

TERMS AND CONDITIONS OF PROVISION OF MPRO5 SERVICE

In consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The capitalized terms used in this Agreement together with the following additional definitions and rules of interpretation:

“**Agreement**” means these Terms and Conditions of Provision of mpro5 Service, together with the applicable Front Sheet that references these Terms and Conditions.

“**Application**” means mpro5’s mobile application and related software marketed under the name “mpro5”, and made available for download by Authorized Users in object code form only, as a tool to access the Service.

“**Authorized Locations**” means those Customer locations set forth as “Authorized Locations” in the applicable Front Sheet.

“**Authorized User**” means those employees of the Customer who are authorized by the Customer to use the Service, the maximum number of which is set forth on the Front Sheet.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in New York when banks in New York are open for business.

“**Confidential Information**” means any information (however recorded or preserved) that is confidential or proprietary in nature disclosed by a Party to the other Party, whether disclosed orally, electronically or in writing, including but not limited to business, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, product information, know-how, designs, trade secrets or software. For clarity, the mpro5 Offering and terms of this Agreement shall be deemed to be the Confidential Information of mpro5, and the Customer Content shall be deemed to be the Confidential Information of Customer. A Party’s Confidential Information shall not be deemed to include information that:

(i) is or becomes publicly known other than through any act or omission of the receiving Party;

(ii) was in the other Party’s lawful possession before the disclosure;

(iii) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or

(iv) is independently developed by the receiving Party without use of or reference to the other Party’s Confidential Information.

“Consultancy Services” means mpro5’s consultancy services set forth in the applicable Statement of Work.

“Customer Content” means the Import Content and the Service Data.

“Documentation” has the meaning set forth in Section 2.1.

“EULA” means mpro5’s end user license agreement that an Authorized User is required to read and accept prior to accessing the Service.

“Import Content” means the content provided to mpro5 by the Customer to enable mpro5 to develop (as part of the Implementation Services or Consultancy Services) a dashboard and landing page for the Customer to access the Service.

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyrights, trademarks and service marks, business names and domain names, trade dress, rights in designs, database rights, moral rights, know-how rights, 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 and the term Intellectual Property shall be interpreted to mean all property and material which is the subject of an Intellectual Property Right or Rights.

“Implementation Fee” means the fees payable by the Customer in respect of the Implementation Services, as set forth on the applicable Front Sheet.

“Implementation Services” means the services to be provided by mpro5 to the Customer to configure the Service, importing the Import Content and provisioning the Customer’s environment.

“mpro5 Offering” means the Service, Application, Documentation, Implementation Services, Consultancy Services, and Support Services, as applicable.

“Normal Business Hours” means 9:00 am to 5:30 pm in New York City, each Business Day.

“Provisioning Date” shall have the meaning set forth on the applicable Front Sheet.

“Renewal Period” means the period described in section 11.1

“Service” means the digital workflow service provided by mpro5, and more particularly described in the Specification, which the Customer accesses by the internet.

“Service Data” means the data which the Customer and Authorized Users upload to the Service from time to time, and all reports generated by Customer through use of the Service.

“**SLA**” means the Service Level Agreement available in the schedules on the Front Sheet.

“**Specification**” the description and specification of the Service which mpro5 has provided to the Customer at <https://www.mpro5.com/en-us/terms-and-conditions>

“**Subscription Fees**” means the fees payable by the Customer to mpro5 for access to the Service, as set out on the Front Sheet and this Agreement.

“**Subscription Term**” has the meaning set forth in the applicable Front Sheet.

“**Support Services**” means the support services related to the Service to be provided by mpro5 by online portal/email/telephone to the Customer or Authorized User as set out in the SLA.

“**Statement of Work**” means a statement of work between Customer and mpro5 that is signed by authorized representatives of each Party referencing these Terms and Conditions.

“**Term**” has the meaning given in Section 11.1 (being the Initial Term together with any subsequent Renewal Periods).

- 1.1 Section, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference to writing or written includes e-mail (to the email address notified for this purpose from time to time).
- 1.6 Any words following the terms include, including, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, phrase or term preceding these terms.

2. SERVICE

- 2.1 Subject to the terms and conditions of this Agreement, mpro5 grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license during the Subscription Term to (i) permit Authorized Users to access and use the Service at Customer’s Authorized Locations solely for Customer’s internal business purposes; (ii) to install and use the Application, and (iii) to use the documentation, user manuals, training materials, Specifications and supporting documents delivered by mpro5 to Customer (the

“**Documentation**”), in each case during the Subscription Term solely in connection with the use of the Service for Customer’s internal business purposes.

- 2.2 mpro5 shall provide the Support Services during Normal Business Hours during the Subscription Term in accordance with the SLA.
- 2.3 mpro5 may from time to time in its discretion provide and install minor improvements, updates, enhancements and fault corrections, and new releases and versions of the Service, Application, and Documentation, but nothing in this Agreement shall entitle the Customer to any new or different version of the Service, Application, or Documentation.

3. IMPLEMENTATION SERVICES AND CONSULTANCY SERVICES

- 3.1 mpro5 shall provide the Implementation Services with all reasonable skill and care and shall use all reasonable endeavours to complete the Implementation Services by the Provisioning Date, but time shall not be of the essence in respect of the provision of the Implementation Services.
- 3.2 The Customer shall promptly provide all information and assistance reasonably requested by mpro5 to enable mpro5 to provide the Consultancy Services and Implementation Services, including in particular providing the Import Content in a format and structure specified by mpro5. mpro5 shall not be liable for any delay, loss, damage or liability whatsoever suffered or incurred by the Customer to the extent resulting from the Customer’s failure to provide or delay in providing any information and/or assistance requested in accordance with this Agreement, or to comply with Customer’s obligations, including pursuant Section 3 or Section 4. Where such failures on the part of the Customer extend the duration of the Implementation Services or Consultancy Services, the Customer shall be liable to pay mpro5 for such additional time at mpro5’s prevailing daily rates.
- 3.3 The Customer is liable to pay the Subscription Fees from the Provisioning Date irrespective of whether or not it chooses to commence use of the Service from that date.

4. CUSTOMER’S OBLIGATIONS AND ACKNOWLEDGMENTS

- 4.1 The Customer shall provide mpro5 with:
 - 4.1.1 all necessary cooperation in relation to this Agreement; and
 - 4.1.2 all necessary access to such information as may be reasonably required by mpro5, to enable mpro5 to provide the mpro5 Offering.
- 4.2 The Customer shall:
 - 4.2.1 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement and use the Service for lawful purposes only;

- 4.2.2 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, mpro5 may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 4.2.3 obtain and shall maintain all necessary licenses, consents, and permissions necessary for mpro5, its contractors and agents to perform their obligations under this Agreement;
 - 4.2.4 be responsible for procuring, maintaining and securing its network connections and telecommunications links from its information technology systems to mpro5's servers. Customer's systems must meet the minimum system requirements provided by mpro5.
 - 4.2.5 be responsible for procuring and installing equipment necessary for the operation of the Service at the Authorized Locations, including certain sensors sold by third parties (mpro5 can advise Customer on the type of equipment and sensors needed in connection with implementing the Service).
- 4.3 The Customer acknowledges that no computing infrastructure is wholly reliable or risk-free and, accordingly, shall implement reasonable safeguards and business continuity processes to minimize the potential impact of any unavailability or reduced functionality of the Service.
- 4.4 The Customer shall:
- 4.4.1 not allow the mpro5 Offering to be used by any person other than Authorized User; and
 - 4.4.2 ensure that each Authorized User shall keep a secure password for his/her use of the Service and keep such password confidential.
- 4.5 The Customer shall not, and shall ensure that the Authorized Users do not access, store, distribute or transmit any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices. Customer shall not upload or transmit any Customer Content that infringes a third party's intellectual property rights, proprietary rights, or rights of publicity or privacy. If there is any breach of the provisions of this Section, mpro5 reserves the right, without liability to the Customer or prejudice to its other rights, and without prior notice to the Customer, to:
- 4.5.1 in respect of the Authorized User in breach of the provisions of this Section, permanently disable access to the mpro5 Offering; and

- 4.5.2 disable the Customer's or Authorized User's (as applicable) access to the mpro5 Offering to take such action as it deems necessary to protect the Service and the Application.
- 4.6 The Customer shall not, and shall ensure that its Authorized Users do not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement:
 - 4.6.1 copy, attempt to copy, modify, duplicate, create derivative works of, frame, mirror, republish, download, display, disassemble, decompile, reverse engineer, transmit, sublicense, rent, lease or distribute any part of the mpro5 Offering, in any form or media or by any means;
 - 4.6.2 remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the mpro5 Offering;
 - 4.6.3 access all or any part of the mpro5 Offering in order to build a product or service which competes with (or might reasonably be expected to compete with) the Service; or
 - 4.6.4 use the mpro5 Offering to provide commercial services to third parties.
- 4.7 The Customer acknowledges and agrees that mpro5 shall not grant access to the mpro5 Offering to any Authorized User who has not accepted the EULA. mpro5 may, without prejudice to its other rights, in respect of any Authorized User, exercise any right or remedy available to it in the EULA against such Authorized User.
- 4.8 The Customer shall be solely responsible for ensuring the compliance by its Authorized Users with the terms of this Agreement and shall be responsible for any Authorized User's breach of this Agreement.
- 4.9 This Agreement applies only to the set-up and supply of the Service and not to any other services which may be developed by mpro5 from time to time (which it is acknowledged would be subject to the terms of a separate agreement).

5. FEES AND PAYMENT

- 5.1 The Customer shall pay to mpro5 the fees set forth in the applicable Front Sheet in accordance with this Section 5. Payment is due in full within thirty (30) days of mpro5's invoice unless otherwise agreed in writing or specified in the Front Sheet
- 5.2 mpro5 may increase the fees set forth in the applicable Front Sheet upon the sooner of the expiration of the initial term or thirty-six (36) months following the Provisioning Date, and such price increase shall become effective upon thirty (30) days prior written notice to Customer.
- 5.3 If at any time the number of Customer's users exceeds the maximum number of Authorized Users indicated on the Front Sheet mpro5 may charge, and Customer shall pay, the

Subscription Fees due in respect of the additional Authorized Users, calculated by reference to the chargeable Subscription Fees set forth in the Front Sheet divided by the number of Authorized Users, then multiplied by the number of additional users. mpro5 shall consult with the Customer before issuing such additional invoice.

5.4 Payments are non-creditable, non-recoupable, and non-refundable. If mpro5 has not received payment by the due date then without prejudice to its other rights and remedies:

5.4.1 interest shall accrue on a daily basis on such due amounts at an annual rate equal to the lower of 4% or the highest rate permitted by applicable law, commencing on the due date and continuing until fully paid, whether before or after judgment; and

5.4.2 mpro5 may, provided the Customer has not remedied such non-payment within five Business Days of notice in writing requiring it to do so, without liability to the Customer and without the requirement to notify the Customer or its billing representative in advance, suspend the provision of the Service, Implementation Services and Consultancy Services, including disabling the Customer's (and each Users' and Authorized User's) password, account and access to all or part of the Service and mpro5 shall be under no obligation to provide the Service, Implementation Services or Consultancy Services while the invoice(s) concerned (and any interest accrued thereon) remain unpaid.

5.5 All amounts and fees stated or referred to in this Agreement shall be payable in United States Dollars (USD) unless otherwise set forth on the Front Sheet, and are exclusive of, and Customer shall pay, all value added tax, sales, use, excise, and other taxes and applicable export and import fees, customs, duties and similar charges that may be levied on the Service, except for employment taxes and taxes based on mpro5's net income, and such taxes and fees shall be added to mpro5's invoice(s) at the appropriate rate.

6. REPRESENTATION AND WARRANTIES

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

6.2 Representations and Warranties of Customer. Customer represents, warrants and covenants to mpro5 that (i) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Content so that, as received by Customer and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law; and (ii) Customer

Content will not contain any financial account identifiers (e.g. credit card numbers or bank account numbers), government issued identifiers (e.g. social security or driver's license numbers,) or other types of sensitive data that is subject to specific or elevated data protection requirements such as the Gramm-Leach-Bliley Act or HIPAA ("Sensitive Personal Data"). Mpro5 shall have no liability under this Agreement for Sensitive Personal Data, notwithstanding anything to the contrary herein.

6.3 Limited Warranty of mpro5.

6.3.1 Subject to the limitations set forth in this Section 6.3, mpro5 warrants to Customer that for a period of thirty (30) days from the date mpro5 provides notice that it has completed implementation of the Service at the Authorized Location under the applicable Statement of Work (the "Warranty Period") the Service will not deviate materially from mpro5's published Documentation then in effect. The limited warranty set forth in this Section 6.3 shall only apply where Customer (i) promptly notifies mpro5 in writing of the warranty breach before the expiration of the Warranty Period; (ii) has promptly installed all updates to the Service that mpro5 previously made available to Customer; (iii) operates such Service in accordance with the standard operating procedures outlined in the Documentation; and (iv) as of the date of notification, is in compliance with all other terms and conditions of this Agreement (including the payment of all license fees then due and owing).

6.3.2 If mpro5 breaches any of the warranties set forth in Section 6.3.1, mpro5 may, at its sole option and expense, take any of the following steps to remedy such breach (i) replace or repair the Service; (iv) replace the Service with functionally equivalent products; and/or (v) terminate this Agreement and, provided that Customer fully complies with its post-termination obligations as set forth in this Agreement, promptly provide to Customer a pro rata refund of the license fees paid by Customer for the Service for the remaining portion of the unused Subscription Term. The remedies set forth in this Section 6.3.2 are Customer's sole and exclusive remedy for mpro5's breach if the warranty set forth in this Section 6.3.1. mpro5's obligations in Section 6.3 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to mpro5's instructions, this Agreement or the Documentation, or modification or alteration of the Service and/or the Application by any party other than mpro5.

6.3.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6.3, ALL SERVICES AND MPRO5 MATERIALS ARE PROVIDED "AS IS." MPRO5 SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MPRO5 MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, MPRO5 OFFERING, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE

OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer acknowledges and agrees that:

7.1.1 As between mpro5 and Customer, mpro5 shall own all right, title, and interest in and to all Intellectual Property Rights in the mpro5 Offering, any improvement, modifications, or derivative works thereof, and all materials, products or services developed by mpro5, or on behalf of mpro5 by third parties, based on or including as a component thereof any such information as described above, and all generalized knowledge, skill, know-how and expertise relating to such information, excluding the Customer Content (the “**mpro5 Property**”). In the event that, by operation of law or otherwise, any right, title, or interest in or to the mpro5 Property, or any portion thereof, shall vest in Customer or any of its Authorized Users, Customer hereby irrevocably and unconditionally transfers and assigns to mpro5 and forever waives and agrees never to assert, and shall cause each and every such Authorized User to irrevocably and unconditionally transfer and assign to mpro5 and forever waive and agree never to assert, any and all such right, title, and interest and agrees to execute all documents, and undertake all other activities, and to cause each such Authorized User to execute all documents, and undertake all other activities, reasonably required by mpro5, in order to vest solely and exclusively in mpro5 all right, title, and interest in mpro5 Property. If Customer provides feedback about the mpro5 Offering, mpro5 may incorporate such feedback as improvements or modifications to the mpro5 Offering, or other services (collectively, “**Feedback**”), and, Customer hereby grants to mpro5 a worldwide, perpetual, irrevocable, transferrable, sublicensable (through multiple tiers), royalty-free fully paid, non-exclusive license to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner.

7.1.2 Except for the limited right to access and use the mpro5 Offering during the Subscription Term granted in Section 2, no other right, title, or interest of any Intellectual Property is granted to Customer and all such rights are hereby expressly reserved.

7.2 Customer hereby grants to mpro5 a worldwide, royalty-free, fully paid-up, nonexclusive, sub-licensable (through multiple tiers) and assignable right and license to copy, modify, distribute, store and process any Customer Content during the Term for the purpose of providing the mpro5 Offering to Customer, including to use and display Customer’s trademarks, tradenames, and service marks on Customer’s implementation of the Service.

7.3 Notwithstanding anything to the contrary herein, mpro5 shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the mpro5 Offerings and related systems and technologies (including, without limitation, information concerning Customer Content and data and insights derived therefrom) on an aggregated and anonymized basis, and mpro5 will be free (during and after the term hereof) to (i) use such information and data internally to improve and enhance the mpro5 Offerings and for other development, diagnostic and corrective purposes in connection with the mpro5 Offerings, and (ii) disclose such data solely in aggregate and de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

8. CONFIDENTIALITY

8.1 Each Party may be given access to Confidential Information belonging to the other Party in order to perform its obligations under this Agreement.

8.2 Subject to Section 8.4, each Party shall hold the other's Confidential Information in confidence and not make (whether by act or omission) the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than for exercise of its rights and obligations under this Agreement and mpro5's Privacy Policy, available at <https://www.mpro5.com/en-us/terms-and-conditions>

8.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

8.4 A Party may disclose the other Party's Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much written notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Section 8.4, and it takes into account the reasonable requests of the Party to which the Confidential Information belongs in relation to the content and form of such disclosure.

9. INDEMNITY

9.1 Indemnity by mpro5.

9.1.1 Subject to the provisions of this Section 9.1, mpro5 shall indemnify, defend, and hold harmless the Customer against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with any third party claim that the Service infringes any United States Intellectual Property Rights of a third party when used in accordance with this Agreement.

9.1.2 In the defense or settlement of any claim, mpro5 may procure the right for the Customer to continue using the Service, replace or modify the Service so that it

becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer (save for a pro-rata reimbursement of any Subscription Fees paid in advance for the then current invoicing period).

9.1.3 In no event shall mpro5, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) any modification of the Service by anyone other than mpro5 (or its authorized representatives)
- (b) any use of the Service in combination with any software or component not licensed by mpro5 to Customer;
- (c) the Customer's use of the Service in a manner contrary to this Agreement;
or
- (d) the Customer's continued use of the Service after notice of the alleged or actual infringement from mpro5 or any competent authority.

9.1.4 Section 9.1 states the Customer's sole and exclusive rights and remedies, and mpro5's entire obligations and liability, for infringement of any Intellectual Property Rights in connection with this Agreement.

9.2 Indemnity by Customer. The Customer shall defend, indemnify and hold harmless mpro5 against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with third party claims arising from (i) any negligence, willful misconduct, or breach of this Agreement by Customer or its employees or other representatives, or (ii) the possession, use, or reliance on any Customer Content.

9.3 Indemnification Procedure. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any claim for indemnification under this Article 9 on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent. The Indemnitee's failure to perform any obligations under this Section 9.3 will not relieve the Indemnitor of its obligations under this Article 9, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

10. LIMITATION OF LIABILITY

10.1 IN NO EVENT WILL MPRO5 OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS

AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF MPRO5 AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO MPRO5 UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. TERM, TERMINATION AND SUSPENSION

- 11.1 This Agreement shall, unless otherwise terminated as provided in this clause 11, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”) and the Initial Term together with any subsequent Renewal Periods shall constitute the “**Term**”, unless:
- 11.1.1 either Party notifies the other Party of termination, in writing, at least 90 days before the end of the then current Term, in which case this Agreement shall terminate upon the expiry of the applicable then-current Term; or
 - 11.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- 11.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 11.2.1 the other Party commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach; or
 - 11.2.2 the other Party files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, or goes into liquidation or receivership.

- 11.3 mpro5 may terminate this Agreement if the Customer fails to pay any amount due on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment.
- 11.4 mpro5 may, without prejudice to its other rights and remedies, immediately suspend or terminate provision of all or part of the mpro5 Offering and this Agreement if:
 - 11.4.1 mpro5 reasonably suspects that the Customer or the Authorized Users are in breach of this Agreement;
 - 11.4.2 There is, or mpro5 reasonably suspects that there is a security breach by the Customer or any Authorized User; or
 - 11.4.3 mpro5's cloud service provider ceases to provide or suspends provision of its hosting service.
- 11.5 On termination of this Agreement for any reason:
 - 11.5.1 all licenses granted to Customer under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Service and the mpro5 Offering;
 - 11.5.2 Customer shall download all Customer Content from the Service prior to the termination of the Agreement; and mpro5 shall have no obligation to retain or provide copies of any Customer Content following termination of the Agreement;
 - 11.5.3 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced; and
 - 11.5.4 any provision that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
 - 11.5.5 The provisions of Sections 4.5, 4.6, 5, the last sentence of Section 6.3.3, 7.1, 7.3, 8, 9, 10, 11.5, and 13 shall survive termination or expiration of this Agreement.

12. FORCE MAJEURE

mpro5 shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of mpro5 or any other Party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

13. MISCELLANEOUS

13.1 Entire Agreement

This Agreement, including any Statements of Work and the Front Sheet, constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the Parties relating to it. Neither Party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in this Agreement. In the event of any conflict between these Terms and Conditions and a Statement of Work or a Front Sheet, these Terms and Conditions shall control except to the extent the provision in the Statement of Work or Front Sheet expressly indicates that it shall control.

13.2 No Partnership etc.

The Parties are independent contractors and this Agreement shall not be deemed to create any partnership or joint venture relationship between them.

13.3 Amendments

No amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorized representative of each of the Parties. Nothing contained in any purchase order, order confirmation, or other documentation of Customer shall in any way modify or add any provisions to the Agreement.

13.4 Assignment

Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without mpro5's prior written consent. No assignment, delegation or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 13.4 is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.5 Waiver

The failure of a Party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

13.6 Severability

If any part of this Agreement becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to

be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement.

13.7 Counterparts

This Agreement may be executed in counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. The exchange of copies of this Agreement, any Statements of Work hereto, or amendments thereto and of executed signature pages by email transmission in portable document format (.pdf), or similar format, shall constitute effective execution and delivery of such instrument(s) as to the Parties and may be used in lieu of the original Agreement, Statement of Work, or amendment for all purposes. Signatures of the Parties transmitted by email in portable document format (.pdf), or similar format, shall be deemed to be their original signatures for all purposes.

13.8 Notices

Whenever, under the terms of or in connection with this Agreement, any notice, consent, approval, authorization or other information is proper or required to be given by either Party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or made by reputable overnight courier with documentation of receipt to the intended recipient thereof or by registered or certified mail, return receipt requested, and with all postage prepaid, to the addresses set forth on the Front Sheet or to such other address for either Party as may be supplied by notice given in accordance herewith.

13.9 Public Announcements.

Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party. Notwithstanding the foregoing, nothing herein shall preclude mpro5 from listing Customer as a client.

13.10 Rights of Third Parties

This Agreement is not intended to create a benefit to any Party other than the Parties, and no Party other than a Party may bring an action hereunder.

13.11 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of the State of North Carolina, excluding (a) its conflicts of law rules that would result in the application of the law of any other jurisdiction; and (b) the United Nations Convention for the International Sale of Goods. The federal and state courts located in Wake County, North Carolina shall have exclusive jurisdiction with respect to any dispute arising under this Agreement.