

**PRODUCTION PRO LLC**

**SUBSCRIPTION AND END-USER LICENSE AGREEMENT (the "Agreement")**

PLEASE READ CAREFULLY BEFORE USING THIS PRODUCT: THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF THE SERVICES AND SOFTWARE OF PRODUCTIONPRO LLC ("PPRO"). BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are a PPRO direct competitor, except with PPRO's prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on June 18, 2014. It is effective between You and PPRO as of the date of You accepting this Agreement.

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## **1. DEFINITIONS**

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Subscription And End-User License Agreement

"Content" means information obtained by Us from Our content licensors or publicly available sources and provided to You as more fully described in the Documentation.

"Content" means information obtained by PPRO from PPRO content licensors or publicly available sources and provided to You, as more fully described in the Documentation.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via prod-pro.com or via the Software on the Android tablet.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Service" or "Services" means (a) the PPRO application for the Android tablet developed by PPRO exclusively for the oil and gas industry, specifically the use of oil and gas well "pumpers" and other field personnel, to record certain measurements on a daily basis access (the "Software Product"); and (b) access to Your data via the PPRO website, where Your information is stored, this access being provided as "software-as-a-service" (the "SAAS Service").

"User" means an individual who is authorized by You to use the Services, for whom You have ordered the Service to whom You (or PPRO at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means electronic data and information submitted by or for You to the Services or collected and processed by or for You using the Services.

## **2. SERVICES BEING PROVIDED**

2.1. THE SOFTWARE PRODUCT: The Software Product allows You to use the PPRO service from Supported Devices. A "Supported Device" is a combination of a mobile device running Android software and an Android software version(s) that is supported by the Software Product. PPRO may choose, from time to time, to make changes to the Software Product. You shall receive notice of the changes of the Software Product and shall be prompted to upgrade your Software Product to the current version. The Software Product is provided by PPRO as a component of the PPRO service.

2.2. THE SAAS SERVICE is cloud-based access to the PPRO system that is granted to you via any standard internet browser. We will (a) make the Services and Content available to You pursuant to this Agreement, (b) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which PPRO shall give at least 8 hours electronic notice and which PPRO shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Central time), and (ii) any unavailability caused by circumstances beyond PPRO reasonable control, including, for example, an act of God, act of

government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving PPRO employees), Internet service provider failure or delay, non-PPRO application, or denial of service attack.

### **3. USE OF SERVICES AND CONTENT**

3.1 Subscription. Unless otherwise provided, (a) Services are purchased as a ongoing and continuous subscription from the date the subscription was purchased until You terminate the Service as outlined in Section 12.3, below; (b) You are subscribing for a maximum number of Wells, Tanks, and Meter Stations in the order form but you will only be billed, on a monthly basis, for the actual number of Wells, Tanks, and Meter Stations You have in the system; (c) You may increase Your maximum number of Wells, Tanks, and Meter Stations in the order form to accommodate Your needs, but you will only be billed, on a monthly basis, for the number of Wells, Tanks, and Meter Stations You have in the system; and (d) on termination of the subscription pursuant to Section 12.3, you will no longer have access to Your information on the Wells, Tanks, and Meter Stations in the system.

3.2 Usage Limits. Services and Content are subject to usage limits, for example, the maximum number Wells, Tanks, and Meter Stations specified in order forms. Unless otherwise specified, a quantity in an order form refers to the maximum number Wells, Tanks, and Meter Stations You have stipulated. If You exceed a contractual usage limit, You may increase your maximum number Wells, Tanks, and Meter or PPRO may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding PPRO efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an order form for additional quantities of the applicable Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 5.2 (Invoicing and Payment).

3.3 Your Responsibilities. You will (a) be responsible for Your compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with the Documentation and applicable laws and government regulations, and (e) comply with terms of service of this Agreement with which You use Services or Content.

3.4 Usage Restrictions. You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (e) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (f) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (g) copy a Service or any part, feature, function or user interface thereof, (h) copy Content except as permitted herein, (i) frame or mirror any part of any Service or Content, (j) access any Service or Content in order to build a competitive product or service, or (k) reverse engineer, decompile, disassemble or create derivative works of the Services and Content, except and only to the extent that the right to do so is mandated under applicable law; further, nothing contained herein shall be construed, expressly or implicitly, as transferring any right, license or title to You other than those explicitly granted under this Agreement. Unauthorized copying of the Services and Content or failure to comply with the above restrictions will result in automatic termination of this Agreement and will constitute immediate, irreparable harm to PPRO for which monetary damages would be an inadequate remedy, in which case injunctive relief will be an appropriate remedy for such breach.

3.5 Removal of Content and Non-PPRO Applications. If PPRO is required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, PPRO may so notify You and in such event You will promptly remove such Content from Your systems. If You do not take required action in accordance with the above, PPRO may disable the applicable Content and /or Service until the potential violation is resolved.

#### **4. GRANT OF LICENSES.**

4.1. License to Use The Software Product. The Software Product, including software embedded in the Software Product, including all of PPRO/their related intellectual property rights., is licensed, not sold, to the You by PPRO only under the terms of this Agreement, as may be amended, and PPRO reserves all rights not expressly granted to You. This Software may include some third-party software. You may own the media or device on which the Software is recorded or stored but PPRO retains ownership of the Software itself.

4.2. Upgrades. To use a Software Product identified as an upgrade, you must first be licensed for the original Software Product identified by PPRO as eligible for the upgrade. After upgrading, you may no longer use the original Software Product that formed the basis for your upgrade eligibility.

4.3. Additional Software. This Agreement applies to updates or supplements to the original Software Product provided by PPRO unless PPRO provides other terms along with the update or supplement. In case of a conflict between such terms, the other terms will prevail.

4.4. License by You to Host Your Data and Applications. You grant PPRO and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data, and any PPRO Applications and program code created by or for You using a Service, as necessary for PPRO to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, PPRO acquires no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any PPRO Application or program code.

4.5. License by You to Use Feedback. You grant to PPRO and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

4.6. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with PPRO to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

#### **4.7. ADDITIONAL TERMS RELEVANT TO GOOGLE INC.**

4.7.1. The Google Play marketplace is owned and operated by Google Inc. Your use of Google Play is governed by a legal agreement between You and Google consisting of the Google Terms of Service (found at <http://www.google.com/accounts/TOS>) and the google play terms of service (found at

[https://play.google.com/intl/en-US\\_us/about/play-terms.html](https://play.google.com/intl/en-US_us/about/play-terms.html) and together with the Google Terms of Service called the "Terms"). In addition, Your use of Google Play is subject to the Google Play Business and Program Policies (<http://play.google.com/about/android-developer-policies.html>). The Google Play Market Terms of Service, Google Play Business and Program Policies, and Google Terms of Service shall take precedence in that order in the event of a conflict between them, to the extent of such conflict.

4.7.2. PPRO is solely responsible for providing and Google has no obligation to provide maintenance and support for the Software Product. Support requests, as well as questions, complaints or claims regarding the Software Product, may be directed to ProductionPro LLC Customer Support, which Users may contact by (i) logging a case by logging into their account at [www.prod-pro.com](http://www.prod-pro.com), clicking "Help" and then "Log a Case," providing the requested information and clicking "Submit" or (ii) calling ProductionPro customer support at +1-972-964-2356 (U.S. Central Time).

4.7.3. To the maximum extent permitted by applicable law, Google will have no warranty obligation whatsoever with respect to the Software Product, and will not be liable for any claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty. PPRO shall not be required to provide a refund to you or to the Customer under any circumstances.

4.7.4. Google shall not be responsible for addressing any claims by You or any third party relating to the Software Product or Your possession and/or use of the Software Product, including but not limited to (i) product liability claims, (ii) any claim that the Software Product fails to conform to any applicable legal or regulatory requirement, or (iii) claims arising under consumer protection or similar legislation.

4.7.5. Google shall not be responsible for the investigation, defense, settlement or discharge of any claim that the Software Product or Your possession and use of the Software Product infringes a third party's intellectual property rights.

4.7.6. You represent and warrant that (i) the Software Product will not be downloaded or used in, or transported to, a country that is subject to a U.S. Government embargo or has been designated by the U.S. Government as a "terrorist-supporting" country, and (ii) neither you, the Customer nor any User is listed on any U.S. Government list of prohibited or restricted parties.

4.7.7. In order to continually innovate and improve Google Play, Google may collect certain usage statistics from Google Play and Supported Devices, including but not limited to, information on how Google Play and Supported Devices are being used. The data collected is examined in the aggregate to improve Google Play for users and developers and is maintained in accordance with Google's Privacy Policy. To ensure the improvement of the Software Product, limited aggregate data may be available to PPRO upon its written request.

## **5. FEES AND PAYMENT FOR PURCHASED SERVICES**

5.1. Fees. You will pay all fees specified in order forms. Except as otherwise specified herein or in an order form, (i) fees are based on the actual number of Wells, Tanks and Meter Stations in service at the price indicated in the system and not on the maximum number of Wells, Tanks, and Meter Stations in the order form, and, (ii) payment obligations are non-cancelable and fees paid are non-refundable.

5.2. Invoicing and Payment. You will provide PPRO with valid and updated credit card information, or with a valid eCheck or alternative document reasonably acceptable to PPRO. If You provide credit card or eCheck information to PPRO, You authorize PPRO to charge such credit card or debit your checking account for all purchased Services listed in the order form as set forth in the order form. Such charges

shall be made in arrears monthly for the actual number of Wells, Tanks, and Meter Stations in service five (5) days prior to the day of the month in which You subscribed to the Service. You are responsible for providing complete and accurate billing and contact information to PPRO and notifying PPRO of any changes to such information.

5.3. Overdue Charges. If any invoiced amount is not received by PPRO by the due date, then without limiting PPRO's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) PPRO may condition future renewals on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for PPRO services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized PPRO to charge to Your credit card), PPRO may, without limiting PPRO's other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend PPRO services to You until such amounts are paid in full. PPRO will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.

5.5. Payment Disputes. PPRO will not exercise PPRO's rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If PPRO has the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.6, PPRO will notify You of the amount of the Taxes and charge your credit card to pay that amount unless You provide PPRO with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PPRO is solely responsible for taxes assessable against PPRO based on PPRO's income, property and employees.

5.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by PPRO regarding future functionality or features.

## **6. PROPRIETARY RIGHTS.**

6.1 All intellectual property rights in the Services, Content and Software Product and user Documentation are owned by PPRO or its suppliers and are protected by law, including but not limited to United States copyright, trade secret, and trademark law, as well as other applicable laws and international treaty provisions. The structure, organization and code of the Software Product are the valuable trade secrets and confidential information of PPRO and its suppliers. You shall not remove any product identification, copyright notices or proprietary restrictions from the Software Product

## **7. CONFIDENTIALITY AND PRIVACY**

7.1. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; PPRO Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all order forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 7.2.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. TRANSFER.**

8.1. Third Party. The Services, Software Product and Content may only be transferred to another end user as part of a transfer of the PPRO Product on which it is installed. Any transfer must include all component parts, media, printed materials and this Agreement. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred product must agree to all the terms of this Agreement. Upon transfer of the PPRO Product, Your license is automatically terminated.

8.2. Restrictions. You may not rent, lease or lend the Services or Software Product or use the Services and Software Product for commercial timesharing or bureau use. You may not sublicense, assign or transfer the license for the Services or Software Product except as expressly provided in this Agreement.

## **9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. PPRO Warranties. PPRO warrants that (a) this Agreement, the order forms and the documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) PPRO will not materially decrease the overall security of the Services during a subscription term, (c) the Services will perform materially in accordance with the applicable Documentation, (d) the purchased Services and Content will not introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **10. MUTUAL INDEMNIFICATION**

10.1. Indemnification by PPRO. PPRO will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give PPRO written notice of the Claim Against You, (b) give PPRO sole control of the defense and settlement of the Claim Against You (except that PPRO may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give PPRO all reasonable assistance, at PPRO expense. If PPRO receives information about an infringement or misappropriation claim related to a Service, PPRO may in PPRO's discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching PPRO's warranties under Section 9.2 (PPRO Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-PPRO Application or Your breach of this Agreement.

10.2. Indemnification by You. You will defend PPRO against any claim, demand, suit or proceeding made or brought against PPRO by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against PPRO"), and will indemnify PPRO from any damages, attorney fees and costs finally awarded against PPRO as a result of, or for any amounts paid by PPRO under a court-approved settlement of, a Claim Against PPRO, provided PPRO (a) promptly give You written

notice of the Claim Against PPRO, (b) give You sole control of the defense and settlement of the Claim Against PPRO (except that You may not settle any Claim Against PPRO unless it unconditionally releases PPRO of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

## **11. LIMITATION OF LIABILITY**

11.1 Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE ONE (1) MONTH PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **12. TERM AND TERMINATION.**

12.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all Services hereunder have expired or have been terminated.

12.2. Term of Purchased Subscriptions. The term of the Services shall be month-to-month beginning on the date you first accept this Agreement (either by clicking a box indicating your acceptance or by executing an order form that references this Agreement as specified in the applicable order form) and continuing until terminated by You or PPRO pursuant to Section 12.3, upon (i) You giving PPRO notice of your termination of Services, as described in Section 13; or, (ii) PPRO giving YOU notice of Your termination Services, as described in Section 13. Except as otherwise specified in an order form, all subscriptions will automatically renew for additional monthly periods. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless PPRO has given You written notice of a pricing increase at least 60 days before the price change takes effect. The pricing increase will be effective as of the date of the price increase indicated in the price increase notice. Any such pricing increase will not exceed 7% of the pricing for the applicable purchased Service or Content in the immediately prior subscription term, unless the pricing in the prior term was designated in the order form as promotional or one-time.

12.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party; (ii) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (iii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Refund or Payment upon Termination. If this Agreement is terminated by You or PPRO in accordance with Section 12.3 (Termination), PPRO will not be obligated to provide any refund of payments made by You. If this Agreement is terminated by PPRO in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all order forms. In no event will termination relieve You of Your obligation to pay any fees payable to PPRO for the period prior to the effective date of termination.

12.5. Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, PPRO will make the Your Data available to You for export or download as provided in the documentation. After that 30-day period, PPRO will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in PPRO systems or otherwise in PPRO's possession or control as provided in the documentation, unless legally prohibited.

12.6. Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Grant of Licenses," "Proprietary Rights," "Confidentiality and Privacy," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," "Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

### **13. NOTICES, GOVERNING LAW AND JURISDICTION**

13.1. General. You are contracting with ProductionPro LLC, 4141 Dundee Road, Northbrook, IL 60062, a Delaware limited liability company, under this Agreement, who You should direct notices to under this Agreement. The laws of the State of Illinois what law will apply in any lawsuit arising out of or in connection with this Agreement. You represent that you are of the legal age of majority in your state, province jurisdiction of residence and, if applicable, you are duly authorized by your employer to enter into this contract.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

13.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

### **14. GENERAL PROVISIONS**

14.1. Export Compliance. The Services, Content, other technology PPRO makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any PPRO employee or agent in connection with this Agreement.

Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify PPRO at [info@prod-pro.com](mailto:info@prod-pro.com).

14.3 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and PPRO regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable order form, (2) this Agreement, and (3) the Documentation.

14.4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, PPRO will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.6. Third-Party Beneficiaries. PPRO Content licensors shall have the benefit of PPRO's rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

14.7. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

© 2014 ProductionPro LLC. The information contained herein is subject to change without notice. The only warranties for PPRO Services are set forth in the express warranty statements accompanying such services. Nothing herein should be construed as constituting an additional warranty. PPRO shall not be liable for technical or editorial errors or omissions contained herein. All rights reserved.

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