

**1. – ProVu General Terms and Conditions**

**1. Definitions and Interpretation**

1. The following definitions and rules of interpretation apply in these Conditions.

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| 1.  | <b>"Business Day"</b>                | 2.  | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;  |
| 3.  | <b>"Commencement Date"</b>           | 4.  | has the meaning given in clause 2.2;   |
| 5.  | <b>"Conditions"</b>                  | 6.  | these terms and conditions as amended from time to time in accordance with clause 21.3;  |
| 7.  | <b>"Confidential Information"</b>    | 8.  | the existence and terms of the Contract, information concerning the business, intellectual property rights, finances, affairs, customer, clients or suppliers of the other party; and any information that is identified as being of a confidential or proprietary nature or that would be regarded as confidential by a reasonable business person; |
| 9.  | <b>"Consignment Goods"</b>           | 10. | has the meaning given to it in clause 6;   |
| 11. | <b>"Contract"</b>                    | 12. | the contract between ProVu and the Customer for the supply of Goods and/or Services in accordance with these Conditions;   |
| 13. | <b>"Customer"</b>                    | 14. | the person or firm who purchases the Goods and/or Services from ProVu, either for its own use or on behalf of an End User;   |
| 15. | <b>"Customer Default"</b>            | 16. | has the meaning given in clause 10.3;  |
| 17. | <b>"Customer Materials"</b>          | 18. | has the meaning given to it in clause 10.2.5;  |
| 19. | <b>"Data Protection Legislation"</b> | 20. | in each case to the extent applicable to the parties and as amended, superseded, replaced or updated from time to time:  |
|     |                                      | 1.  | GDPR;  |
|     |                                      | 2.  | the UK GDPR;   |
|     |                                      | 3.  | the Data Protection Act 2018;  |

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|-----|---------------------------------|--|
|     |                                 | <p>4. the Privacy and Electronic Communications (EC Directive) Regulations 2003; and</p> <p>5. any other applicable data protection and privacy laws;</p>  |
| 21. | <b>"Deliverables"</b>           | 22. the deliverables set out in the Order, as supplied by ProVu for the Customer;  |
| 23. | <b>"Delivery Location"</b>      | 24. has the meaning given in clause 5.1;   |
| 25. | <b>"End User"</b>               | 26. where the Customer is not to be the user of the Goods and/or Services, a person or entity who places an order for the Goods and/or Services with the Customer, which order is then placed by the Customer with ProVu;  |
| 27. | <b>"Force Majeure Event"</b>    | 28. has the meaning given to it in clause 20;  |
| 29. | <b>"GDPR"</b>                   | 30. the General Data Protection Regulation ((EU) 2016/679).  |
| 31. | <b>"Goods"</b>                  | 32. the equipment (or any part of it) supplied by ProVu which could include hardware by way of sale or rental and any other equipment, machinery or spares and may also include non-standard or branded goods specifically obtained or prepared by ProVu for the Customer. Software may also be supplied as a Good under the Contract;   |
| 33. | <b>"Good Industry Practice"</b> | 34. in respect of a <b>party</b> , the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking as that <b>party</b> under the same or similar circumstances;  |
| 35. | <b>"Goods Specification"</b>    | 36. any specification for the Goods as provided by ProVu, in ProVu's catalogue or on ProVu's website, including any relevant plans or drawings;  |
| 37. | <b>"Initial Term"</b>           | 38. the minimum term commitment stipulated in the Order;   |
| 39. | <b>"Insolvency Event"</b>       | 40. the other party: <ul style="list-style-type: none"> <li>1. enters liquidation or a winding up petition is presented against the company;</li> <li>2. has a receiver, liquidator, administrator, trustee, monitor or an individual with a similar role appointed over any of its assets;</li> <li>3. proposes to make any arrangements with its creditors or passes a resolution to place the company into liquidation; or (d)</li> </ul> |

suffers an event which, under the law of a different country, is equivalent to any of the previously specified acts or events;

41. "Intellectual Property Rights"	42. patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
43. "Order"	44. the Customer's order for the supply of Goods, Software and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of ProVu's quotation, or as made via a self-serve portal, as the case may be;
45. "ProVu"	46. ProVu Communications Limited registered in England and Wales with company number 03748320;
47. "ProVu Materials"	48. has the meaning given in clause 10.2.10;
49. "Services"	50. the services, including the Deliverables, supplied by ProVu to the Customer as set out in an Order and as described in a Service Specification, which may include consultancy services and technical support services (including arranging delivery and collection services via third parties);
51. "Service Specification"	52. the description or specification for Services provided in writing by ProVu to the Customer;
53. "Software"	54. has the meaning given to it in clause 4.1;
55. "UK GDPR"	56. has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
57. "Warranty Period"	58. has the meaning given to it in clause 7.1.

2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal **personality**).

3. Any reference to the **Customer** in these Conditions shall, where the context so permits and where the Customer is purchasing the Goods and/or Services on behalf of a third party, be deemed to include a reference to the **End User**.

4. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

5. Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

6. A **reference to writing or written** excludes fax but not email.

## 2. Basis of Contract

1. The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2. The Order shall only be deemed to be accepted when ProVu issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**"). Any Contract is, until the fulfilment of the Order, conditional on ProVu providing confirmation by email to the Customer that the terms stated on the Order of the applicable Contract do not contain any errors or omissions.

3. Where applicable, the Contract shall continue in force for the Initial Term and shall continue in force until it is otherwise terminated in accordance with its terms.

4. Any drawings, descriptive matter or advertising issued by ProVu and any descriptions of the Goods, Software or Services contained in ProVu's catalogues or brochures are provided for the sole purpose of giving an approximate idea of the Goods, Software and/or Services so described. They shall not form part of the Contract nor have any contractual force.

5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

6. Any quotation given by ProVu shall not constitute an offer, and, unless otherwise agreed in writing, is only valid for a period of 20 Business Days from its date of issue.

7. No Order may be cancelled without ProVu's prior written consent. If cancellation is agreed, the Customer shall make payment to ProVu of all costs reasonably incurred by ProVu in fulfilling the Order up until the date of amendment or cancellation.

## 3. Goods

1. The Goods are as described in the Goods Specification.

2. ProVu reserves the right to amend the Goods Specification of the Goods if required by any applicable statutory or regulatory requirement.

3. If any Goods ordered are stored by ProVu at the Customer's request or after notice has been given that the Goods are ready for despatch the Customer shall reimburse ProVu for all reasonable storage costs and expenses (including any necessary insurance).

4. Goods leased to the Customer by ProVu or its suppliers shall remain the property of ProVu or its suppliers. The Customer shall comply with the terms of any applicable lease relating to such Goods, as those terms are communicated by ProVu to the Customer from time to time.

5. The Customer shall, in relation to any Goods leased to the Customer by ProVu or its suppliers:

1. from the date on which such Goods are delivered to the Customer (or an End User) until such Goods are re-delivered to or collected by ProVu, maintain in place with an insurer acceptable

to ProVu (acting reasonably) insurance covering the Goods to their full replacement value against all usual risks relating to loss or damage from whatever cause (other than exclusions agreed in writing by ProVu);

2. not sell, assign, sub-let, pledge or part with possession or control or otherwise deal with the Goods except as authorised in writing by ProVu;
3. not create any mortgage, charge, lien or other encumbrance on the Goods; and
4. keep the Goods in good condition and working order (fair wear and tear excepted).

6. The Customer acknowledges that ProVu does not make any representations or give any warranties as to the suitability of the Goods for the Customer's purposes or for the Customer's use of the Goods by its End Users.

#### **4. Software**

1. Where any software is provided by ProVu to the Customer to enable it to make use of the Services, including any of ProVu's proprietary software or a third party's software ("**Software**"), ProVu grants the Customer a non-exclusive, non-transferable licence to use the Software solely for the purpose of receiving the Services and to copy the Software to the extent required to make back-up copies, provided it complies with the terms of the relevant software licence.

2. Where Software is supplied and subject to third party licence terms relating to third party software, the Customer shall comply (and ensure that its End Users comply with) such terms including any that are embedded in any click through form or otherwise.

3. Except where the Customer obtains ProVu's prior written consent or as set out in the Order, the Customer acknowledges and agrees that it shall not:

1. rent, loan, lease, sub-licence, translate, merge, adapt, vary or modify the Software, in whole, or in part; nor
2. disassemble, decompile, reverse engineer, or create derivative works based on the whole, or any part, of the Software nor attempt to do such things except to the extent that such acts cannot be prohibited by law.

4. ProVu will do everything possible to optimise the reliability and performance of the Software however, the Software is provided on a 'best-efforts' basis and ProVu bears no liability to the Customer for the failure or unavailability of the Software.

5. The Customer acknowledges that ProVu does not make any representations or give any warranties as to the suitability of the Software for the Customer's purposes or for the Customer's use of the Software by its End Users.

#### **5. Delivery of Goods**

1. ProVu shall deliver the Goods (or arrange for the Goods to be delivered) to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after ProVu notifies the Customer that the Goods are ready. If a courier delivers Goods to the main entrance of the Delivery Location, delivery to a receptionist in such event shall be deemed to be effective delivery. Unless the Customer arranges its own delivery of the Goods, any costs associated with the delivery (and where appropriate, the export and import of the Goods) shall be invoiced to the Customer. Delivery of Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

2. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ProVu shall not be liable for any delay in or failure of delivery caused by a Force Majeure Event or the Customer's failure to provide ProVu with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If the Customer changes the delivery address or date or delivery fails for some reason that is not attributable to ProVu and ProVu incurs costs from the carrier, ProVu reserves the right to charge the Customer for such costs.

3. If the Customer (or the End User, where appropriate) fails to accept delivery of the Goods within 3 Business Days of ProVu notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by ProVu's failure to comply with its obligations under the Contract in respect of the Goods:

1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which ProVu notified the Customer or End User that the Goods were ready; and

2. ProVu shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4. If after 10 Business Days after ProVu notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, ProVu may resell or otherwise dispose of part or all of the Goods and, after deducting any reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. If a Customer requires ProVu to deliver the Goods in instalments, such instalments shall be invoiced and paid for separately. Each delivery will attract a separate delivery charge and consequently the total separate delivery charges may be in excess of the delivery charge agreed when the order was confirmed. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. The Customer shall be responsible for inspecting the Goods on arrival and shall notify ProVu immediately if there is any damage, discrepancy or shortage or within 7 days after receipt of notice of despatch in the event of non-arrival. Failure to do so shall constitute acceptance of any such Goods and a waiver of any claim against ProVu.

7. At ProVu's discretion, ProVu may allow the Customer (or the End User, if different) to return Goods (at the Customer's cost) after delivery, provided they are unused and in pristine, unopened condition. ProVu will levy a restocking fee of 15% of the sales value of such Goods. If restocking is agreed, ProVu will only issue a credit note after the Goods have been returned and checked for damage.

## **6. Consignment Goods**

1. If agreed between ProVu and a Customer, ProVu shall hold goods on a Customer's behalf (at ProVu's risk) ("**Consignment Goods**").

2. ProVu shall deliver such quantities of the Consignment Goods as the Customer may request from time to time. The Customer shall be responsible for the individual delivery charges arising in respect of each delivery and any fulfilment costs.

3. In the event of any loss of or damage to the Consignment Goods whilst in ProVu's possession, the maximum liability of ProVu to the Customer or the End User in all circumstances shall be the replacement cost of the Consignment Goods. If ProVu was not the vendor of such Consignment Goods, the Customer shall provide evidence to ProVu of the cost of the Consignment Goods.

4. All of these Conditions shall apply where ProVu is the vendor of Goods comprising the Consignment Goods.

5. Only Conditions 2.2, 2.5, 2.6, 2.7, clause 5 (but not clause 5.7), 8.1, 10.3, 12.4, 12.5, 12.6, 12.7, 12.8, 15, 16, 17.1, 17.2, 17.4, 18, 19, 20 and 21 and applicable definitions in clause 1 (the "**Applicable Conditions**") shall apply where ProVu is not the vendor of any Goods comprising the Consignment Goods.

6. Any reference to Goods in the Applicable Conditions shall be deemed to be a reference to the Consignment Goods or such part of the Consignment Goods as have been requested by the Customer from time to time.

## 7. Quality of Goods

1. Provided that the End User has provided all required facilities for the Goods to operate normally and provided that, where appropriate, software on any hardware is kept up to date, ProVu warrants that on delivery, and for the warranty period provided by individual product manufacturers in respect of particular products (including where any extended manufacturer's warranty is taken by the End User) ("**Warranty Period**"), the Goods shall:

1. conform in all material respects with the Goods Specification;
2. be free from material defects in design, material and workmanship; and
3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979),

and where there is no such manufacturer product warranty, ProVu warrants that the Goods shall be free of defects in workmanship and materials for the period of 12 months after despatch. Where agreed between ProVu and the Customer and upon payment of the relevant sums to ProVu, ProVu may provide additional warranties following the expiry of any manufacturer's warranty.

2. Subject to clause 7.3 and 7.4, ProVu shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

1. the Customer or the End User gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
2. ProVu is given all requested information and a reasonable opportunity of examining such Goods (in its place of operation, if appropriate); and
3. the Customer or the End User (if asked to do so by ProVu) returns such Goods to ProVu's place of business at the Customer's cost,

and further detail of ProVu's warranty policy is available at [www.provu.co.uk/returns](http://www.provu.co.uk/returns).

3. ProVu shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:

1. the End User makes any further use of such Goods after giving a notice in accordance with clause 7.2;
2. the defect arises because the End User failed to follow ProVu's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none)

good trade practice, including, but not limited to, if a waterproofed item is installed incorrectly, or if the Customer attempts to repair routers provided by ProVu itself;

3. the defect arises as a result of ProVu following any design or Goods Specification supplied by the Customer;

4. the Customer or the End User alters, adds to or repairs (either itself or using a third party) such Goods without the written consent of ProVu;

5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions including, but not limited to, if a non-waterproof item is used outside; or

6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4. For the avoidance of doubt ProVu shall not be liable to the Customer or any End User for any costs (including any third party costs) incurred by the Customer or an End User in attempting to repair (either itself or using a third party) any Goods that are the subject of the warranty in clause 7.1.

5. Except as provided in this clause 7, ProVu shall have no liability to the Customer or the End User in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

6. To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

7. These Conditions shall apply to any repaired or replacement Goods supplied by ProVu.

## **8. Title and Risk**

1. The risk in the Goods shall pass to the Customer on completion of delivery where ProVu has arranged delivery or upon transfer of the Goods to the Customer's delivery agent where the Customer arranges its own delivery.

2. Save as provided in clause 3.4, title to the Goods shall not pass to the Customer or End User until ProVu receives payment in full (in cash or cleared funds) for (i) the Goods; and (ii) any other goods that ProVu has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

3. Until title to the Goods has passed to the Customer, the Customer (or, if different, the End User) shall:

1. store the Goods separately from all other goods held by the Customer and not interfere with them in any way and so that they remain readily identifiable as ProVu's property;

2. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ProVu's behalf from the date of delivery;

3. notify ProVu immediately if it becomes subject to any of the events listed in clause 18.2.2; and

4. give ProVu such information relating to the Goods as ProVu may require from time to time.



4. Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ProVu receives payment for the Goods. However, if the Customer resells the Goods before that time:

1. it does so as principal and not as ProVu's agent; and
2. title to the Goods shall pass from ProVu to the Customer immediately before the time at which resale by the Customer occurs.

5. If before title to the Goods passes to the Customer or the End User, the Customer or the End User becomes subject to any of the events listed in clause 18.2.2, then, without limiting any other right or remedy ProVu may have:

1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
2. ProVu may at any time:
  1. require the Customer or, if different, the End User to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party (including that of the End User) where the Goods are stored in order to recover them.

## **9. Supply of Services**

1. ProVu shall supply the Services to the Customer or, where appropriate, the End User as set out and for the period specified in the Order and the Services will be provided in accordance with Good Industry Practice. ProVu shall be entitled to subcontract the delivery of the Services.

2. ProVu shall use all reasonable endeavours to meet any agreed performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3. ProVu reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ProVu shall notify the Customer in any such event.

4. If it becomes necessary to modify a Service in accordance with clause 9.3, ProVu may, by giving the Customer prior reasonable notice, migrate the Customer to the modified Service or to a suitable alternative Service.

5. The Customer acknowledges that ProVu does not make any representations or give any warranties as to the suitability of the Services for the Customer's purposes or for the Customer's use of the Services by its End Users.

6. ProVu agrees to comply with any Customer access and security procedures for a Customer site that ProVu has approved in advance. In addition, the Customer confirms that any person attending a Customer site from ProVu or on behalf of ProVu shall have a safe and suitable working environment.

## **10. Customer's Obligations**

1. The Customer warrants and undertakes to ProVu that it is entering into the Contract for the purposes of its trade, business and/or profession.

2. The Customer shall (and, if the Customer is not the End User, the Customer shall ensure that the End User, where appropriate, shall):

1. ensure that the terms of the Order are complete and accurate;
2. co-operate in all matters relating to the provision of the Goods and the Services;
3. provide ProVu, its employees, agents, consultants and subcontractors, with access to the relevant premises and facilities as reasonably required by ProVu to, where appropriate, provide the Services;
4. obtain all licences, consents and other regulatory approvals that are required to permit the Customer to make use of the Services;
5. provide ProVu with accurate information and any materials as ProVu may reasonably require to supply the Services ("**Customer Materials**") and ensure that it has all necessary rights, title, interest in and to the Customer Materials, and that it has obtained all consents, licences, permissions and releases necessary to grant ProVu the right to copy, display, distribute, download, transmit and otherwise use the Customer Materials solely as reasonable required to perform ProVu's obligations under a Contract. The Customer shall be liable in respect of any liability, loss, injury, damage, demand, claim, cost charge or expense which may be incurred or sustained by ProVu by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any Customer Materials, or where the compliance with any Customer Materials by ProVu constitutes the infringement of the Intellectual Property Rights of another person;
6. promptly inform ProVu of any inaccuracy or changes in the Customer Materials and reimburse to ProVu any costs reasonably incurred by ProVu in reliance on such incomplete or inaccurate information;
7. be solely responsible for the content and security of any data or information which it (or any person on its behalf) sends or receives using the Services;
8. prepare the premises for the operation of the Goods or the supply of the Services and ensure that its premises and all equipment connected to the Services complies with and is used in accordance with all reasonable procedures notified by ProVu and any applicable legislation;
9. ensure that all applicable software updates in respect of the Goods are applied without undue delay after release; and
10. keep all equipment, documents and other property of ProVu (including the Goods where ownership of the Goods is not to pass) ("**ProVu Materials**") in safe custody at its own risk, maintain the ProVu Materials in good condition until (where appropriate) returned to ProVu, and not dispose of or use the ProVu Materials other than in accordance with ProVu's written instructions or authorisation.

3. Equipment provided or installed by or on behalf of ProVu for use in connection with the Services shall not be used for any purpose other than that for which ProVu provided it. In the event that the Customer, an End User or any other third party attempts to operate or maintain any ProVu-supplied equipment without first obtaining ProVu's consent, the Customer shall indemnify ProVu, in addition to ProVu's other rights and remedies, for any damage incurred, repair and/or replacement (at ProVu's option) necessitated, and service charges relating to the maintenance, inspection, repair or replacement of such equipment. ProVu shall not be responsible for the installation, maintenance, compatibility, or performance of any equipment or software

not provided by ProVu. If such equipment or software impairs the Service, the Customer shall remain liable for payment. If such equipment or software causes or is likely to cause a hazard or service obstruction, the Customer shall, immediately upon notice, remedy the situation.

4. If ProVu's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer (or, in each case, by the End User) to perform any relevant obligation ("**Customer Default**"):

1. without limiting or affecting any other right or remedy available to it, ProVu shall have the right to suspend performance of the Services until the Customer or End User remedies the Customer Default, and the Customer Default shall relieve ProVu from the performance of any of its obligations whilst such Customer Default continues. Where the issue can be remedied by the Customer, ProVu will give the Customer 7 days' notice in which to do so before it suspends the performance of the Services;

2. ProVu shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default;

3. the Customer shall reimburse ProVu on written demand for any costs or losses sustained or incurred by ProVu arising directly or indirectly from the Customer Default; and

4. any relevant time periods for ProVu shall be extended until the Customer has complied with its responsibilities.

5. The Customer shall indemnify, defend and hold harmless ProVu from and against any and all losses, damages, claims, demands, costs and expenses, including reasonable legal fees (including liable for infringement of a third party's Intellectual Property Rights), personal injury, death or property damage caused by or arising from:

1. the content of any communication transmitted via a Service or maintained in connection with any Goods provided hereunder; or

2. the acts or omissions of an End User or a third party including their respective employees or representatives, in connection with the Services and/or Goods provided hereunder.

## **11. Non-solicitation**

1. The Customer shall not, without the prior written consent of ProVu, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract (or in the case of multiple Contracts the last Contract to be terminated or expire), actively solicit or entice away from ProVu, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of ProVu in the provision of the Services to the Customer. Any consent given by ProVu in accordance with this clause 11 shall be subject to the Customer paying to ProVu a sum equivalent to twenty per cent of the then current annual remuneration of ProVu's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

## **12. Charges and Payment**

1. The price for Goods:

1. shall be the price set out in the Order or, if no price is quoted, the price set out in ProVu's published price list as at the date of the Order;

2. shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be included in addition in the Order and invoiced to the Customer; and
  3. shall not include any costs associated with taxes or export/import duties where Goods are being sent abroad, all of which shall be arranged and paid for by the Customer or End User.
2. The price for Services and the Software shall be as set out in the Order or, if no price is quoted, the price set out in ProVu's published price list as at the date of the Order.
  3. ProVu reserves the right to:
    1. make a reasonable increase in the charges for the Services and/or the provision of the Software on an annual basis with effect from each anniversary of the Commencement Date;
    2. increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to ProVu that is due to:
      1. any factor beyond the control of ProVu (including foreign exchange fluctuations, increases in taxes and duties, and increases imposed by its suppliers);
      2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
      3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give ProVu adequate or accurate information or instructions in respect of the Goods.
  4. In respect of Goods, unless otherwise agreed in advance or there is an authorised credit account, the Customer shall pay for the Goods in advance of delivery. Where credit terms apply and unless otherwise agreed, the Goods shall be paid for within 30 days of despatch. No Goods shall be despatched if any credit limit would be exceeded or if any other invoices for the Customer are overdue. In respect of Services, ProVu shall invoice the Customer on completion of the Services.
  5. The Customer shall pay each invoice submitted by ProVu:
    1. unless otherwise agreed in writing, within 30 days of the date of the invoice or in accordance with any credit terms agreed by ProVu;
    2. in the currency set out on the invoice; and
    3. in full and in cleared funds by cheque, direct debit or by bank transfer to a bank account nominated in writing by ProVu by a method acceptable to ProVu.
  6. Unless otherwise stated, all amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT") and the Customer shall pay to ProVu any VAT as is chargeable.
  7. If the Customer fails to make a payment due to ProVu under the Contract by the due date, then, without limiting ProVu's other remedies (including informing credit reference agencies), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 12.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8. The Customer may be required to pay a fee of £20.00 per incident for any cancelled, dishonoured or failed direct debits or cheques.

9. The Customer authorises ProVu to levy a service Charge of three percent (3%) where ProVu is debiting the Customer's credit card account with any outstanding balance.

10. If any sum owed by the Customer to ProVu under the Contract or any other contract with ProVu is not paid by the due date, ProVu may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with ProVu.

11. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

### **13. Credit account**

1. Where the Customer requests a credit limit the Customer:

1. hereby consents to and shall procure that its owners, directors, officers and assigns consent to, ProVu carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, directors, officers and assigns; and

2. undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.

2. If the Customer is approved for a credit limit under clause 13.1, an account for the Customer will be opened and a credit limit (inclusive of VAT) will be notified to the Customer and this credit limit should not be exceeded by the Customer. ProVu reserves the right to suspend the Customer's account and any use of the Services in the event that this credit limit is exceeded at any time. Any increase in the credit limit must be requested in writing and will be subject to approval by ProVu, which may entail further credit checks in accordance with clause 13.1. ProVu does not accept responsibility for the Customer exceeding the credit limit due to any reason. Customers who anticipate exceeding their credit limit should contact ProVu to avoid their Services being suspended.

3. Credit limits are subject to periodic review at ProVu's discretion. ProVu may require that a deposit be placed in cases where the Customer incurs monthly charges in excess of the credit limit and the Customer authorises ProVu to debit their credit card, where details have been provided, at ProVu's discretion for this excess amount overdue, or for any amount over the credit limit set.

### **14. Intellectual Property Rights**

1. All Intellectual Property Rights in or arising out of or in connection with the Goods, Services or Software (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by ProVu or ProVu's licensors and nothing in these Conditions shall be construed so as to transfer such ownership.

2. ProVu grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

3. The Customer shall not sub-license, assign or otherwise transfer the rights granted by [clause 14.2](#).

4. The Customer grants ProVu a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to ProVu for the term of the Contract for the purpose of providing the Goods, Services or Software to the Customer.

5. The Customer shall indemnify ProVu against all claims, demands, actions, liability, costs and expenses (including reasonable legal fees) arising from any infringement by the Customer or an End User of ProVu's (or its licensors') Intellectual Property Rights.

## **15. Data Protection**

1. This clause 15 sets out the additional terms, requirements and conditions on which ProVu will process Personal Data when performing its obligations under a Contract.

2. Each party shall comply with applicable requirements of the Data Protection Legislation. This clause 15 is in addition to and does not replace a party's obligations under the Data Protection Legislation. The terms "controller", "processor", "data subject", "personal data", "personal data breach", "process", "processing" and "third country" have the meanings prescribed in the Data Protection Legislation.

3. For the purposes of the Data Protection Legislation, the Customer is the controller and ProVu is the processor. Annex 1 to this Schedule 1 sets out the subject matter, nature and purpose of processing by ProVu, the duration of the processing, the types of personal data, categories of data subject and the obligations and rights of the Customer as controller.

4. ProVu shall:

1. process personal data only on written instructions of the Customer and only to the extent required to fulfil its obligations under a Contract. If ProVu is required by any applicable laws to process personal data it shall, to the extent legally permitted, notify the Customer before doing so;

2. have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of, accidental loss or destruction of or damage to personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected. ProVu shall implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate: (i) the pseudonymisation and encryption of personal data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of security measures;

3. not engage another processor without general written authorisation from the Customer and without ensuring that the same data protection obligations as set out in these Conditions are imposed in a written contract on that other processor and ProVu shall remain fully liable to the Customer for performance of the other processor's obligations. ProVu shall ensure that its agreement with the other processor terminates automatically on termination of a Contract for any reason;

4. ensure that persons who have access to or process personal data are authorised to access personal data only when such persons have a work related need to access the personal data and that they keep the personal data confidential (either under contractual or statutory obligations);

5. ensure that where personal data is transferred outside of the European Economic Area: (i) the personal data is processed in a territory which is subject to a current finding by (in respect of EEA Personal Data) the European Commission or (in respect of UK Personal Data) the UK Government under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals; or (ii) ProVu participates in a valid cross-border transfer

mechanism under the Data Protection Legislation so that ProVu (and where appropriate the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of GDPR. Such valid cross-border transfer mechanism may consist of EEA Standard Contractual Clauses for the transfer of EEA Personal Data or the UK IDTA or the UK Addendum for the transfer of UK Personal Data or any other approved transfer mechanism from time to time in force; or (iii) the transfer otherwise complies with the Data Protection Legislation;

6. assist the Customer to respond to any request from a data subject;

7. notify the Customer without undue delay if it receives a request from a data subject to exercise any of their rights under the Data Protection Legislation in relation to the personal data processed by ProVu pursuant to a Contract;

8. notify the Customer without undue delay if it becomes aware of any accidental, unauthorised or unlawful processing of the personal data or a personal data breach including the following information: (i) description of the nature of the accidental, unauthorised or unlawful processing and/or personal data breach including where possible the categories and approximate number of the data subjects concerned and the categories of personal data concerned; (ii) a description of the likely cause and to the extent known the likely consequences of the unlawful processing, personal data breach or suspected personal data breach; and (iii) a description of the measures taken or proposed to be taken to address the accidental, unauthorised or unlawful processing and/or personal data breach together with measures to mitigate possible adverse effects;

9. following the occurrence of an event described in clause 15.4.7, cooperate with the Customer;

10. not inform any third party of any personal data breach without first obtaining the Customer's prior written consent, except when required to do so by law;

11. taking into account the nature of ProVu's processing and the information available to ProVu, provide reasonable assistance to the Customer complying with its obligations pursuant to Articles 32 to 36 of GDPR including in relation to data subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation and ProVu reserves the right to charge the Customer for such assistance;

12. at the written direction of the Customer, delete or return personal data to the Customer on termination of a Contract unless ProVu is required by law to continue to store the Personal Data;

13. maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Customer or the Customer's designated auditor no more than once per year, provided that the Customer shall provide reasonable notice of any audit it wishes to carry out; and

14. immediately inform the Customer if, in its opinion, an instruction from the Customer infringes the Data Protection Legislation.

5. If, during the term of a Contract the Data Protection Legislation changes and as a result amendments to these Conditions are necessary to ensure the parties can continue to comply with the Data Protection Legislation, the parties, acting reasonably, will discuss and agree appropriate amendments to these Conditions to achieve that compliance. Each party will bear its own costs in so doing.

## **16. Confidentiality**



1. Each party shall treat as confidential all Confidential Information of the other party and shall not disclose such Confidential Information to any person other than in accordance with these Conditions.
2. Neither party shall use or disclose any Confidential Information of the other party other than to exercise its rights and perform its obligations under a Contract or to make any disclosure that it is required to make by law, by any court of competent jurisdiction or by any regulatory or administrative body.
3. A party's Confidential Information shall not be deemed to include information that:
  1. is or becomes publicly known other than through any act or omission of the receiving party;
  2. was in the other party's lawful possession before the disclosure;
  3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
  5. the parties agree in writing is not confidential.

#### **17. Limitation of Liability**

1. Nothing in these Conditions shall limit or exclude ProVu's liability for:
  1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  2. fraud or fraudulent misrepresentation;
  3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
  5. defective products under the Consumer Protection Act 1987; or
  6. any liability which cannot legally be limited or excluded.
2. Subject to clause 17.1, ProVu shall not be liable to the Customer (or, for the avoidance of doubt, the End User, if different), whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  1. loss of profits;
  2. loss of sales or business;
  3. loss of anticipated savings;
  4. loss of use or corruption of software or data;
  5. loss of or damage to goodwill; or



6. any indirect or consequential loss.
3. Subject to clauses 17.1 and 17.2, ProVu's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract:
  1. in the case of direct physical damage to any tangible property (other than the Goods) to the extent it results from the negligence of ProVu, or of its employees, agents or contractors, shall be limited in respect of any one claim or series of claims arising out of the same event or circumstances, to £1 million; and
  2. in the case of any other claim or series of claims arising out of the same event or circumstances, shall be limited to the amount of the price paid by the Customer for the Goods and Services pursuant to the Contract.
4. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
5. This clause 17 shall survive termination of the Contract.

## **18. Termination**

1. Without affecting any other right or remedy available to it, ProVu may terminate the Contract by giving the Customer not less than 60 days' written notice.
2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  2. one or more of the following applies to the other party: (a) it is unable to pay its debts; (b) it ceases to trade; or (c) it suffers an Insolvency Event.
3. Without affecting any other right or remedy available to it, ProVu may terminate the Contract with immediate effect by giving written notice to the Customer if:
  1. the Customer fails to pay any amount due under the Contract on the due date for payment;  
or
  2. there is a change of Control of the Customer.
4. Without affecting any other right or remedy available to it, ProVu may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and ProVu if:
  1. ProVu has reasonable grounds to believe that the Customer has not complied with the Contract;
  2. the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 18.2.2, or ProVu reasonably believes that the Customer is about to become subject to any of them;

3. any of the information given to ProVu by the Customer is false or misleading; or
4. the Customer consumes a Service in an amount that (as determined by ProVu, acting reasonably) materially exceeds the Customer's credit limit;
5. the Customer fails to pay a deposit within 30 days of a request by ProVu under clause 13.3;
6. any scheduled or emergency maintenance is needed;
7. ProVu needs to substitute, change, reconfigure, relocate or rearrange a Service, as agreed with the Customer; or
8. ProVu receives an order, instruction or request to do so from any government entity, regulator or judicial body.

## 19. Consequences of Termination

### 1. On termination of the Contract:

1. the Customer shall immediately pay to ProVu all outstanding unpaid invoices and interest and, in respect of Services, Software and Goods supplied but for which no invoice has been submitted, ProVu shall submit an invoice, which shall be payable by the Customer immediately on receipt;
2. the Customer shall return all of the ProVu Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then ProVu may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
3. ProVu shall return all of the Customer Materials to the Customer. If ProVu fails to do so, then the Customer may enter ProVu's premises and take possession of them. Until they have been returned, ProVu shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
4. if the Customer made a deposit, ProVu will only return any surplus to the Customer after deduction of all unpaid Charges. Any request for repayment must be made in writing.

2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 20. Force Majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 21. General

1. **Publicity.** The Customer agrees that ProVu shall be entitled to publicise the fact that ProVu has entered into the Contract with the Customer, which shall include but not be limited to ProVu being permitted to refer to the Customer's name in any public announcements.

2. **Compliance.** Each party shall comply with the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010, the Modern Slavery Act 2015 or the Criminal Finances Act 2017.

3. **Variations.** These Conditions and any Contract may only be amended by written agreement between the parties.

4. **Notices.** Any notice or other document to be served under these Conditions or any Contract must be in writing, and a notice or other document will be effectively served if served in the following ways (and shall be deemed to have been served at the times stated):

1. by pre-paid recorded delivery post, on the second day after posting;
2. by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.4.1, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt;
3. by personal delivery, upon actual delivery or upon refusal to accept delivery.

Any notice or other document to be served under these Conditions or any Contract shall be addressed to the recipient's address stated above or any other address of which the recipient has notified the other party (or alternatively in the case of a company, to the registered office of that company).

5. **Further Assurance.** Each party shall, at the reasonable request and cost of the other party, do whatever is reasonably required to give the other party the full benefit of all of the provisions of these Conditions.

6. **Entire Agreement.** The Contract forms the entire agreement between the parties relating to its subject matter and supersedes all previous contracts, arrangements, representations (other than fraudulent misrepresentations) or understandings between ProVu and the Customer, in each case, whether written, arising from custom or oral.

7. **Assignment.** ProVu may assign, license or subcontract all or any part of its rights or obligations under a Contract without the Customer's consent. The Customer shall not be entitled to assign, license or subcontract all or any part of its rights or obligations under a Contract without the prior consent of ProVu in writing.

8. **Waiver.** Failure to exercise (or to fully exercise), or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy under these Conditions or by law.

9. **Severability.** If any provision of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from these Conditions in so far as these Conditions relate to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and the other provisions of these Conditions shall not be affected or impaired.

10. **Third Party Rights.** Nothing in these Conditions shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of these Conditions under the Contracts (Rights of Third Parties) Act 1999.

11. **Governing Law and Jurisdiction.** These Conditions are and any Contract is governed by and is to be construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.

## **Annex 1 - Processing, Personal Data and Data Subjects**

### **1. Subject Matter of Processing**

The provision of the Services by ProVu to the Customer.

### **2. Duration of Processing**

The duration of the provision of the Services to the Customer.

### **3. Nature of Processing**

Accessing only.

### **4. Purpose of Processing**

To allow ProVu to perform its obligations under a Contract, to assess any level of credit to extend, and to fulfil an Order.

### **5. Types of personal data**

1. Names;

2. Email addresses;

3. Telephone numbers; and

4. Any other Personal Data to which ProVu has access or may be able to view as a result of the provision of Goods, Software and Services to the Customer.

### **6. Categories of Data Subject**

Individuals at the Customer.

### **7. Obligations and Rights of the Controller**

The obligations and rights of the Customer as set out in the Data Protection Legislation and these Conditions.