** PROS retains all right, title, and interest in and to the Subscription Service and Documentation, including all copies and derivative works thereof (by whomever produced), and all related intellectual property rights inherent therein. Except for the rights granted herein, Customer will not acquire any ownership rights by implication, estoppel or otherwise. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary notices of PROS.

**7.2 Feedback.** If Customer or Users decide in their sole discretion to provide Feedback, PROS will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate any such Feedback into its products and services. PROS has no obligation to use Feedback. Customer has no obligation to provide Feedback.

**8. CONFIDENTIALITY.**

**8.1 Use of Confidential Information.** Receiving Party will use Confidential Information solely in the exercise of its rights and performance of its obligations under this Agreement and will not disclose any Confidential Information other than in connection therewith, 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 exercise its rights or perform its obligations 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.

**8.2 Exclusions.** Confidential Information will not be deemed 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; (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; or (iv) was independently developed by the Receiving Party without the use of or reference to any portion of the Confidential Information or violation of this Agreement. 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.

**8.3 Return of Confidential Information.** 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.

**9. SUBSCRIPTION TERM AND TERMINATION.**

**9.1 Subscription Term.** PROS makes the Subscription Service available on a subscription basis, and Customer is purchasing a

subscription to access and use the Subscription Service upon the terms and conditions set forth in this Agreement, for the Subscription Term and subject to payment of the fees specified in the Order. Neither party may terminate this Agreement for convenience prior to the end of the Subscription Term.

**9.2 Termination for Cause.** Either party may terminate this Agreement or any SOW by written notice if the other party (i) breaches any material term thereunder, and (ii) fails to cure such breach within 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 30-day period, if the breaching party does not commence to correct such failure within such 30-day period and thereafter diligently prosecute same to completion). Such written notice shall specify in detail the alleged material breach.

**9.3 Immediate Termination.** Either party may immediately terminate this Agreement, including any SOWs, 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.

**9.4 Effect of Expiration or Termination.** Upon termination or expiration of this Agreement for any reason, PROS will terminate access to the applicable Subscription Service, and all rights and licenses granted to Customer by PROS pursuant to this Agreement shall terminate immediately.

If this Agreement is terminated by Customer and Customer is in full compliance with all material terms and conditions of this Agreement, PROS will refund to Customer any unused pre-paid Subscription Service fees for the period after the effective date of termination.

**9.5 Survival.** Except to the extent expressly provided to the contrary herein, the obligation of Customer to pay in full any amounts due and Sections 1.2(c), 2.3, 3, 4.3, and 5 to 11 inclusive (and for the Professional Services Supplement, Sections 3, 4.2, 5 and 6), and any other provision which by its nature survives, will survive the termination or expiration of this Agreement.

**9.6 Transition Services.** PROS may make available to Customer for a reasonable period of time after the expiration or termination of the Subscription Service, transition services to facilitate the orderly transfer of Customer Data hereunder to Customer or its designee at PROS then-current Professional Services rates and subject to the parties' execution of an agreement covering such services.

**10. GENERAL.**

**10.1 Export Control Laws.** The Subscription Service, the Professional Services 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. PROS authorizes use of the Subscription Service, Professional Services and associated technical data only with third party software and hardware obtained and used in compliance with export control laws and regulations. Each party represents that it is not named 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. Each party shall comply with applicable export control laws and regulations in providing and using the Subscription Service and Professional Services. Without limiting the foregoing, Customer will not permit Users to access and use the Subscription Service and Professional Services if they are: (i) located in a country that is subject to a U.S. government embargo; (ii) listed on any U.S. government list of prohibited or

restricted parties; or (iii) otherwise in violation of any U.S. export law or regulation.

**10.2 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 courts of Ireland 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 waives any right to jury trial in connection with any dispute 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.

**10.3 Free Trial.** If Customer uses a Free Trial Service, PROS will make such Free Trial Service available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer agreed to use such Free Trial Service, (b) the start date of any Subscription Service purchased by Customer for the same service, or (c) termination of the Free Trial Service by PROS in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding (but solely with respect to the Free Trial Service to which they apply).

Free Trial Services are provided for evaluation purposes and not for production use. Customer shall have sole responsibility, and PROS assumes no liability, for any Customer Data that Customer may choose to upload on the Free Trial Services.

NOTWITHSTANDING SECTIONS 4 AND 5 ABOVE, FREE TRIAL SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY AND PROS SHALL HAVE NO INDEMNIFICATION OBLIGATIONS, NOR ANY LIABILITY OF ANY TYPE WITH RESPECT TO A FREE TRIAL SERVICE, UNLESS SUCH EXCLUSION OF LIABILITY IS UNENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE, PROS TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A FREE TRIAL SERVICE IS US\$1,000. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 5 ABOVE, CUSTOMER SHALL BE FULLY LIABLE FOR ANY DAMAGES ARISING OUT OF ITS USE OF A FREE TRIAL SERVICE. ANY CUSTOMER DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER'S FREE TRIAL SERVICE ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF THE FREE TRIAL SERVICE.

**10.4 Injunctive Relief.** Any breach of Sections 1.2(c) or 8 will result in irreparable and continuing damage for which there will be no adequate remedy at law. Each party is 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.

**10.5 Force Majeure.** Neither party will be liable where performance of its obligations hereunder (other than for payment obligations) is rendered impossible by reasons beyond that party's reasonable control and occurring without that party's fault or negligence, (a "**Force Majeure Event**"). Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any delay so caused. If a delay caused by a Force Majeure Event continues for more than 90 consecutive days, either party may terminate this Agreement by providing 30 days' written notice to the other party.

**10.6 Notices.** Unless expressly stated otherwise, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) the date shown on the confirmation of delivery; or (iii) in the case of email, the first business day (not including legal public holidays in the United States) after sending by email. PROS system notifications and other information relating to the operation, hosting or support of the Subscription Service can also be provided within the Subscription Service or made available via the PROS Connect portal.

Billing-related notices to Customer will be addressed to the Invoicing Contact identified in the Order or SOW, as applicable. All other notices to **Customer** will be addressed to the Primary Contact identified in the Order.

Notices to **PROS** will be addressed to either (i) [legal@pros.com](mailto:legal@pros.com), with the subject matter "Formal Notice", or (ii) PROS, Inc., 3200 Kirby Drive, Suite 600, Houston, Texas 77098 USA, Attn: Legal Department.

Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

**10.7 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, conditioned or delayed). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all SOWs), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will be binding on, inure to the benefit of, and enforceable by and against the parties and their respective successors and permitted assigns.

**10.8 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 (and any other indemnified party pursuant to the terms of Section 5) 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.

**10.9 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.

**10.10 Headings.** Headings in this Agreement are provided for convenience only and will not control the interpretation of this Agreement.

**10.11 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 this Agreement, and the remaining provisions will remain in full force and effect.

**10.12 Counterparts.** Any Order or SOW, and these Terms, if applicable, 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. Electronic signatures will be relied upon as original signatures in all respects.

**10.13 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.

**10.14 Conflict.** In the event of a conflict between the documents forming this Agreement that is not expressly resolved in the documents, the terms will control in the following order: (1) the Order, (2) any Product Specific Terms (but solely with respect to the particular Subscription Services, or components thereof, to which they apply), (3) the SLA, (4) these Terms, and (5) any other terms incorporated by reference into the Order.

## 11. DEFINED TERMS.

**"Affiliate"** means any entity that controls, is controlled by, or is controlled by an entity that controls either party. All derivatives of the word "**control**" mean the ownership directly or indirectly of more than 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.

**"Agreement"** means the applicable Order together with these Terms, the applicable SLA, and any Product Specific Terms (each

of which are deemed incorporated by reference). If the parties enter into more than one Order, each additional Order is deemed to form a new and separate agreement between the parties (and the term "*this Agreement*" is deemed to refer to the particular agreement required by the context, independently of and separately from other Orders) unless the additional Order specifically states that it is supplementing and amending an existing Order.

"**Audit Report(s)**" means PROS' most recently completed SOC1 and SOC2 audit reports, or comparable industry-standard successor reports, prepared by PROS' independent third-party auditor.

"**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 financial performance, and/or the results of any benchmark or performance tests of the Subscription Service, (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.

"**Customer**" means the legal entity which has entered into this Agreement by either executing an Order, an SOW or by using any Free Trial Service.

"**Customer Data**" means all electronic data submitted by or on behalf of Customer for use in the Subscription Service.

"**Documentation**" means the online user guides for the Subscription Service.

"**Feedback**" means any suggestions, ideas for improvements, enhancement requests, feedback, recommendations provided by Customer or its Users relating to the Subscription Service.

"**Free Trial Service**" means any PROS product, service or functionality that PROS makes available to Customer to try at Customer's option, at no additional charge, and which is clearly designated as "beta," "trial," "non-GA," "pilot," "developer preview," "free trial," "evaluation," or similar designation.

"**Gross Negligence**" means a reckless or serious disregard of or indifference to the need to use reasonable care in the performance of a party's obligations hereunder (and not merely a failure to exercise reasonable care) to an obvious or known risk.

"**Losses**" means in connection with an indemnified claim, reasonable 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, each to the extent payable to a third party.

"**Order**" means a mutually executed order form incorporating these Terms, under which Customer subscribes to the Subscription Service, and containing all of the subscription details, including Subscription Term, Subscription Service(s)

purchased, usage limits, and applicable fees.

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

"**Product Specific Terms**" means any terms and conditions specific to certain Subscription Service, which are, where applicable, incorporated by reference in the applicable Order and supplement, but do not replace, these Terms.

"**Professional Services**" mean the implementation, configuration, strategic consulting, training or other professional services PROS may perform for Customer pursuant to an SOW.

"**PROS**" means the PROS company which has executed the Order or SOW or, where applicable, offered the Free Trial Service.

"**SLA**" means the PROS Support & Service Level Agreement specified in the Order for the Subscription Service identified therein, which is hereby incorporated by reference into this Agreement.

"**SOW**" or "**Work Order**" means a mutually executed statement of work (as the same may be amended or supplemented by any applicable change order(s) executed by the parties pursuant to Section 1.3 of the Professional Services Supplement) that (i) incorporates by reference these Terms, (ii) describes the Professional Services to be provided, and (iii) may include additional details concerning specific requirements, assumptions, specifications, milestones and other terms applicable to such Professional Services.

"**Subscription Service**" means the generally available PROS software-as-a-service offering(s) subscribed to by Customer under an Order, the specific features and functionality of which are described in the Documentation. "Subscription Service" includes any maintenance and support services offered by PROS to its customers generally as part of the relevant subscription and/or as described in the SLA, but excludes implementation, configuration, consulting and other professional services and Free Trial Services.

"**Subscription Term**" means the period during which Customer is entitled to receive the Subscription Service as specified in the Order.

"**Taxes**" means any and all taxes, which may include local, state, provincial, federal or foreign taxes, withholding taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes.

"**Users**" means Customer's employees, consultants, clients, external users, contractors, agents or other third parties authorized to use the Subscription Service by Customer and have been assigned unique user identifications and passwords.

"**Willful Misconduct**" means knowingly or recklessly committing a breach of a Party's obligations hereunder

## Professional Services Supplement

These supplemental terms and conditions together with the Terms shall apply to the provision of Professional Services by PROS.

### 1. PROFESSIONAL SERVICES.

#### 1.1 PROS Responsibilities.

(a) **Provision of Professional Service.** PROS will provide the Professional Services and deliver the related Deliverables on the terms and subject to the conditions set forth in the SOW. A "**Deliverable**" is any tangible work product resulting from the Professional Services that are delivered or required to be delivered by PROS pursuant to a SOW. PROS has no obligation to provide services that are not specified in a SOW.

(b) **Compliance with Customer On-Site Requirements.** Professional Services will be delivered by PROS off-site unless otherwise specified in a SOW. When PROS provides Professional Services on Customer premises, PROS personnel will comply with any reasonable Customer rules and regulations regarding safety and conduct which have been made known in advance to PROS.

(c) **PROS Personnel.** PROS will use adequate numbers of qualified individuals with suitable training, education, and skill to provide Professional Services. PROS will determine in its sole discretion which of its personnel are assigned to perform the Professional Services, and may reassign such personnel during the term of an SOW. PROS may use Affiliates, subcontractors and other third parties in the performance of the Professional Services, provided that no such use of Affiliates, subcontractors or other third parties will relieve PROS of its obligations.

**1.2 Customer Responsibilities.** Customer will cooperate fully with PROS in PROS' provision of the Professional Services, including by (a) providing PROS with timely access to Customer systems, personnel, and information, if and as required, and (b) performing all tasks and providing all decisions in a timely fashion, as reasonably required for PROS performance of the Professional Services. PROS shall not be liable for any delays to the extent caused by (i) any failure or delay by Customer to fulfill its obligations under any SOW; (ii) inaccurate information provided by Customer; (iii) Customer-requested changes to the scope of the Professional Services under a SOW ("**Scope**"); (iv) changes in Customer personnel; or (v) other factors beyond PROS' reasonable control.

**1.3 Change Management.** Either party may request a change to an SOW by following the change control process set forth at: [pros.com/changecontrol](http://pros.com/changecontrol). Any changes to the Scope will be made only by written change order or additional SOW signed by an authorized representative of each party prior to implementation of such changes.

**1.4 Project Management.** Customer will designate in writing a project manager to act as the primary contact person for all communications with PROS pursuant to an SOW. Customer will promptly inform PROS of any change in the identity of such project manager. Customer's project manager is authorized to make technical and project-level decisions within the scope of the SOW on behalf of Customer.

**1.5 Customer Materials.** If Customer provides or otherwise makes available to PROS any software, data or other materials belonging to Customer in connection with an SOW, then PROS and its Affiliates and their respective employees and agents will have the non-exclusive right and license to reproduce, modify and use the same solely in connection with the provision of the Professional Services.

**1.6 Customer Acknowledgement.** Customer acknowledges that (i) any Professional Services purchased hereunder are ordered separately from any Subscription Service; and (ii) Customer may acquire rights to use the Subscription Service without purchasing Professional Services.

### 2. MILESTONES AND ACCEPTANCE CRITERIA.

**2.1 Milestones.** Subject to Section 1.2 of this Supplement (Customer Responsibilities), PROS will use commercially reasonable efforts to meet any milestones and estimated timeframes stated in an SOW. PROS' ability to complete the Professional Services and Deliverables within such milestones and estimated timeframes is dependent on Customer responsiveness.

**2.2 Acceptance.** Unless otherwise specified in an SOW, all Professional Services and Deliverables are deemed accepted by Customer upon receipt. If the SOW specifies that a Deliverable is subject to acceptance testing, then following PROS' delivery of such Deliverable, Customer will have seven calendar days (or such other time period as may be specified in the SOW) ("**Acceptance Period**") to accept or reject (pursuant to Section 2.3 below) such Deliverable, provided that such Deliverable will be deemed accepted on the earlier of (x) when such Deliverable passes the acceptance criteria specified in the SOW ("**Acceptance Criteria**"), (y) when Customer makes productive use of such Deliverable, or (y) as of the last day of the Acceptance Period if Customer: (a) does not expressly accept the Deliverable within the Acceptance Period; or (b) fails to notify PROS that it is rejecting the Deliverable, or fails to specify the basis for that rejection, within the Acceptance Period.

**2.3 Notice of Rejection.** If a Deliverable fails to substantially comply with the Acceptance Criteria, Customer may reject the Deliverable by notice to PROS within the Acceptance Period, specifying the basis for the rejection and a precise description of the defect(s) found. Immaterial defects are not grounds to withhold acceptance. Notwithstanding the 'Notices' term in the Terms, this notice will be valid if in writing and delivered by email to the PROS Primary Contact specified in the applicable SOW, with copy to [legal@pros.com](mailto:legal@pros.com).

**2.4 Correction.** PROS will have a reasonable period to rework and resubmit rejected Deliverable, and the Acceptance Period will reset on notification by PROS that the rectified Deliverable is ready for acceptance testing.

### 3. FEES AND EXPENSES.

**3.1 Professional Services Fees.** Customer shall pay all fees and charges as set forth in each SOW.

**3.2 Expenses.** Customer will reimburse PROS for reasonable pre-approved travel expenses incurred by PROS while performing Professional Services. Expenses will be charged on a pass-through basis (i.e. without markup or margin applied) and incurred consistent with any Customer expense guidelines attached to the SOW.

**3.3 Payment Terms.** Unless otherwise specified in the SOW, amounts are invoiced monthly in arrears on a time and materials basis as Professional Services are performed and expenses are incurred. Subject to Section 3.2 of the Terms, Customer shall pay all invoiced amounts within 30 days from the invoice date.

**3.4 Purchase Orders.** Customer may purchase Professional Services by issuing a purchase order that (i) references the Terms, and (ii) is accepted by PROS (a "**Purchase Order**"). All accepted Purchase Orders are deemed to be SOWs hereunder; provided that, notwithstanding anything to the contrary in these Terms, any additional or conflicting terms or conditions contained in Purchase Orders will be disregarded, null and void, and the Terms will govern all Purchase Orders.

### 4. PROFESSIONAL SERVICES WARRANTY.

**4.1 Warranty.** PROS warrants that all Professional Services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards. Customer shall promptly (and in any event within 90 days of the performance of the relevant Professional Services) notify PROS of any non-conformance of such warranty, specifying in reasonable detail the manner in which PROS has failed to conform to the warranty in this Section 4.1. If PROS confirms the non-conformity, PROS will: (a) correct or reperform any nonconforming elements of the Professional Services at no charge to Customer so that they conform to the warranty; and, (b) if PROS is unable to provide such remedy after using commercially reasonable efforts, provide a refund of the fees paid for the nonconforming elements of the Professional Services. The foregoing sets forth the exclusive remedies of Customer, and the sole liability of PROS, in the event of any nonconformance with the warranty set forth in this Section 4.1 or otherwise with respect to any other errors, defects or other problems with the Professional Services or Deliverables.

**4.2 Warranty Disclaimers.** THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 4 CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY PROS WITH RESPECT TO THE PROFESSIONAL SERVICES AND DELIVERABLES. PROS MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PROFESSIONAL SERVICES OR THE DELIVERABLES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### 5. PROPRIETARY RIGHTS.

**5.1 PROS Ownership.** As between the parties, PROS retains ownership and all intellectual property rights to the Deliverables and other work product developed by PROS in connection with any Professional Services, and Customer shall acquire no right of ownership or use with respect thereto except as expressly set forth in Section 5.2.

**5.2 License to Deliverables.** Subject to these Terms, PROS grants Customer a worldwide, non-exclusive, non-sublicensable, non-transferable license to make use of the Deliverables for the purposes contemplated by the applicable SOW.

**6. CONFLICT.** In the event of a conflict, discrepancy or inconsistency between any documents forming part of an SOW that is not expressly resolved in the SOW, the terms will control in the following order: (1) the SOW, (2) these Terms, and (3) any other terms incorporated by reference into the SOW.