

## **Prophix General Services Terms**

Version: July 3, 2025

These Prophix General Services Terms (the “General Services Terms”) and any applicable appendices are incorporated by reference into each Order (together, the “Agreement”) entered into between the Prophix entity named in the applicable Order (“Prophix”) and the Customer entity named in the applicable Order (“Customer”). These General Services Terms apply to all purchases and use of AI, Cloud, and Professional Services by Customers. All capitalized terms used but not defined in these General Services Terms have the meanings provided in the applicable Order or appendix.

### **1. DEFINITIONS**

Certain capitalized terms used in these General Services Terms have the meanings ascribed to them where they appear in these General Services Terms. In addition, the following capitalized terms have the following meanings:

- (a) **“Affiliate(s)”** means any entity or person that is directly or indirectly controlling, controlled by or under common control with a Party hereto.
- (b) **“AI Services”** means the AI services provided by Prophix pursuant to an applicable Order and the AI Services Terms appendix. For the avoidance of doubt, certain AI Services will be enabled by default.
- (c) **“Applicable Laws”** or **“Laws”** means the laws of the United States, United Kingdom, European Union, and Canada, including the data privacy laws thereof.
- (d) **“Authorized User(s)”** means the individual employees and representatives of Customer and its Affiliates who are permitted to access and use the Cloud Services for Customer’s and its Affiliates’ internal use. The number of Authorized Users shall not exceed the number of users specified in the Order. Each Authorized User must have a distinct username, email address and password, and must not share their access credentials with any other individual.
- (e) **“Change Order”** means a document signed by a duly authorized representative of each Party, pursuant to which the Parties agree to amend an Order and which is identified as a “Change Order”.
- (f) **“Cloud Services”** means the hosted services made available by Prophix to Customer including access to: (i) the Software and Documentation; (ii) the Cloud Services Environment; and (iii) Prophix Content.
- (g) **“Cloud Services Environment”** means the software-as-a-service application or platform made available by Prophix to Customer online, from which the Software is hosted and accessed.
- (h) **“Cloud Services Period”** means the Initial Cloud Services Period and any Renewal Terms, separately and collectively.
- (i) **“Content”** means data, documents, templates, text, audio, video, images or other content.
- (j) **“Confidential Information”** has the meaning set out in Section 8.
- (k) **“Customer Content”** means any data, templates, text, audio, video, or images that Customer and/or an Authorized User uploads to and/or provides to Prophix, including links or other connections to outside Content, and including any Personal Data and Third-Party Content included therein.
- (l) **“Documentation”** means the online help materials and release notes describing functional aspects of the Cloud Services that Prophix makes generally available from time to time for use in conjunction with the Cloud Services, which Prophix may modify and update from time to time at its discretion, the current version of which can be found at: [Cloud Services Documentation](#).
- (m) **“Effective Date”** means the date stipulated as such in an applicable Order.
- (n) **“Expenses”** means any pre-approved expenses agreed to in writing, including those listed in the Prophix Expense Policy which can be found here: [https://legaldocs.prophix.com/PSI\\_EP.pdf](https://legaldocs.prophix.com/PSI_EP.pdf).
- (o) **“Fees”** means the fees payable by Customer to Prophix pursuant to an Order.

- (p) **"Initial Order"** means the first Order form signed by the Parties incorporating these General Services Terms and identified as an "Initial Order".
- (q) **"Initial Cloud Services Period"** means the period stipulated as such in the Initial Order.
- (r) **"Intellectual Property Rights"** means all intellectual, industrial and other proprietary rights, including copyrights, trademarks, publicity rights, personality rights, moral rights, patents, in or to all intellectual or industrial property, including source code and object code of software, compilations of data, computer databases (whether or not protected by copyright), specifications, designs (including industrial designs and trade dress), know-how, confidential information, trade secrets, works of authorship, inventions and improvements, discoveries and systematic methods, techniques and approaches, and all applications, registrations, renewals and extensions pertaining to the foregoing, as applicable, and all rights and causes of action for infringement, violation, breach or misuse of any of the foregoing, together with all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
- (s) **"Order"** means any order form or Change Order form for Customer's purchase of Cloud and/or Professional Services from Prophix that references these General Services Terms, describes the services to be provided by Prophix, and is signed by both Parties.
- (t) **"Party"** and **"Parties"** means the entities stipulated as such in the applicable Order.
- (u) **"Personal Data"** means any information that relates to an identified or identifiable person as defined by applicable laws and regulations pertaining to privacy, data protection and processing of personal information.
- (v) **"Professional Services Hour"** means an hour of Professional Services to be provided by Prophix pursuant to an Order.
- (w) **"Professional Services"** means professional services provided from time to time by Prophix to Customer pursuant to an Order.
- (x) **"Prophix Content"** means any templates, reports, documents, data, text, training materials, audio, video or images that Prophix provides and makes available to Customer in connection with the provision of the services, excluding Customer Content and Third-Party Content.
- (y) **"Renewal Term"** means any period of Cloud Services that follows the expiration of an Initial Cloud Services Period.
- (z) **"Services End Date"** means the date specified in the applicable Order.
- (aa) **"Services Start Date"** means the date specified in the applicable Order.
- (bb) **"Software"** means the software owned or licensed by Prophix and made available by Prophix to Customer as part of the Cloud Services, excluding Third-Party Products.
- (cc) **"Third-Party Content"** means all Content, in any format, that is obtained or derived from third-party sources by Customer in conjunction with Customer's use of the Cloud Services.
- (dd) **"Third-Party Product(s)"** means products and services supplied by third parties to Customer or that Customer uses in connection with the Cloud Services, including, without limitation, any products and services identified in the Documentation as being compatible with the Cloud Services.

## **2. SERVICES PERIOD AND TERM OF AGREEMENT**

- 2.1 These General Services Terms will begin on the Effective Date specified in the Initial Order and will remain in effect for the duration of any Order(s) that remain in effect between the Parties (the "Services Period"). All Orders containing Cloud Services entered into during the Services Period shall be coterminous with the Cloud Services Period. All Orders containing Professional Services entered into during the Services Period shall expire on the Services End Date.
- 2.2 The term of the Initial Order will begin on the Services Start Date and will continue in effect until the Services End Date, unless renewed, extended or terminated in accordance with these General Services Terms or an applicable Order.

## **3. RIGHTS GRANTED**

- 3.1 As and if indicated in the applicable Order, solely for the duration of the Services Period, subject to Customer's payment obligations, and except as otherwise set forth in this Agreement, Customer has the non-exclusive, non-assignable, worldwide limited right to access and use the Cloud Services, solely for Customer's internal business operations and subject to the terms of the Agreement and the applicable Order(s). Customer is responsible for Authorized Users' compliance with the Agreement.
- 3.2 Customer's Affiliates may enter into Orders, in which event these General Services Terms will apply to such Affiliate and to the services purchased under such Order, and all references in these General Services Terms to "Customer" will be deemed to apply to that Affiliate. Such Affiliate will be bound by the terms of these General Services Terms as if it were an original party.
- 3.3 Third-Party Products are governed by separate agreements between Customer and the applicable third-party and Prophix has no obligation or liability to Customer in respect thereof. Customer is solely responsible for procuring Third-Party Products at Customer's expense and for compliance with any applicable agreements governing same. To the extent that Prophix provides or permits access to any Third-Party Products in connection with Customer's use of the Cloud Services, such Third-Party Products are provided on an "as-is" and "as available" basis, without warranty of any kind by Prophix. Prophix is not responsible for, and is under no obligation to control, manage, monitor or correct any Third-Party Products.
- 3.4 In the event Customer wishes to retain Prophix to provide Professional Services to Customer in connection with the Cloud Services or otherwise, such services shall be detailed in the applicable Order. Customer has no obligation to purchase Professional Services from Prophix and is entitled to retain third-parties to provide Customer with implementation, configuration and other professional services in connection with Customer's set-up and use of the Cloud Services, provided that Customer will be responsible for ensuring such third-parties' compliance with Customer's obligations under these General Services Terms.

#### **4. OWNERSHIP AND RESTRICTIONS**

- 4.1 All right, title and interest (including Intellectual Property Rights) in and to Customer Content is and shall remain owned by Customer, provided that Customer grants to Prophix, for the duration of the Services Period (plus any additional post-termination period during which Prophix provides Customer with access to retrieve an export file of Customer Content) the non-exclusive, royalty-free, sublicensable (to its subcontractors), non-transferable, worldwide right and license to use, reproduce, display and process Customer Content as reasonably required in order for Prophix to exercise its rights and perform its obligations under these General Services Terms and any Order. Nothing in this Agreement will be construed as assigning any Intellectual Property Rights owned by Customer to Prophix. Customer represents, warrants, and covenants that Customer has obtained all rights, consents and permissions necessary to grant Prophix such rights, and Customer will indemnify, defend, and hold harmless Prophix in the event of Customer's violation of this obligation.
  - 4.1.1 All right, title, and interest (including Intellectual Property Rights) in and to Professional Services deliverables, as detailed in the applicable Order, shall vest with Customer upon full and final payment of all Fees set forth in the applicable Order.
- 4.2 All right, title and interest (including all Intellectual Property Rights) in and to the Cloud Services and all patches, revisions, updates, upgrades, additions, enhancements, translations, ports, conversions, modifications, customizations and derivative works and all copies thereof (regardless of the form or media upon which such copies are recorded) are and shall remain at all times exclusively owned by Prophix or its licensors. All trade names, company names, trademarks, service marks and other product and service names and logos in or displayed by the Cloud Services are the proprietary marks of Prophix or its licensors and are protected by law and may not be copied, imitated or used, in whole or in part, without the consent of their respective owners. Where copies are permitted by Prophix in writing, Customer must include all proprietary rights, legends or notices on all copies in the same form and location as on or in the originals. No rights are granted to Customer hereunder other than as expressly set forth herein. Except as expressly set forth in these

General Services Terms, Prophix grants no license or other rights in or to the Cloud Services or any other intellectual or proprietary property of Prophix. All such rights are expressly reserved to Prophix.

- 4.3 Customer acknowledges and agrees that Prophix may use and exploit in any manner, on a worldwide, irrevocable, perpetual, royalty-free basis, any suggestions or feedback from Customer or the Authorized Users for improving or modifying Prophix's products and services, including the Cloud Services (collectively "Feedback"), provided that Prophix's public use of such Feedback does not include any Confidential Information of Customer or identify Customer as the source of such Feedback.
- 4.4 Except to the extent such restriction is expressly prohibited by applicable laws, Customer may not, directly or indirectly, and may not permit, encourage or assist any other person (including its Authorized Users) to:
- (a) use the Cloud Services in any manner except as expressly permitted by these General Services Terms and in accordance with the Documentation;
  - (b) sell, resell, license, sublicense, distribute, make available, rent, or lease the Cloud Services;
  - (c) make the Cloud Services available in any manner to anyone other than Customer or its Authorized Users, or to use the Cloud Services for the benefit of a third-party or otherwise create, assign, or transfer any interest in the Cloud Services in favour of any third-party, or include the Cloud Services in an offering to third-parties;
  - (d) modify, make, copy, or create derivative works based on the Cloud Services or any part, feature, function, or user interface thereof;
  - (e) disassemble, decompile, or reverse engineer, or otherwise attempt to derive the source code, algorithms or associated know-how of, any part of the Cloud Services;
  - (f) upload, post, host, transmit or create any Customer Content or information that is unlawful, infringing, offensive, abusive, fraudulent, threatening, tortious, libelous, defamatory, pornographic, obscene or otherwise objectionable, or any Customer Content or information that Customer is not authorized to transmit;
  - (g) reproduce, distribute, republish, host, commercially exploit or download any part of the Cloud Services (the foregoing prohibitions include but are not limited to data structures or similar materials produced by or inherent in the Cloud Services), or disclose, access, or use the Cloud Services in order to build or support, and/or assist a third-party in building or supporting, products or services competitive to Prophix;
  - (h) perform any benchmark, security, performance, or other tests of the Cloud Services;
  - (i) attempt to disable, impair, destroy or circumvent any access or use restrictions or security features of the Cloud Services or permit unauthorized access to the Cloud Services;
  - (j) use the Cloud Services in a manner that compromises, or would be reasonably expected to compromise, the integrity or security of the Cloud Services, their availability to other users or Prophix's operation thereof;
  - (k) alter or remove any trademarks or proprietary notices contained in or on the Cloud Services or deliverables;
  - (l) use the Cloud Services at any time other than during the Services Period;
  - (m) use the AI, Professional, or Cloud Services or deliverables in any manner that would reasonably be expected to expose Prophix to civil or criminal liability or otherwise violate applicable law, including export control laws, and/or might reasonably be expected to detrimentally affect the reputation and goodwill of Prophix; or
  - (n) share an Authorized User's account with multiple individuals: (each, a "Prohibited Use").
- 4.5 Except as required or prohibited by Applicable Law, Prophix reserves the right but is under no obligation to monitor Customer's use of the Cloud Services to confirm compliance with and detect any violation of applicable use restrictions by Customer and Authorized Users, including violations of Section 4.4. If Prophix reasonably suspects or believes that Customer or any Authorized Users have violated the restrictions set

forth in Section 4.4, or if in Prophix's reasonable judgment the Cloud Services or any component thereof have suffered or will likely suffer a significant threat to security or functionality, Prophix may, in its sole discretion: (a) restrict, limit, or temporarily suspend Customer's password, account and/or access to or use of the Cloud Services ("Suspension"); or (b) remove offending material or take such other reasonable remedial action as Prophix may reasonably deem necessary ("Removal"). Prophix will use commercially reasonable efforts to provide Customer with prior notice for any such Suspension or Removal, provided that advance notice may not be possible based on the circumstances. Prophix will use commercially reasonable efforts to: (a) make available to Customer all Customer Content existing in the Cloud Services as of the date of such Suspension or Removal; and (b) re-establish the affected Cloud Services promptly after Prophix determines, acting reasonably, that the situation giving rise to the Suspension or Removal has been cured or resolved.

## **5. USE OF THE CLOUD SERVICES**

- 5.1 In order to access and use the Cloud Services, Customer must use compatible hardware and software, including without limitation, computers, operating systems and internet browsers, all as identified in the Documentation.
- 5.2 Customer is responsible for:
- (a) ensuring its Authorized Users' compliance with these General Services Terms;
  - (b) identifying and authenticating all Authorized Users;
  - (c) properly configuring, distributing and governing access rights to the Cloud Services by Authorized Users;
  - (d) maintaining the security and confidentiality of usernames, passwords and other account or access information to prevent unauthorized access to the Cloud Services;
  - (e) ensuring the confidentiality and timely and proper termination of Authorized User records in Customer's local identity infrastructure or on Customer's local computers and within the Cloud Services;
  - (f) all activities that occur under Customer's and Authorized Users' usernames, passwords and accounts;
  - (g) notifying Prophix immediately if Customer becomes aware of or suspects any unauthorized use of the Cloud Services or unauthorized access to Customer's or Authorized Users' accounts;
  - (h) providing Prophix with all information, access and full good faith cooperation reasonably necessary to enable Prophix to provide the Cloud Services;
  - (i) obtaining and maintaining, at its own expense, all compatible hardware and other software necessary to access and use the Cloud Services, including without limitation, computers, operating systems and internet browsers, all as identified in the Documentation; and
  - (j) its own legal and regulatory compliance in connection with its use of the Cloud Services. Customer is responsible for making Prophix aware of any requirements that result from Customer's legal and regulatory obligations prior to entering into the Agreement.

Prophix will provide the Cloud Services and technical support services to Customers in accordance with the service levels set out on its website at [https://legaldocs.prophix.com/PSI\\_SLA.pdf](https://legaldocs.prophix.com/PSI_SLA.pdf), which Prophix may modify and update from time to time at its discretion, the current version of which can be found below at Appendix 1.

## **6. FEES AND TAXES**

- 6.1 Customer agrees to pay to Prophix the Fees set forth in the applicable Order, without deduction or setoff, on the payment schedule set forth in the applicable Order, and otherwise in accordance with the terms set forth in the applicable Order. Notwithstanding anything to the contrary, Fees and any discounts, rebates, or other incentives are subject to change at each Renewal Term.
- 6.2 Except as otherwise expressly set forth in these General Services Terms or the applicable Order, all Fees are non-cancelable and non-refundable.



- 6.3 Customer is responsible for paying all sales, value-added, use, transaction, excise, or similar taxes imposed on or otherwise associated with each Order. If Customer is exempt from any such taxes, Customer will promptly, in conjunction with agreeing to the Initial Order, provide Prophix with a copy of the relevant tax exemption certificates. Customer will reimburse Prophix for any deficiency related to any such taxes that are Customer's responsibility. If Customer is required by law to withhold or deduct a portion of the Fees payable, Customer will notify Prophix in writing in advance and will pay such additional amounts as are necessary to ensure that the net amount received by Prophix, after such deduction or withholding, equals the amount that Prophix would have received if there had been no such deduction or withholding. Each Party will be responsible for its own income taxes.
- 6.4 All overdue payments shall bear interest at the rate of 1% per month (or, the highest rate allowed by Applicable Law, whichever is lower), calculated daily and payable monthly, on the amounts outstanding until payment is received by Prophix. In addition, without limiting any other provision of these General Services Terms or any other rights available to Prophix, if Customer fails to pay any amounts when due: (a) Prophix may suspend the provision of the Cloud Services until such time as all such amounts and any applicable interest have been paid in full by Customer; and (b) Prophix may terminate these General Services Terms and any Orders then in effect on thirty (30) days prior written notice to Customer, if Customer does not pay all such amounts and any applicable interest within such thirty (30) day period.
- 6.5 Unless Customer sends a written objection to Prophix within ten (10) days following Customer's receipt of an invoice, detailing the reasons for its objection, Customer is deemed to have approved such invoice and may not subsequently dispute such invoice. The Parties will work in good faith to resolve any such objections as soon as reasonably possible.
- 6.6 As specified in the applicable Order, Prophix may provide some or all Professional Services on an hourly basis (each a Professional Services Hour) or may provide certain Professional Services on a flat rate or per-unit fee basis. Any Professional Services Hours will be provided on a time and materials basis, and Prophix does not represent or warrant that the number of Professional Services Hours set out in the applicable Order will be sufficient to meet Customer's requirements. If Customer wishes to purchase additional Professional Services or Professional Services Hours, the Parties may sign a Change Order. Professional Services in excess of forty (40) hours per individual in any calendar work week must be pre-approved in writing by Customer and Prophix.
- 6.7 Once an Order for Professional Services is signed, all Fees are non-cancelable and non-refundable, except as expressly provided otherwise in these General Services Terms.
- 6.8 If the applicable Order specifies that any Fees must be pre-paid ("Prepaid Fees"), Prophix will not begin providing any Professional Services until all such Prepaid Fees have been received by Prophix.
- 6.9 In the event that any Professional Services are provided at the Customer's premises, Customer will be charged a minimum of eight (8) Professional Services Hours per day when at Customer's premises, and Customer will reimburse Prophix for all reasonable Expenses incurred by Prophix and its personnel, with such reimbursement to be paid in accordance with the applicable Order.
- 6.10 For all Professional Services that are provided remotely, a minimum charge of one-half (1/2) hour will apply at the rate set out in the Order for the type of Professional Services being provided.
- 6.11 Notwithstanding anything to the contrary, the Parties acknowledge and agree that for purposes of this Fees and Taxes section, if a Reseller Customer has procured Prophix Cloud Services or Professional Services through a Prophix authorized Reseller, references in this section to "Prophix" will be used interchangeably with "Reseller", and "Customer" with "Reseller Customer" as applicable in the circumstances.
- 6.12 Each Prophix Cloud Services subscription shall automatically renew for additional successive terms equal to the Initial Cloud Services Period (each a "Renewal Term") following the expiration of the Initial Cloud Services Period unless either Party provides written notice of its intention not to renew. The Customer may elect not to renew by providing Prophix with at least forty-five (45) days' written notice prior to the expiration of the

then-current term. Prophix may elect not to renew by providing the Customer with at least sixty (60) days' written notice prior to the expiration of the then-current term.

## **7. TERMINATION**

- 7.1 If the Cloud Services expire or terminate for any reason: (a) Customer's right to access or use the Cloud Services will terminate immediately; and (b) all payment obligations of Customer will be due and payable within thirty (30) days following expiration or termination. Notwithstanding the foregoing, for a period of up to thirty (30) days after the end of the Cloud Services, Prophix will make Customer Content, then in the Cloud Services, available to Customer for the sole purpose of retrieval by Customer. Following such thirty (30) day period, and except as may be required or permitted by applicable law, Prophix will delete or otherwise render inaccessible any Customer Content that remains in the Cloud Services. Except as expressly set forth in these General Services Terms, Customer will have no entitlement to any refund of Fees in the event of termination of the Cloud Services.
- 7.2 If a Party is in material breach of these General Services Terms or any Order, the non-breaching Party may terminate such Order and/or these General Services Terms upon written notice to the breaching Party: (a) if such breach is not cured within thirty (30) days following receipt of written notice of the breach from the non-breaching Party, if the breach is capable of being cured; or (b) immediately, if the breach is not capable of being cured. In addition, Prophix may terminate the Agreement if any of the causes of Suspension or Removal are attributable to Customer and have not been cured within thirty (30) days after Prophix's initial notice thereof to Customer. For the avoidance of doubt, Customer's failure to pay any amounts due (or statement that it will not pay any amount when due) will be deemed a material breach.
- 7.3 Either Party may terminate any Order(s) then in effect immediately upon written notice to the other Party: (a) if the other Party ceases to do business in the ordinary course; (b) upon the commencement by or against the other Party of any application proposal, assignment or other proceeding under any bankruptcy, insolvency or reorganization laws or other similar laws; or (c) upon the appointment of a receiver for the other Party, or the levy, seizure, assignment or sale for or by any creditor or of substantially all of the other Party's property.
- 7.4 If Customer terminates this Agreement pursuant to Section 7.2 or the DPA, Prophix will refund the portion, prorated on a monthly basis, of any unused prepaid Fees for any period past the termination date, calculated as at the end of the month during which the Agreement was terminated. If Prophix terminates the Agreement pursuant to Section 7.2, Customer must pay within thirty (30) days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Cloud Services for the duration of the Cloud Services Period plus related taxes. The non-breaching Party may agree in its sole discretion to extend the thirty (30) day cure period for so long as the breaching Party continues reasonable efforts to cure the breach.

## **8. CONFIDENTIALITY**

- 8.1 Each Party may directly or indirectly disclose or provide access to information (in any form) to the other Party that relates to the disclosing Party's or its Affiliates' past, present and future financial information, activities including research and development, business activities, products, services, processes, and technical knowledge, which is identified by the disclosing party as confidential or would be reasonably understood to be confidential based on the circumstances of its disclosure or the nature of the information (collectively, "Confidential Information"). The term "Confidential Information" does not include "Personal Data" which is addressed in Section 9.
- 8.2 A Party's Confidential Information does not include information that:
- (a) is or becomes a part of the public domain through no act or omission of the receiving Party;
  - (b) was in the receiving Party's lawful possession without a duty of confidentiality prior to the disclosure by the disclosing Party and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party;

- (c) is lawfully disclosed to the receiving Party by a third-party without restriction and not in violation of any duty owed to the disclosing Party or to others; or
- (d) can be demonstrated by documented evidence to have been developed by the receiving Party prior to disclosure of, or without reference or reliance upon, the Confidential Information of the disclosing Party.

- 8.3 Each Party will protect Confidential Information of the other Party using the same means it uses to protect its own similar Confidential Information, but in any event no less than reasonable means. The receiving Party will use the disclosing Party's Confidential Information solely for the purposes of exercising its rights and performing its obligations under these General Services Terms and any applicable Order. Neither Party will, in the course of exercising its rights or performing its obligations hereunder, use or disclose to the other Party any information of any third-party which it is under a duty not to so use or disclose.
- 8.4 The receiving Party will not disclose the disclosing Party's Confidential Information to third-parties, either directly or indirectly, except that the receiving Party may disclose Confidential Information of the disclosing Party to the receiving Party's and its Affiliates' employees, officers, directors, advisors, agents or subcontractors who have a bona fide need to know the Confidential Information and are required to protect it against unauthorized use and disclosure in a manner no less protective than required under these General Services Terms. The receiving Party may disclose the disclosing Party's Confidential Information solely to the extent permitted hereunder or as required by applicable law, judicial, or trial process, provided that the receiving Party makes reasonable efforts (if permitted by applicable law) to provide the disclosing Party with prior notice and an opportunity to seek a protective order for such Confidential Information. The receiving Party will promptly notify the disclosing Party upon discovery of any misuse, misappropriation, or disclosure of the disclosing Party's Confidential Information, and will reasonably cooperate with the disclosing Party to prevent the further unauthorized use or disclosure of such Confidential Information.
- 8.5 The provisions of this Section 8 supersede the provisions of any Non-Disclosure Agreement that may have previously been entered into between the Parties.

## **9. DATA PROTECTION, PERSONAL DATA AND CUSTOMER CONTENT**

- 9.1 In performing the Cloud Services, Prophix will maintain commercially reasonable administrative, physical, and technical safeguards to protect the security and confidentiality of Customer Content submitted or uploaded by Customer through the Cloud Services, as outlined in Schedules 2 and 3 of the Prophix Data Processing Addendum ("DPA") (available at: [Prophix DPA](#)) which is incorporated into and made part of these General Services Terms. Customer Personal Data will be processed by Prophix in accordance with the DPA. Upon request during the Services Period, Prophix will provide to Customer its most recent SOC (or successor or similar) audit reports concerning Prophix's operations all of which reports will constitute Confidential Information of Prophix and be treated as such by Customer. Prophix will promptly notify Customer if Prophix becomes aware of any breaches of security that have resulted in the unauthorized access, use or disclosure of Customer Content and will use commercially reasonable efforts to cooperate with Customer in the investigation and remediation of any such breach of security. Prophix will also use commercially reasonable efforts to cooperate with Customer in responding to reasonable inquiries from Customer (or from Customer's regulators or data controllers) regarding Prophix's compliance as a data processor with its data security obligations under these General Services Terms. Notwithstanding the foregoing, Customer acknowledges that security measures are not infallible and are capable of circumvention. Consequently, Prophix does not guarantee that the Cloud Services or any information contained or stored therein cannot be accessed by unauthorized persons who are capable of circumventing such measures. Prophix will not be liable for any such unauthorized access provided that Prophix has adhered to the provisions of this Section 9 of these General Services Terms.
- 9.2 Each Party agrees to comply with its respective obligations under all applicable United States, United Kingdom, European Union, and Canadian data and privacy protection laws and regulations ("Privacy Laws"). Customer represents and warrants that Customer has and will have the authority and has and will have



obtained all required consents and provided all required notices, and obtained all required licenses, permission, and rights necessary to grant the licenses in this Agreement, to use and provide Prophix with all Customer Content, including all Personal Data contained in Customer Content, and to permit Prophix to use it in accordance with these General Services Terms.

- 9.3 Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all necessary rights in all Customer Content, and Customer bears all risks associated with access to and use of Customer Content.
- 9.4 Customer is responsible for any security vulnerabilities arising from Customer Content, and the consequences of such vulnerabilities, including any malware, viruses, Trojan horses, worms or other programming routines contained in Customer Content that could limit or harm the functionality of the Cloud Services or that could damage, intercept, or expropriate data. Customer will promptly notify Prophix if Customer becomes aware of any actual or suspected breaches of security that may result in the unauthorized access, use, or disclosure of the Cloud Services or Customer Content and will cooperate with Prophix in the investigation and remediation of any such breach of security. Customer may disclose or transfer, or instruct Prophix to disclose or transfer, Customer Content to a third-party, and upon such disclosure or transfer, Prophix is no longer responsible for the security or confidentiality of such Customer Content outside of the Cloud Services.
- 9.5 Customer will not include in Customer Content: (a) data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, health data, data concerning a natural person's sex life or sexual orientation; (b) payment card data; (c) age or date of birth; (d) government issued ID numbers; or (e) data of any other kind that imposes specific data security or other obligations for the processing of such data on Prophix beyond those contemplated in these General Services Terms. If Prophix believes, acting reasonably, that Customer's provision or Prophix's permitted usage of any Personal Data does or is likely to constitute a violation of Privacy Laws, Prophix will notify Customer and Prophix will be relieved of its obligations to the extent of such violation and the Parties will cooperate to determine a method of performing such obligations without violation.
- 9.6 Prophix is not responsible for any Customer Content generated via, or any Third-Party Content provided via, the Cloud Services; any such output data constitutes advice only, and usage of and decisions based on such content is the sole responsibility of Customer.
- 9.7 The Customer agrees that: (a) Prophix is not acting on the Customer's behalf as a Business Associate or subcontractor; (b) the Cloud Services may not be used to store, maintain, process or transmit protected health information ("PHI"); and (c) the Cloud Services will not be used in any manner that would require Prophix or the Cloud Services to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected health information" or "PHI" shall have the meanings described in HIPAA.

## **10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

- 10.1 Each Party represents that it has the right, legal power and authority to enter into and to perform its obligations under these General Services Terms and any Order. Additionally, each Party warrants that it will comply with all applicable United States, United Kingdom, European Union, and Canadian laws and regulations, including those applicable to anti-bribery/anti-corruption and the DPA, in its performance of these General Services Terms and any Order.
- 10.2 Prophix warrants that during the Cloud Services Period:
  - (a) the functionality of the Software will perform in all material respects as described in the Documentation;
  - (b) it will not materially decrease the overall security of the Cloud Services;
  - (c) it will not knowingly place any disabling code or viruses in the Cloud Services which would alter, destroy, or inhibit the Cloud Services, or its use by Customer; and
  - (d) it will use commercially reasonable virus protection technology in the provision of the Cloud Services.

- 10.3 For any breach of Prophix's warranties in Section 10.2, Customer's exclusive remedies are set forth in Section 7.4 (which shall be subject to the limits set forth in Section 11). The warranties in Section 10.2 do not apply to the extent that the breach of warranty is caused by: (a) the modification or alteration of the Cloud Services or any deliverable by or on behalf of any person other than Prophix; (b) the access, use, installation or operation of the Cloud Services or any deliverable by Customer or any person having access through Customer in violation of these General Services Terms or the Documentation; or (c) any error, defect or bug caused by or attributable to equipment, products, systems, data, integrations or configurations not supplied by Prophix (including Third-Party Products, Third-Party Content and Customer Content).
- 10.4 Prophix does not offer legal, tax, financial or accounting advice. Customer acknowledges that Prophix may provide general information about standard finance and accounting principles, but such general information is intended for informational purposes only and is not intended to be relied upon as professional advice.
- 10.5 EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES ARE PROVIDED BY PROPHIX TO CUSTOMER ON AN AS-IS BASIS, AND NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ACCURACY OF RESULTS. WITHOUT LIMITING THE FOREGOING, PROPHIX MAKES NO REPRESENTATIONS OR WARRANTIES AND DISCLAIMS ALL LIABILITY WITH RESPECT TO (A) ANY PRODUCTS OR SERVICES NOT PROVIDED BY PROPHIX PURSUANT TO AN ORDER; OR (B) THE OPERATION OF THE CLOUD SERVICES BEING UNINTERRUPTED, CONTINUOUS, ENTIRELY SECURE, OR COMPLETELY ERROR OR VIRUS FREE.

## **11. LIMITATION OF LIABILITY**

- 11.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES AND LICENSORS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, ARISING OUT OF OR RELATED TO THESE GENERAL SERVICES TERMS OR ANY ORDER, INCLUDING BUT NOT LIMITED TO LOST PROFITS, REVENUE, SAVINGS OR DATA, OR COSTS OF SUBSTITUTE GOODS OR SERVICES (REGARDLESS OF THE BASIS OR TYPE OF CLAIM OR THEORY OF LIABILITY AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).
- 11.2 IN ADDITION:
- (a) EXCEPT FOR ANY CLAIM BASED UPON CUSTOMER'S BREACH OF SECTION 4.4 (PROHIBITED USE), OR UPON CUSTOMER'S FAILURE TO MAKE TIMELY PAYMENT, THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS IN ANY MANNER RELATED TO THESE GENERAL SERVICES TERMS AND ANY ORDERS (WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, BY STATUTE OR OTHERWISE) WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THE ORDER(S) GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.
  - (b) WHERE THE CLAIM IS BASED UPON A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 8 (CONFIDENTIALITY) OR SECTION 9 (DATA PROTECTION, PERSONAL DATA AND CUSTOMER CONTENT), EACH PARTY'S AGGREGATE LIABILITY WILL NOT EXCEED USD\$1,000,000.
- 11.3 THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION 11 REPRESENT THE ALLOCATION OF RISK BETWEEN THE PARTIES AS REFLECTED IN THE PRICING AND ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. ADDITIONALLY, THESE DO NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS AND ARE INTENDED TO APPLY TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW AND REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY SPECIFIC OR EXCLUSIVE REMEDY.

## **12. INDEMNIFICATION**

- 12.1 Prophix will defend, or at its option settle, any claim, demand, suit or proceeding made against Customer or its Affiliates by a third-party that the Software or any Prophix Content infringes the third-party's copyright, registered patent or trademark, and Prophix will pay any damages and costs finally awarded in a final judgment (or amounts agreed in a monetary settlement), including reasonable legal fees and expenses, in any such claim defended by Prophix.
- 12.2 Prophix's defense and indemnification obligations under Section 12.1 will not apply to the extent that the infringement was caused by: (a) the Customer's use or combination of the Cloud Services with software, hardware, data, processes or services that are not provided by Prophix or authorized by Prophix in writing (including any Third-Party Products), if the Cloud Services or use thereof would not infringe without such combination; (b) the Customer's failure to use corrections or updates to the Cloud Services that are made available by Prophix; (c) the Customer's failure to use the Cloud Services in accordance with these General Services Terms or the Documentation; or (d) Customer Content, Third-Party Services, or Third-Party Content.
- 12.3 If the Cloud Services are, or in Prophix's opinion are likely to be, held to be infringing, Prophix will at its expense and option either: (a) procure the right for Customer to continue using it; (b) replace the infringing portion with non-infringing technology having substantially similar functionality; (c) modify it to make it non-infringing; or (d) terminate these General Services Terms and/or any affected Order, and refund the portion, prorated on a monthly basis, of any unused, prepaid Fees for any period past the termination date, calculated as at the end of the month during which these General Service Terms and any affected Order are terminated. Sections 12.1 to 12.3 set forth Customer's sole and exclusive remedies for any actual or alleged infringement of any intellectual property by the Cloud Services.
- 12.4 Customer will defend, or at its option settle, any claim, demand, suit or proceeding brought against Prophix or its Affiliates by a third-party, which arises from or is related to: (a) an allegation that any Customer Content or Third-Party Content infringe the third-party's copyright, registered patent or trademark or violate any applicable laws or regulations; or (b) the failure by Customer to obtain any necessary rights, consents or permissions, or provide any necessary notices, as required by applicable laws and regulations in respect of Customer Personal Data, Customer Content or Third-Party Content, and Customer will pay any damages and costs finally awarded in a final judgment (or amounts agreed in a monetary settlement), including reasonable legal fees and expenses, in any such claim defended by Customer.
- 12.5 The indemnification obligations of the Parties are conditional upon the indemnified party: (a) promptly notifying the indemnifying party in writing of any eligible claim or demand; (b) providing the indemnifying party with sole control over the defense and settlement of the claim or demand; and (c) providing the indemnifying party with all information and cooperation reasonably requested by the indemnifying party in connection with the defense and settlement of the claim or demand, provided that: (1) the indemnifying party will not consent to any judgment or agree to any settlement that imposes any admission of liability or any obligation on the indemnified party (monetary or otherwise) without the prior written consent of the indemnified party (which will not be unreasonably withheld, conditioned or delayed); and (2) the indemnified party will have the right to participate in the defense of such claim or demand with counsel of its choosing, at its own expense.

## **13. CLOUD SERVICES TOOLS, SERVICE ANALYSES AND MODIFICATIONS**

- 13.1 Prophix may use software and utilities (collectively, the "Tools") to monitor and administer the Cloud Services and to help resolve Customer's service requests in connection with the Cloud Services. The Tools will not collect or store any Customer Content residing in the Cloud Services, except as necessary to provide the Cloud Services or troubleshoot service requests or other problems in the Cloud Services. Information collected by the Tools (excluding Customer Content) may also be used internally by Prophix to assist in

managing Prophix's product and service portfolio, to help Prophix address deficiencies in its product and service offerings, and for license and Cloud Services management.

- 13.2 Prophix may compile statistical and other information related to the performance, operation and use of the Cloud Services, and use data from the Cloud Services in aggregated and anonymized form for security and operations management, to create statistical analyses, and for research and development purposes (the "Service Analyses"). Prophix retains all Intellectual Property Rights in Service Analyses.
- 13.3 Prophix may modify or make updates to the Cloud Services from time to time, including to reflect changes in technology, industry practices and market demand, provided that any such changes will not result in a material reduction in the functionality, security or availability of the Cloud Services provided under the applicable Order.

#### **14. AMENDMENT OF GENERAL SERVICE TERMS**

Prophix reserves the right to amend these General Services Terms in its sole discretion from time to time, provided that any such amendments will not apply to any Orders then in effect between the Parties and will become effective immediately upon the start of the next Renewal Term unless the Parties expressly agree otherwise in advance of any such Renewal Term and except to the extent the amendments apply to new functionality or the DPA, or are required by Applicable Law, in which case they will be effective immediately. Prophix will at all times post the current version of the Prophix General Services Terms at [https://legaldocs.prophix.com/PSI\\_GST.pdf](https://legaldocs.prophix.com/PSI_GST.pdf). Prior versions will be made available to Customers upon request. If Customer objects to the updated General Services Terms, as its exclusive remedy, Customer may choose not to renew. By continuing to use the services after the effective date of any modifications to these General Services Terms, Customer agrees to be bound by the modified terms in connection with any future Orders. It is Customer's responsibility to check for modifications to these General Services Terms. Prophix last modified these General Services Terms on the date listed in the footer of this Agreement.

#### **15. FORCE MAJEURE**

Neither Party will be responsible for any failure or delay of performance under these General Services Terms or any Order (other than the obligation to pay amounts owing) if caused by: an act of war, riot, terrorism, hostility, or sabotage; act of God, earthquake or flood; pandemic or epidemic; electrical, internet, network or telecommunication outage or disruption that is not caused by the obligated Party including unavailability of third-party servers; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated Party (each, a "Force Majeure Event"). The affected Party will give the other Party notice of such Force Majeure Event and its expected duration, to the extent known. Both Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such event continues for more than thirty (30) days subsequent to written notice, either Party may cancel unperformed Order(s) upon written notice to the other Party. This Section does not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's accrued payment obligations in relation to the Cloud Services.

#### **16. GOVERNING LAW AND JURISDICTION**

The Agreement will be exclusively governed by and construed in accordance with the laws of the jurisdiction specified below without giving effect to its conflict of laws principles and without reference to the United Nations Convention on Contracts for the International Sale of Goods or the United States Uniform Computer Information Transactions Act adopted by any State, the application of which are expressly excluded or opted out of by the Parties, as applicable. Each Party specifically attorns to the exclusive jurisdiction of the courts of such jurisdiction over all matters arising in relation to the Agreement. Customer may have other rights under mandatory law. Prophix does not seek to limit those rights to the extent prohibited by applicable jurisdictional law.

| <u>Address of Customer in Order Form</u> | <u>Jurisdiction</u>     |
|--|-------------------------|
| Canada                                   | Ontario, Canada         |
| United States of America                 | Delaware, United States |

South America  
United Kingdom  
European Union  
Asia Pacific  
Rest of World

Sao Paulo, Brazil  
London, England and Wales  
Brussels, Belgium  
Canberra, Australia  
Delaware, United States

## **17. NOTICES**

- 17.1 Any notice or other communication required or permitted to be given by the Agreement must be in writing and will be effectively given if sent to:
- (a) Prophix, at the address or email address set out in the applicable Order, with a copy to:  
[legal@prophix.com](mailto:legal@prophix.com); and
  - (b) the Customer, at the address or email address set out in the applicable Order or to the most current address or email address on record with Prophix.
- 17.2 All notices will be in writing in the English language and will be duly given if sent by email to the respective addresses of the Parties described above. Any notice given will be deemed to have been received on the next local business day following the day of transmission. Each Party may change its address or email address for the receipt of notices by giving notice of change as required in this Section. For purposes of this Section “local business day” means a day which, in the jurisdiction of the address of the recipient, is not a weekend or public holiday and is a day upon which banks are generally open for business.
- 17.3 Notwithstanding Sections 17.1 and 17.2, Prophix may give notices applicable to Prophix’s Cloud Services customer base by means of a general notice on the Prophix portal for the Cloud Services.

## **18. ASSIGNMENT**

Except as provided herein, neither Party may assign the Agreement, or any rights granted under the Agreement to another individual or entity, in whole or in part, whether voluntarily, by operation of law or otherwise without the prior written approval of the other Party. Any such attempted assignment or transfer will be null and void. Notwithstanding the foregoing, either Party may assign these General Services Terms and all Orders then in effect to an Affiliate, or in connection with the sale of substantially all of its assets, or in a merger, amalgamation or similar transaction provided that copies of the documentation evidencing the transaction are provided to the other Party prior to the effective date of such assignment and provided that the assignee is not a competitor of the other Party, or could cause the other Party to be in violation of any applicable law, statute, or regulation. These General Services Terms and any Order(s) will be binding on and enure to the benefit of the Parties and their respective successors and permitted assigns.

## **19. MISCELLANEOUS**

- 19.1 The relationship between Prophix and Customer is that of independent contractors and the Parties agree that no partnership, joint venture, employer-employee, franchisor-franchisee, or agency relationship exists between them, and neither Party has the power to bind the other Party.
- 19.2 Customer agrees that upon receipt of Customer’s prior written consent, Prophix may identify Customer as its customer on its websites and marketing, advertising and promotional materials and media.
- 19.3 If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term will be replaced with another term consistent with the purpose and intent of the Agreement.
- 19.4 The Parties agree that breach of the provisions of these General Services Terms relating to ownership, intellectual property rights and/or confidentiality may cause the non-breaching Party irreparable harm for which money damages will not make it whole. The non-breaching Party will be entitled, without any bond or other security being required, to seek specific performance and injunctive relief as remedies for any such



breach. The foregoing is in addition to any other remedies which the non-breaching Party may have hereunder, at Applicable Law or in equity. To the extent permitted by Applicable Law, the Parties agree to waive any right to trial by jury in any matter related to this Agreement or the relationship between the Parties.

- 19.5 Unless specifically identified as an exclusive remedy, the rights and remedies under the Agreement are cumulative, may be exercised singularly or concurrently, and are in addition to and not in substitution for any rights or remedies available under Applicable Law or in equity to the injured Party. Neither Party will retain the benefit of inconsistent remedies.
- 19.6 No provision of the Agreement will be interpreted against a Party merely because that Party or its legal representative drafted the provision. The division of the Agreement into sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of the Agreement.
- 19.7 The Parties hereto agree that the provisions of this Section, as well as Section 4 (Ownership and Restrictions), Section 6 (Fees and Taxes), Section 7 (Termination), Section 8 (Confidentiality), Section 9 (Data Protection, Personal Data and Customer Content), Section 10 (Warranties, Disclaimers and Exclusive Remedies), Section 11 (Limitation of Liability), Section 12 (Indemnification), Section 16 (Governing Law and Jurisdiction), Section 17 (Notices), and this Section 19 (Miscellaneous) together with any other provisions that by their nature are intended to survive termination or expiration shall survive and remain in full force and effect after the termination or expiration of the Agreement.
- 19.8 Customer will not, directly or indirectly export any product, including Software, received from Prophix to any destination, entity or person to which such export is restricted or prohibited by applicable laws, without obtaining prior written authorization from the competent government authorities as required by those laws. Prophix makes no representation that the Cloud Services are appropriate or available for use in any specific country. Customer will not use the Cloud Services for military or quasi-military projects, unless specifically authorized by the appropriate governmental body for such purposes, and notice is provided to Prophix thereof. The Software is commercial computer software, as that term is defined in 48 §C.F.R. 2.101. If Customer is part of the United States Government or any contractor for it, Customer will receive only those rights with respect to the Software as are granted to all other customers.
- 19.9 These General Services Terms, together with any appendices and exhibits incorporated herein (including reference to information contained in a URL), and any Orders entered into between the Parties, constitute the complete and final agreement pertaining to the services purchased by Customer, and supersede all prior or contemporaneous proposals, agreements, understandings, negotiations or representations, written or oral, regarding such services. Except as provided elsewhere in these General Services Terms, no modifications, alterations or waivers of any provisions contained herein will be binding on the Parties unless evidenced in writing and signed by duly authorized representatives of both Parties. A Party's failure to enforce or exercise any provision set forth in this Agreement is not a waiver of that provision.
- 19.10 Except as otherwise set forth herein, this Agreement does not create any third-party beneficiary rights.
- 19.11 In the event of a conflict or inconsistency between an Order and these General Services Terms, the Order will prevail, provided that the Order specifies the applicable provision in these General Services Terms that it intends to modify. Notwithstanding the foregoing, in the event of a conflict or inconsistency between these General Services Terms or an Order (on the one hand) and the Prophix DPA (on the other hand), the Prophix DPA will govern. Any different or additional terms and conditions set forth in any purchase order, confirmation, order form or similar form provided by Customer, even if dated after the Effective Date, will have no force or effect unless such document specifies the applicable provisions of the General Services Terms or Order that it intends to modify and is signed by duly authorized representatives of both Parties.
- 19.12 The English language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

## **20. PROFESSIONAL SERVICES SPECIFIC TERMS *(not applicable unless indicated in an Order)***

- 20.1 Prophix will, after execution by the Parties of the applicable Order, designate an appropriate individual (the “Prophix Point of Contact”) to act as a single point of contact for Customer with respect to all matters concerning the Professional Services.
- 20.2 Customer will, on the applicable Order, designate an appropriate individual (the “Customer Designated Representative”) to act as a dedicated resource and single point of contact for Prophix with respect to all matters concerning the Professional Services. The Customer Designated Representative will: (a) be a member of Customer’s senior management team; (b) possess commensurate, appropriate and sufficient skills, knowledge and/or experience; and (c) have the required authority to oversee the Professional Services, evaluate the results of the Professional Services, provide feedback, ensure participation of Customer personnel in training and testing, where applicable, and establish and maintain internal controls, including monitoring ongoing activities.
- 20.3 The Parties will, through the Customer Designated Representative and Prophix Point of Contact, work together in good faith towards resolving any issues that arise between them relating to the Professional Services in a mutually satisfactory manner. Each Party will appoint a management level individual (an “Escalation Contact”) to whom any unresolved disputes relating to the Professional Services or this Agreement will be escalated when necessary. If the issue cannot be resolved by the Customer Designated Representative and Prophix Point of Contact within a period of ten (10) days, the dispute will be escalated to the Escalation Contacts for resolution. Customer may change the Customer Designated Representative by written notice to the Prophix Point of Contact, and Prophix may change the Prophix Point of Contact by written notice to the Customer Designated Representative.
- 20.4 Customer will comply with all applicable laws in connection with its receipt of these Professional Services and will at all times and in a timely manner furnish Prophix with all necessary and relevant information, documentation and assistance for the performance of the Professional Services, including but not limited to, business process documentation, existing report samples, technical data for interfacing with existing systems, and access to employees and relevant existing systems. Customer will ensure that its key resources are reasonably available to allow for adequate time for Prophix to transfer knowledge and provide training to Customer and for the Parties to configure models and test appropriately. Customer acknowledges that its participation and collaboration with Prophix and its personnel in a timely manner are critical for the successful and timely performance of the Professional Services.
- 20.5 If any Professional Services are required to be provided at Customer’s premises: (a) Customer will provide Prophix and its personnel with safe and secure access to the Customer’s premises and the necessary equipment, systems, information and personnel; (b) Customer will ensure that it has obtained and will maintain all necessary third-party consents that may be required in order to provide such access; and (c) Prophix will ensure that its personnel comply with any reasonable security policies and procedures while on Customer’s premises, provided that Customer has provided such policies and procedures in writing to Prophix at least thirty (30) days in advance.
- 20.6 Prophix will:
- (a) provide the Professional Services in a manner commensurate with industry standards, and subject to the provisions herein with respect to scheduling and Customer’s obligations;
  - (b) with respect to Professional Services Hours, keep accurate records of time worked;
  - (c) use a combination of timesheets, status reports and calls with Customer to review key metrics such as Professional Services Hours remaining, tasks completed and remaining work items;
  - (d) work with Customer on how to best allocate the Professional Services Hours to focus on the highest priority items identified by Customer; and
  - (e) comply with all Laws in connection with Prophix’s performance of the Professional Services.
- 20.7 Subject to Customer’s prior written approval, not to be unreasonably delayed, conditioned, or withheld, Prophix may sub-contract the provision of any of the Professional Services to a third-party who Prophix

determines has the requisite expertise to provide the sub-contracted services. Any such third-party is deemed to be a representative of Prophix when providing such sub-contracted services to Customer.

20.8 Each Order for Professional Services will set out:

- (a) the Effective Date of the Order;
- (b) the names of Customer and the Prophix entity that is entering into the Agreement;
- (c) a description of the Professional Services to be provided pursuant to such Order, including, if applicable, the number of Professional Services Hours to be provided;
- (d) the Fees to be paid by Customer; and
- (e) payment terms, including frequency of invoicing if applicable.

20.9 If either Party wishes to amend an Order or change any of the items described therein, the Parties will work together in good faith to negotiate such amendments or changes (including any resulting change in applicable Fees), but no amendments or changes will be effective unless agreed to in writing by both Parties in a Change Order.

20.10 Unless otherwise specified in the applicable Order or this Agreement, any prepaid Professional Services will expire on the earlier of (i) twelve (12) months from the Effective Date of the applicable Order, or (ii) the Services End Date (collectively, the "Prepaid Professional Services Expiration Date"). Prior to the Prepaid Professional Services Expiration Date, Customer must inform Prophix whether it wishes to extend the Prepaid Professional Services Expiration Date or purchase additional services with the Prepaid Fees. If Customer wishes to extend the Prepaid Professional Services Expiration Date, the Parties will sign a Change Order providing for a later Prepaid Professional Services Expiration Date. If Customer does not wish to extend the Prepaid Professional Services Expiration Date or the Parties are unable to agree on a Change Order, Customer may apply unused Prepaid Fees to the purchase from Prophix of training and/or Solution Units, provided that such purchase will be subject to a separate agreement. Upon the Prepaid Professional Services Expiration Date, any unused portion of the prepaid Professional Services shall be forfeited, and Customer shall not be entitled to any refund or credit with respect thereto.

**21. PROFESSIONAL SERVICES SCHEDULING (*not applicable unless indicated in an Order*)**

21.1 Prophix and Customer will schedule dates and times for the provision of Professional Services in advance and will confirm same by email.

21.2 Customer may request that Professional Services be rescheduled by emailing the Prophix Point of Contact. In the event that Customer provides less than seventy-two (72) hours' notice that it wishes to reschedule any Professional Services, the rescheduled Professional Services may be subject to a rescheduling fee equivalent to the hours cancelled, less any hours that can be rescheduled by Prophix to another project. If the rescheduled Professional Services were to be provided by Prophix at Customer's premises, Customer will reimburse Prophix for the cost of all travel expenses or cancellation fees that are incurred in connection with such rescheduling.

**Applicable Appendices**

**Appendix 1:** Prophix Cloud Services and Technical Support Services – Service Level Addendum  
(accessible at [https://legaldocs.prophix.com/PSI\\_SLA.pdf](https://legaldocs.prophix.com/PSI_SLA.pdf))

**Appendix 2:** Prophix AI Services Addendum  
(accessible at [https://static.prophix.cloud/legal/PROPHIX\\_GENERAL\\_SERVICES\\_AI\\_ADDENDUM.pdf](https://static.prophix.cloud/legal/PROPHIX_GENERAL_SERVICES_AI_ADDENDUM.pdf))