

ProSys Device Management as a service (SaaS) agreement (EULA)

These current consolidated ProSys Master SaaS Terms were published on 29th January 2024. This is the first version of this agreement.

1 Definitions and interpretation

1.1 The definitions and rules of interpretation set out in the schedule shall apply to our Agreement.

1.2 In our Agreement:

1.2.1 each Order Form entered into by the Customer shall form a separate agreement, incorporating these Master SaaS Terms together with the Addendums, the Master Services Agreement and the Specific Terms for the respective Subscribed Services and the Policies (our **Agreement**);

1.2.2 in the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):

- (a) the Order Form;
- (b) The Master Services Agreement
- (c) <https://www.provu.co.uk/pdf/terms-and-conditions.pdf>
- (d) ProSys SaaS EULA (This document)

1.2.3 subject to the order of priority between documents in clause 1.2.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

1.3 Any obligation of the Supplier under our Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the Subscribed Territory as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on the Supplier (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

2 Rights of use

2.1 Upon Order Acceptance and subject to the terms of our Agreement, the Supplier grants the Customer a non-exclusive, non-transferable, personal right to:

2.1.1 use each Subscribed Service during Service Hours; and

2.1.2 copy and use the Documentation as strictly necessary for its use by Authorised Users of the Subscribed Services, within the relevant Subscribed Territory during the Subscribed Service Period for the Permitted Purpose.

2.2 The Customer acknowledges that access to the Subscribed Services may take up to seven Business Days from Order Acceptance to initially set up and that use of the Subscribed Services is at all times subject to the Customer's compliance with our Agreement and the requirements identified in our Agreement (including all minimum system requirements).

2.3 The Customer acknowledges that the Services do not include:

2.3.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services);

2.3.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data);

Authorised Users

3.1 The Customer shall ensure that only Authorised Users use the Subscribed Services and that such use is at all times in accordance with our Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the Subscribed Services, the employees or contractors of the Customer or Authorised Affiliates.

3.2 The Customer shall keep a list of all Authorised Users and shall notify the Supplier within two Business Days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by a relevant entity such that they are no longer entitled to be Authorised Users. Where termination of such relationship is known in advance, the Supplier shall provide such information as soon as reasonably possible prior to such termination of that relationship, together with the date such person shall cease to be an Authorised User.

3.3 The Customer is entitled to remove one individual as an Authorised User and replace them with another individual in accordance with the terms of our Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time.

3.4 Without prejudice to any other right or remedy of the Supplier, in the event the Customer is in breach of clause 3.3 then:

3.4.1 the warranties in clause 8.1 shall cease to apply (to the relevant subscribed service) for the duration of the period during which the Customer is in breach of clause 3.3; and

3.5 The Customer shall:

3.5.1 be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own;

3.5.2 only provide Authorised Users with access to the Services via the access method provided by the Supplier and shall not provide access to (or permit access by) anyone other than an Authorised User; and

3.5.3 procure that each Authorised User (and each Authorised Affiliate) is aware of, and complies with, the obligations and restrictions imposed on the Customer under our Agreement, including all obligations and restrictions relating to the Supplier's Confidential Information.

3.6 The Customer warrants and represents that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Customer and its Authorised Affiliate's organisation as necessary for use of the Service) their password or access details for any Subscribed Service.

3.7 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.

3.8 If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify the Supplier immediately.

3.9 The Customer shall comply (and shall ensure all Authorised Affiliates and Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to the Services, the Customer Data and the Documentation (or any part), and shall not export or reexport, directly or indirectly, separately or as a part of a system, the Services, the Customer Data or the Documentation (or any part) to, or access or use the Services, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, the United States, the European Union or any of its member states, without first obtaining such licence or other approval. Without prejudice to the Supplier's obligations under the Data Protection Addendum, the Customer shall be solely responsible for ensuring its access, importation and use of the Services, the Customer Data and Documentation in or into any part of the Subscribed Territory or elsewhere complies with all export and other laws.

3.10 Clauses 3.5 to 3.9 (inclusive) shall survive termination or expiry of our Agreement.

3 Indemnity

4.1 The Customer shall indemnify, keep indemnified and hold harmless the Supplier (on the Supplier's own behalf on behalf of each of the Supplier's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of our Agreement.

4.2 This clause 4 shall survive termination or expiry of our Agreement.

4 Support

5.1 Support Services shall be available for each Subscribed Service to the Customer for the duration of the respective Subscribed Service Period, to the extent and in the manner specified in the relevant Subscription Service Specific Terms and Order Form.

5.2 The Supplier shall use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

5 Changes to services and terms

6.1 The Supplier may at its absolute discretion make, and notify the Customer of, updated versions of the documents referred to in clause 1.2.2 or other documents referred to in any part of our Agreement (excluding in each case the Order Form) from time to time by notifying the Customer of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which the Supplier elects. The Supplier shall comply with its related obligations in the Data Protection Addendum.

6.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of our Agreement from the date 30 Business Days' after Update Notification of such revised document(s) (the **Update**) (or at such later date as the Supplier may specify).

6.3 In the event that the Customer reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement in respect of all impacted Subscribed Services provided it exercises such right prior to such Update taking effect pursuant to clause 6.2 on not less than 10 Business Days prior written notice and notifies the Supplier at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Customer shall receive a refund of any pre-paid Fees in respect of such terminated Services.

6.4 The Customer acknowledges that the Supplier shall be entitled to modify the features and functionality of the Services. The Supplier shall use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the relevant Subscribed Service(s) by the Supplier's customers generally. The Supplier may, without limitation to the generality of this clause 6.4, establish new limits on the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Service, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents. The Supplier shall comply with its related obligations in the Data Protection Addendum.

6 Fees

7.1 The Subscription Fee and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in the Pricing Terms.

7.2 The Supplier shall invoice the Customer:

7.2.1 Monthly or annually in advance for all Subscription Fees; and

7.2.2 Monthly for all other Fees, due under our Agreement, and the invoices shall be

paid within 30 calendar days of the date on the invoice.

7.3 The Fees are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.

7.4 Fees payable to the Supplier under our Agreement shall be paid into the Supplier's bank account, unless otherwise notified by the Supplier to the Customer in writing in accordance with our Agreement.

7.5 The Supplier shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of The Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

7.6 The Supplier shall be entitled to increase the Fees for any and all Services at any time by notice to the Customer provided that the Supplier shall not be entitled to increase the Fees on less than four weeks prior notice or more than once every 12 months.

7.7 To the extent our Agreement terminates or expires (other than due to termination by the Customer under clauses 6.3 or 20.3) the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.

7 Warranties

8.1 Subject to the remainder of this clause 8, the Supplier warrants that:

8.1.1 each Subscribed Service shall operate materially in accordance with its Description when used in accordance with our Agreement under normal use and normal circumstances during the relevant Subscribed Service Period; and

8.1.2 it shall provide each of the Services with reasonable care and skill.

8.2 The Customer acknowledges that clause 8.1 does not apply to Free or Trial Services or to Support Services provided in connection with the same. Without prejudice to the Supplier's obligations under our Agreement in respect of Protected Data, Free or Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.

8.3 The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.

8.4 If there is a breach of any warranty in clause 8.1 the Supplier shall at its option: use reasonable endeavours to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Fees for the impacted Services which were otherwise payable for the period during which the Supplier was in breach of any such warranty (provided such period is at least 5 consecutive days). To the maximum extent permitted by law, this clause 8.4 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 8.1.

8.5 The warranties in clause 8.1 are subject to the limitations set out in clause 17 and shall not apply to the extent that any error in the Services arises as a result of:

8.5.1 incorrect operation or use of the Services by the Customer, any Authorised Affiliate or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);

8.5.2 use of any of the Services other than for the purposes for which it is intended;

8.5.3 use of any Services with other software or services or on equipment with which it is incompatible.

8.5.4 any act by any third party (including hacking or the introduction of any virus or malicious code);

8.5.5 any modification of Services (other than that undertaken by the Supplier or at its direction);
or

8.5.6 any breach of our Agreement by the Customer (or by any Authorised Affiliate or Authorised User).

8.6 The Supplier may make Non-Supplier Materials available for the Customer's use in connection with the Services. The Customer agrees that:

8.6.1 the Supplier has no responsibility for the use or consequences of use of any Non-Supplier Materials;

8.6.2 the Customer's use of any Non-Supplier Materials shall be governed by the applicable terms between the Customer and the owner or licensor of the relevant Non-Supplier Materials;

8.6.3 the Customer is solely responsible for any Non-Supplier Materials used in connection with the Services and for compliance with all applicable third party terms which may govern the use of such Non-Supplier Materials; and

8.6.4 the continued availability, compatibility with the Services and performance of the NonSupplier Materials is outside the control of the Supplier and the Supplier has no responsibility for any unavailability of or degradation in the Services to the extent resulting from the availability, incompatibility or performance of any of the Non-Supplier

8.7 The Customer acknowledges that no liability or obligation is accepted by the Supplier (howsoever arising whether under contract, tort, in negligence or otherwise):

8.7.1 that the Subscribed Services shall meet the Customer's individual needs, whether or not such needs have been communicated to the Supplier;

8.7.2 that the operation of the Subscribed Services shall not be subject to minor errors or defects;
or

8.8 Other than as set out in this clause 8, and subject to clause 17.7, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.

8 Customer's responsibilities

9.1 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications.

9 Intellectual property

10.1 All Intellectual Property Rights in and to the Services (including in all Applications, Documentation and all Supplier Provided Materials) belong to and shall remain vested in the Supplier or the relevant third party owner. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Applications, Documentation, Supplier Provided Materials or any other part of the Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier or such third party as the Supplier may elect. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause 10.1.

10.2 The Supplier has no obligation to deliver any copies of any software to the Customer in connection with our Agreement or the Services.

10.3 The Customer and Authorised Users may be able to store or transmit Customer Data using one or more Subscribed Service and the Subscribed Services may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for the Supplier (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the Services or to exercise or perform the Supplier's rights, remedies and obligations under our Agreement.

10.4 To the extent Non-Supplier Materials are made available to, or used by or on behalf of the Customer, any Authorised Affiliate or any Authorised User in connection with the use or provision of any Subscribed Service, such use of Non-Supplier Materials (including all licence terms) shall be exclusively governed by applicable third party terms notified or made available by the Supplier or the third party and not by our Agreement. The Supplier grants no Intellectual Property Rights or other rights in connection with any Non-Supplier Materials.

10.5 The Supplier may use any feedback and suggestions for improvement relating to the Services provided by the Customer, the Authorised Affiliates or any Authorised User without charge or limitation (**Feedback**). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier at the time such Feedback is first provided to the Supplier.

10.6 The Customer hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to the Supplier under our Agreement.

10.7 Except for the rights expressly granted in our Agreement, the Customer, any Authorised User, any Customer Affiliate and their direct and indirect sub-contractors, shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Services

(or any part including the Applications or Documentation) and no Intellectual Property Rights of either party are transferred or licensed as a result of our Agreement.

10.8 This clause 10 shall survive the termination or expiry of our Agreement.

10 Defence against infringement claims

11.1 Subject to clauses 11.2 and 11.5, the Supplier shall:

11.1.1 defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and

11.1.2 pay, subject to clause 11.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.

11.2 The provisions of clause 11.1 shall not apply unless the Customer:

11.2.1 promptly (and in any event within 5 Business Days) notifies the Supplier upon becoming aware of any actual or threatened IP Claim and provides full written particulars;

11.2.2 makes no comment or admission and takes no action that may adversely affect the Supplier's ability to defend or settle the IP Claim;

11.2.3 provides all assistance reasonably required by the Supplier subject to the Supplier paying the Customer's reasonable costs; and

11.2.4 gives the Supplier sole authority to defend or settle the IP Claim as the Supplier considers appropriate.

11.3 The provisions of clause 17 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 11.1.

11.4 In the event of any IP Claim the Supplier may elect to terminate our Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance. This clause 11.4 is without prejudice to the Customer's rights and remedies under clauses 11.1.

11.5 The Supplier shall have no liability or obligation under this clause 11 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:

11.5.1 any modification of the Services (or any part) without the Supplier's express written approval;

11.5.2 any Non-Supplier Materials;

11.5.3 any Customer Data;

11.5.4 any breach of our Agreement by the Customer;

11.5.5 installation or use of the Services (or any part) otherwise than in accordance with our Agreement and the User Manual; or

11.5.6 installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by the Supplier.

11.6 Subject to clause 17.7, the provisions of this clause 11 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

11 Customer Systems and Customer Data

12.1 Customer Data shall at all times remain the property of the Customer or its licensors.

12.2 Except to the extent the Supplier has direct obligations under data protection laws, the Customer acknowledges that the Supplier has no control over any Customer Data hosted as part of the provision of the Services and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.

12.3 If the Supplier becomes aware of any allegation that any Customer Data may not comply with the Acceptable Use Policy or any other part of our Agreement the Supplier shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful the Supplier shall notify the Customer before taking such action.

12.4 Except as otherwise expressly agreed in our Agreement, the Supplier shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Service Period. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all

Customer Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of our Agreement or the cessation or suspension of any of the Services.

12.5 The Supplier routinely undertakes regular backups of the Subscribed Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make the Supplier responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, the Supplier shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.

12.6 Unless otherwise set out in the Order Form, the Subscribed Service Specific Terms or subsequently agreed by the parties in writing, the Customer hereby instructs that the Supplier shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires the Supplier to store such Customer Data. The Supplier shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with our Agreement.

12 Confidentiality and security of Customer Data

13.1 The Supplier shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with our Agreement, disclose or copy the Customer Data other than as necessary for the performance of the Services or its express rights and obligations under our Agreement.

13.2 The Supplier shall implement technical and organisational security measures in accordance with the Information Security Addendum.

13.3 The Supplier:

13.3.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of the Services, and

13.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in clause 13.3.1 in respect of the confidentiality and security of the Customer Data as if they were the Supplier's own.

13.4 The provisions of this clause 13 shall not apply to information which:

13.4.1 is or comes into the public domain through no fault of the Supplier, its officers, employees, agents or contractors;

13.4.2 is lawfully received by the Supplier from a third party free of any obligation of confidence at the time of its disclosure;

13.4.3 is independently developed by the Supplier (or any of its Affiliates or any person acting on its or their behalf), without access to or use of such Confidential Information; or 13.4.4 is required by law, by court or governmental or regulatory order to be disclosed, provided that clauses 13.4.1 to 13.4.3 (inclusive) shall not apply to Protected Data.

13.5 This clause 13 shall survive the termination or expiry of our Agreement for a period of ten years.

13.6 To the extent any Customer Data is Protected Data, the Supplier shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of the Supplier's obligations under the Data Protection Addendum. Clauses 13.1 to 13.5 (inclusive) are subject to this clause 13.6.

13 Supplier's Confidential Information

14.1 The Customer shall maintain the confidentiality of the Supplier's Confidential Information and shall not without the prior written consent of the Supplier, disclose, copy or modify the Supplier's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under our Agreement.

14.2 The Customer undertakes to:

14.2.1 disclose the Supplier's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;

14.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 14; and

14.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 14.2 as if they were the Customer's own acts or omissions.

14.3 The Customer shall give notice to the Supplier of any unauthorised use, disclosure, theft or loss of the Supplier's Confidential Information immediately upon becoming aware of the same.

14.4 The provisions of this clause 14 shall not apply to information which:

14.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;

14.4.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;

14.4.3 is independently developed by the Customer, without access to or use of the Supplier's Confidential Information; or

14.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies the Supplier at the earliest opportunity before making any disclosure.

14.5 This clause 14 shall survive the termination or expiry of our Agreement for a period of *ten* years.

14 Monitoring compliance

15.1 During the Service Period and for five years thereafter the Customer shall maintain full and accurate records relating to Authorised Users', the Customer's and Authorised Affiliates' use of the Services under our Agreement.

15.2 The Customer shall allow and procure for the Supplier (and any representatives of the Supplier) access to its premises and the premises of Authorised Affiliates to:

15.2.1 inspect use of the Services; and

15.2.2 audit (and take copies of) the relevant records of the Customer and the Authorised Affiliates,

in each case to the extent necessary to verify that the Customer is in compliance with its obligations under our Agreement.

15.3 Unless otherwise agreed in writing, the inspection and audit referred to in clause 15.2 shall be undertaken:

15.3.1 during the Customer's normal business hours on Business Days;

15.3.2 subject to the provision by the Supplier of a minimum of five Business Days' notice; and

15.3.3 not more than twice in any calendar year.

15.4 At the Supplier's request from time to time the Customer shall promptly (and in any event within two Business Days of such request) provide the Supplier with copies of the records referred to in clause 15.1.

15.5 The Supplier may monitor, collect, store and use information on the use and performance of the Services (including Customer Data) to detect threats or errors to the Services and/or Supplier's operations and for the purposes of the further development and improvement of the Supplier's services, provided that such activities at all times comply with the Privacy Policy and Data Protection Addendum.

15.6 This clause 15 shall survive termination or expiry of our Agreement for a period of 12 months.

15 Relief

To the maximum extent permitted by law, the Supplier shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

16 Limitation of liability

17.1 The extent of the Supplier's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 17.

17.2 Subject to clauses 17.2, 17.4 and 17.7, the Supplier's aggregate liability in respect of each individual Subscribed Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed the greater of:

17.2.1 an amount equal to the Subscription Fees for the relevant Subscribed Service paid to the Supplier by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

17.2.2 an amount equal to 12 times the Subscription Fees for the relevant Subscribed Service due or paid to the Supplier for the first month of the relevant Subscribed Service Period.

17.3 Subject to clauses 17.4 and 17.7, the Supplier's aggregate liability in respect of each individual Free or Trial Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed 12 times the Subscription Fees for the relevant subscribed service.

17.4 Subject to clause 17.7, the Supplier's total aggregate liability howsoever arising under or in connection with our Agreement shall not exceed the greater of:

17.4.1 an amount equal to the Fees for all Services paid to the Supplier in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

17.4.2 an amount equal to [12] times the Fees due or paid to the Supplier for the Services provided in the first month of the Service Period.

17.5 Subject to clause 17.7, the Supplier shall not be liable for consequential, indirect or special losses.

17.6 Subject to clause 17.7, the Supplier shall not be liable for any of the following (whether direct or indirect):

17.6.1 loss of profit;

17.6.2 destruction, loss of use or corruption of data;

17.6.3 loss or corruption of software or systems;

17.6.4 loss or damage to equipment;

17.6.5 loss of use;

17.6.6 loss of production;

17.6.7 loss of contract;

17.6.8 loss of commercial opportunity;

17.6.9 loss of savings, discount or rebate (whether actual or anticipated); and/or

17.6.10 harm to reputation or loss of goodwill.

17.7 Notwithstanding any other provision of this Agreement, the Supplier's liability shall not be limited in any way in respect of the following:

17.7.1 death or personal injury caused by negligence;

17.7.2 fraud or fraudulent misrepresentation; or

17.7.3 any other losses which cannot be excluded or limited by applicable law.

17.8 This clause 17 shall survive the termination or expiry of our Agreement.

17 Suspension

18.1 The Supplier may suspend access to the Services (or any part) to all or some of the Authorised Users if:

18.1.1 the Supplier suspects that there has been any misuse of the Services or breach of our Agreement;

18.1.2 the Customer fails to pay any sums due to the Supplier by the due date for payment; or

18.1.3 required by law, by court or governmental or regulatory order.

18.2 Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 20, the Supplier will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

18.3 In relation to suspensions under clause 18.1.2, access to the Services will be restored promptly after the Supplier receives payment in full and cleared funds.

18.4 Fees shall remain payable during any period of suspension notwithstanding that the Customer, Authorised Affiliates or some or all of the Authorised Users may not have access to the Services.

18 Renewals

19.1 Unless the Order Form specifies there shall be no automatic renewals and subject to clause 19.2, on expiry of the Subscribed Service Period indicated in the Order Form for each Subscribed Service the Subscribed Service Period shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a **Renewal Date**). This clause 19.1 shall not apply in respect of Free or Trial Services (which shall not renew unless otherwise expressly stated in the Order Form).

19.2 If either party wishes for the Subscribed Service Period to expire on the next Renewal Date, it may cause the Subscribed Service to expire on that Renewal Date by notice provided such notice is served at least 30 days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 19.2, the Subscribed Service shall renew at the next Renewal Date in accordance with clause 19.1.

19 Term and termination

20.1 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Service Period after which it shall automatically expire.

20.2 Either party may terminate our Agreement or the provision of any of the Subscribed Services for convenience on not less than 30 days' prior written notice to the other. Any fees due for the remainder of the contract period would still need to be paid on termination.

20.3 Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:

20.3.1 the other party commits a material breach of our Agreement and such breach is not remediable;

20.3.2 the other party commits a material breach of our Agreement which is not remedied within 20 Business Days of receiving written notice of such breach; or

20.3.3 the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue.

20.4 The Supplier may terminate or suspend the provision of Free or Trial Services (and all related Support Services) at any time with or without notice.

20.5 Any breach by the Customer of the Acceptable Use Policy shall be deemed a material breach of our Agreement which is not remediable.

20 Consequences of termination

21.1 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by the Supplier under our Agreement shall terminate and the Customer shall (and shall procure that each Authorised User and Authorised Affiliate shall):

21.1.1 stop using the Services; and

21.1.2 destroy and delete or, if requested by the Supplier, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them).

21.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

21 Entire agreement

22.1 Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

22.2 Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

22.3 Nothing in our Agreement shall limit or exclude any liability for fraud.

22 Notices

23.1 Any notice or other communication given by a party under our Agreement shall be:

23.1.1 in writing and in English;

23.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and

23.1.3 sent to the relevant party at the address set out in clause 23.3.

23.2 Notices may be given, and are deemed received:

23.2.1 by hand: on receipt of a signature at the time of delivery;

23.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

23.2.3 by email: on receipt of a delivery OR read receipt email from the correct address.

23.3 Notices and other communications shall be sent to:

23.3.1 in the case of those to the Supplier, to ProVu Communications Ltd at:

Savile Mill
Savile Street
Milnsbridge
West Yorkshire HD3 4PG

contact@provu.co.uk in the case of those to the Customer, to any email or physical address or contact details notified on the Order Form (as updated from time to time pursuant to clause 23.4).

23.4 Any change to the contact details of a party as set out in clause 23.3 shall be notified to the other party in accordance with clause 23.1 and shall be effective:

23.4.1 on the date specified in the notice as being the date of such change; or

23.4.2 if no date is so specified, five Business Days after the notice is deemed to be received.

23.5 This clause does not apply to notices given in legal proceedings or arbitration.

23 Variation

24.1 No variation of our Agreement shall be valid or effective unless it is:

24.1.1 an Update made in accordance with our Agreement; or

24.1.2 made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

24 Assignment and subcontracting

25.1 Except as expressly provided in our Agreement, the Supplier may at any time assign, subcontract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

25.2 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, subcontract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without the Supplier's prior written consent.

25 Set off

Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

26 No partnership or agency

The parties are independent and are not partners or principal and agent and our Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall Severance

27.1 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.

27.2 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary

to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

27 Waiver

28.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

28.2 No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

28.3 A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

28 Costs and expenses

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of our Agreement (and any documents referred to in it).

29 Third party rights

A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

30 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

31 Governing law

Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

32 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).

THE SCHEDULE DEFINITIONS AND INTERPRETATION

In our Agreement:

Addendums

means each of the following:

- (a) the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.provu.co.uk/pdf/terms-and-conditions.pdf> ; and
- (b) the addendum identifying certain of the parties' respective rights and obligations in respect of security under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.provu.co.uk/pdf/terms-and-conditions.pdf> ;

Affiliate

means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010.

Applications

means the software or applications used by or on behalf of the Supplier to provide the Subscribed Services;

Authorised Affiliates

means, in respect of the relevant Subscribed Service, the Affiliates of the Customer (if any) identified in the Order Form as Authorised Affiliates in respect of that Subscribed Service;

Authorised Users

means, in respect of the relevant Subscribed Service, the named users authorised by the Customer to use that Subscribed Service in accordance with the terms of our Agreement;

Business Day

means a day other than a Saturday, Sunday or bank or public holiday in England;

Customer	has the meaning given in the relevant Order Form;
Customer Data	means all data (in any form) that is provided to the Supplier or uploaded or hosted on any part of any Subscribed Service by the Customer or by any Authorised User (but excluding Feedback as defined in clause 10.5);
Customer Systems	means all software and systems used by or on behalf of the Customer, the Customer's Affiliates, any of its or their direct or indirect sub-contractors, or any Authorised User in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);
Data Protection Losses	has the meaning given to that term in the Data Protection Addendum;
Documentation	means: <ul style="list-style-type: none">(a) the description of the relevant Subscribed Service (as Updated from time to time), which as at Order Acceptance is the latest version available at https://www.provu.co.uk/pdf/terms-and-conditions.pdf;(b) in respect of each Subscribed Service, the relevant instructions as to how to use that part of the Services made available by the Supplier at https://www.provu.co.uk/pdf/terms-and-conditions.pdf
Fees	means the Subscription Fees together with any other amounts payable to the Supplier under our Agreement;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;

Free or Trial Service	means any Subscribed Service identified as being provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis);
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none">(a) whether registered or not;(b) including any applications to protect or register such rights(c) including all renewals and extensions of such rights or applications.(d) whether vested, contingent or future; and(e) wherever existing
Master SaaS Terms	means the terms set out in the clauses and other provisions of this document (including the schedule), as Updated from time to time;
Materials	means all services, data, information, content, Intellectual Property Rights, websites, software and other materials provided by or on behalf of the Supplier in connection with the Services, but excluding all Customer Data;
Non-Supplier Materials	means Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the Customer and the relevant third party (including such Non-Supplier Materials which may be linked to, interact with or used by the Services) and all other Materials expressly identified as Non-Supplier Materials in our Agreement;

Open Source Software	means any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the date of our Agreement and any 'free software' as defined by the Free Software Foundation (www.gnu.org/philosophy/freesw.html) at the date of our Agreement;
Order Acceptance	means the effective date of the relevant Order Form;
Order Form	means the electric or physical form (including its schedules, annexes and appendices (if any)) ordering the Subscribed Services entered into by or on behalf of the Customer and Supplier, incorporating these Master SaaS Terms and our Agreement (and as varied by the parties by agreement in writing from time to time);
Permitted Downtime	means: <ul style="list-style-type: none">(a) scheduled maintenance which the Supplier shall use reasonable endeavours to undertake from [8pm] to [8am] (UK time);(b) emergency maintenance; or(c) downtime caused in whole or part by Force Majeure.
Permitted Purpose	means use solely for the Customer's internal business operations and, in respect of each Subscribed Services, also for the internal business of operations of the Authorised Affiliates identified in respect of that Subscribed Service on the Order Form, in each case in accordance with the applicable Documentation and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law: <ul style="list-style-type: none">(a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring,

disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of any Subscribed Service or Documentation;

- (b) permitting any use of any Subscribed Service or Documentation in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Subscribed Service or Documentation (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing (other than to the Authorised Affiliates for the Permitted Purpose));
- (c) combining, merging or otherwise permitting any Subscribed Service (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications or the Services (or any part), except as expressly

permitted under our Agreement.

Policies

means each of the following:

- (a) the Supplier’s policy on acceptable use of the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at *[Insert URL]* (the **Acceptable Use Policy**); and
- (b) the Supplier’s privacy policy in relation to the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at *[Insert URL]* (the **Privacy Policy**);

Pricing Terms means the details of pricing and fees in respect of each part of the Services, as initially provided under the Order Form and updated from time to time in accordance with clause 7.6 or, in respect of any part of the Services for which prices are not expressly agreed, on the Supplier’s Standard Pricing Terms;

Protected Data

has the meaning given in the Data Protection Addendum;

Purchased Authorised User Accounts

means, in respect of each Subscribed Service, the number of Authorised Users who may use that Subscribed Service

as set out in the Order Form;

Relief Event	means: <ul style="list-style-type: none">(a) any breach of our Agreement by the Customer; or(b) any Force Majeure;
Renewal Date	has the meaning given in clause 19.1;
Service Hours	means [24 hours a day, seven days a week] excluding Permitted Downtime;
Service Period	means the period beginning on Order Acceptance and ending with the last of the Subscribed Service Periods;
Services	means the Subscribed Services and the Support Services;
Subscribed Service Period	means (subject to clauses 19 and 20) in respect of each Subscribed Service, the duration during which such services are to be provided as initially set out in the Order Form and as varied in accordance with our Agreement;
Subscribed Service Specific Terms	
Subscribed Services	means each cloud service to which the Customer has subscribed as set out in the Order Form (and Subscribed Service shall refer to each respective service separately);
Subscribed Territory	means, in respect of the relevant Subscribed Service, the territories identified in the Order Form except to the extent it is illegal (including as a result of any embargo) under the laws of the United States, any member of the European Union or the United Kingdom (as binding on any person) for the Subscribed Service to be provided to or received within such territories from time to time;

Subscription Fee	means, in respect of each Subscribed Service, the fees payable by the Customer in consideration of that Subscribed Service as set out in the Pricing Terms;
Supplier	has the meaning given in the relevant Order Form;
Supplier Provided Materials	means all of the Materials provided or made available by or on behalf of the Supplier, but excluding all Customer Data and all Non-Supplier Materials;
Supplier’s Confidential Information	means all information (whether in oral, written or electronic form) relating to the Supplier’s business which may reasonably be considered to be confidential in nature including information relating to the Supplier’s technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers. All information relating to the Pricing Terms, the User Manual, the Description and any other technical or operational specifications or data relating to each Subscribed Service shall be part of the Supplier’s Confidential Information;
Supplier’s Standard Pricing Terms	means the Supplier’s standard pricing terms for each part of the Services, as amended by the Supplier from time to time
Support Services	means, in respect of the relevant Subscribed Service, the support services provided by the Supplier to the Customer as described in the Subscribed Service Specific Terms;
Update	has the meaning given in clause 6.2, and Updated shall be construed accordingly;
Update Notification	has the meaning given in clause 6.1; and
VAT	means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

In our Agreement, unless otherwise stated:

- 1.1 the table of contents, background section and the clause, paragraph, schedule or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
- 1.2 the Supplier and the Customer are together the **parties** and each a **party**, and a reference to a party includes that party's successors and permitted assigns;
- 1.3 words in the singular include the plural and vice versa;
- 1.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 1.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.7 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.