



PROPHIX CLOUD SERVICES TERMS

These Prophix Cloud Services Terms (the "Prophix Cloud Services Terms") are incorporated by reference into Prophix Cloud Services Agreements (and related Orders) entered into between Prophix (as defined below) and a Customer (as defined below). The Prophix Cloud Services Terms apply to all purchases and use of Cloud Services by Prophix's Customers. The Prophix Cloud Services Terms may be revised and amended from time to time as set out in Section 14. The current version of the Prophix Cloud Services Terms at any time can be found at <http://legal.prophix.com/PSI-CST>, and prior versions will also be made available to Customer upon request, or posted online. All capitalized terms used but not defined in these Prophix Cloud Services Terms have the meanings provided in the applicable Order.

1. DEFINITIONS

- (a) "Affiliates" means any entity or person that is directly or indirectly controlling, controlled by or under common control with a party hereto.
- (b) "Authorized Users" means Customer's employees, contractors, agents and other persons that Customer authorizes to access and/or use the Cloud Services on Customer's behalf.
- (c) "Cloud Services" means the services made available by Prophix through the Cloud Services Configuration to Customer pursuant to the Agreement including access to: (a) the Software and Documentation; (b) the Services Environment; and (c) Content made available to Customer by Prophix in conjunction with the foregoing; all as updated and modified by Prophix from time to time.
- (d) "Cloud Services Configuration" means the services specified in the applicable Order.
- (e) "Cloud Services Period" has the meaning described in Section 7.1 of these Cloud Services Terms.
- (f) "Cloud Services End Date" means the date stipulated as such in the applicable Order.
- (g) "Cloud Services Start Date" means the date stipulated as such in the applicable Order upon which the Cloud Services purchased are to commence or be deemed to commence.
- (h) "Confidential Information" has the meaning set out in Section 8 hereof.
- (i) "Content" means data, text, audio, video or images.
- (j) "Customer" means the Prophix customer named in an Order into which these Cloud Services Terms are incorporated by reference.
- (k) "Customer Content" means the Content Customer uploads to, accesses and/or creates, while using the Cloud Services, including links or other connections to outside Content not residing in the Cloud Services, including any Personal Data and Third Party Content included therein.
- (l) "Documentation" means the online help materials and release notes Prophix makes generally available from time to time for use in conjunction with the Software, which online help materials and release notes may be modified by Prophix from time to time at its discretion, and the current version of which can be found at: <http://help.prophix.cloud/>. The Documentation describes functional aspects of the Software.
- (m) "Effective Date" means the date stipulated as such in the Initial Order.
- (n) "Initial Order" means the first Order form signed by the Parties incorporating these Prophix Cloud Services Terms, and identified as an "Initial Order".
- (o) "Initial Cloud Services Period" means the date stipulated as such in the Initial Order.
- (p) "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 software, compilations of data, computer databases (whether or not protected by copyright), specifications, designs (including industrial designs), 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.
- (q) "Order" means any order form or reconfiguration order form that references the Prophix Cloud Services Terms, describes the Cloud Services to be provided by Prophix and the fees to be paid by Customer, and is signed by both parties. When used herein the term "Order" includes "Initial Order(s)" unless otherwise specified.
- (r) "Party" and "Parties" means the entities stipulated as such in the applicable Order.



- (s) "Personal Data" means any information that relates to an identified or identifiable person as defined by applicable laws, regulations, guidelines and codes of practice pertaining to privacy, data protection and processing of personal information.
- (t) "Prophix" for purposes of each Customer means either Prophix Software Inc. or the Affiliate of Prophix Software Inc., as applicable, that entered into an Agreement with that Customer for the sale of Cloud Services.
- (u) "Renewal Cloud Services Period" has the meaning set out in Section 7.1.
- (v) "Services Environment" means the combination of hardware and software components owned, licensed or managed by Prophix where the Software is hosted and accessed.
- (w) "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.
- (x) "Term" has the meaning set out in Section 2.
- (y) "Third Party Content" means all Content, in any format, that is obtained or derived from third party sources in conjunction with Customer's use of the Cloud Services.
- (z) "Third Party Products" means products and services supplied by third parties to use in connection with the Cloud Services, including, without limitation, any products identified in the Documentation as being compatible with the Cloud Services.

2. CLOUD SERVICES PERIOD AND TERM OF AGREEMENT

2.1 The Cloud Services will commence on the Cloud Services Start Date and continue for the duration of the Cloud Services Period or until terminated in accordance with the Agreement. All Orders entered into during a Cloud Services Period shall be coterminous with that Cloud Services Period.

2.2 The Agreement shall be in effect for a term starting on the Effective Date and shall remain in effect for so long as any Cloud Services Period remains in effect (the "Term")

3. RIGHTS GRANTED

3.1 Solely for the duration of the Cloud Services Period and subject to Customer's payment obligations, and except as otherwise set forth in the 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 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 cost and expense and for compliance with any applicable agreements governing same.

3.3 In the event Customer wishes to retain Prophix to provide professional services to Customer in connection with the Cloud Services, such services shall be governed under a separate services agreement to be entered into between Customer and Prophix. Customer has no obligation to retain Prophix to provide professional services and shall be entitled to retain third parties in this regard, provided Customer is and shall be responsible to ensure compliance, by all such third parties performing such services, with Customer's obligations to Prophix under the Agreement.

4. OWNERSHIP AND RESTRICTIONS

4.1 All right, title and interest in and to Customer Content is and shall remain owned by Customer, provided however Customer grants to Prophix, for the duration of the Cloud Services Period (plus any additional post-termination period during which Prophix provides Customer with access to retrieve an export file of Customer Content) the right to use and process Customer Content as reasonably required in order for Prophix to comply with its obligations under the Agreement, and to defend any claim against Prophix. Customer represents and warrants that Customer has obtained all rights, consents and permissions necessary to grant Prophix such rights.

4.2 The Cloud Services and the Software are protected by Intellectual Property Rights. Except for the rights expressly granted to Customer under the Agreement, all right, title and interest (including all Intellectual Property Rights) in and to the Cloud Services and the Software 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. 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.

4.3 Customer agrees that any feedback, or suggestions about the features, functions or operation of the Software or the Cloud Services, provided or made available to Prophix by Customer or any Authorized User, shall become Prophix's exclusive property and its Confidential Information and may be used by Prophix to modify the Cloud Services or create other products or services without any obligation or payment to Customer whatsoever.

4.4 Customer and Authorized Users may only use the Cloud Services as set forth in the Agreement. Customer may not attempt, or authorize, cause, permit or encourage its Authorized Users or others to:

- (a) use the Cloud Services except as expressly permitted by the Agreement;
- (b) make the Cloud Services available in any manner to any third party for use in the third party's business operations or otherwise create, assign or transfer any interest in the Cloud Services in favour of any third party;
- (c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish 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;
- (d) perform any benchmark, security, performance or other tests of the Cloud Services;
- (e) attempt to disable or circumvent any security features of the Cloud Services or the Software or permit unauthorized access to the Cloud Services or the Software;
- (f) 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 or which would otherwise impose an unreasonable or disproportionate load on the Cloud Services;
- (g) use the Cloud Services in any manner that would reasonably be expected to expose Prophix to civil or criminal liability or otherwise violates applicable laws, or might reasonably be expected to detrimentally affect the reputation and goodwill of Prophix; and
- (h) use any means whatsoever to directly or indirectly access or interact with the Cloud Services, except for manually operated web-browsers and other manually operated software, in either case as expressly identified in the Documentation as permitted and compatible with the Cloud Services.

4.5 Prophix reserves the right 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. Notwithstanding the foregoing, Prophix is not responsible for any harm caused by Authorized Users, or individuals who were not authorized to have access to the Cloud Services but who were able to gain access through Customer's usernames, passwords or accounts. Customer is responsible for all activities that occur under Customer's and Authorized Users' usernames, passwords or accounts. Customer agrees to notify Prophix immediately of any unauthorized use.

5. USE OF THE CLOUD SERVICES

5.1 In order to access and use the Cloud Services, Customer must use compatible hardware and other software, including without limitation, computers, operating systems and internet browsers, all as identified in the Documentation.

5.2 Customer is responsible for:

- (a) identifying and authenticating all Authorized Users,
- (b) properly configuring, distributing and governing access rights to the Cloud Services by Authorized Users;
- (c) maintaining the security and confidentiality of usernames, passwords and other account or access information to prevent unauthorized access to the Cloud Services;



- (d) 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;
- (e) providing Prophix with all information, access and full good faith cooperation reasonably necessary to enable Prophix to provide the Cloud Services;
- (f) its own 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 regulatory obligations prior to entering into the Agreement. Prophix will cooperate with Customer's efforts to determine whether use of the standard Cloud Services offering is consistent with those requirements.

5.3 Prophix reserves the right at its sole discretion to upgrade or otherwise modify the Cloud Services from time to time.

5.4 Prophix will provide the Cloud Services in accordance with the service levels set out in Appendix 1 – Service Level Agreement.

6. FEES AND TAXES

6.1 In consideration for the provision of the Cloud Services and any other products or services set forth in the Agreement, Customer agrees to pay to Prophix the fees set forth in the Agreement, without deduction or setoff, and otherwise in accordance with the terms set forth in the Agreement.

6.2 Once the Order is signed it is non-cancelable and the sums paid non-refundable, except as specifically provided to the contrary in the Agreement. Customer will pay any sales, value-added or other similar taxes imposed by applicable law that Prophix must pay, in addition to all amounts payable to Prophix by Customer pursuant to the Agreement, except for taxes based on Prophix's income. If Customer is exempt from any such tax, Customer will provide the relevant exemption certificate. Customer agrees to pay applicable taxes in the event of any defect, dispute or rejection of any such exemption by the relevant tax authorities.

6.3 All overdue payments shall bear interest at the rate of 12% per annum (or, if less, the highest rate allowed by applicable law), calculated daily and payable monthly, on the amounts outstanding until payment is received by Prophix.

7. RENEWAL AND EXPIRY OF CLOUD SERVICES PERIODS; REMEDIES AND TERMINATION

7.1 The Cloud Services shall be provided to Customer for the Initial Cloud Services Period. Thereafter, the Cloud Services Period shall be automatically renewed annually for additional one (1) year renewal periods (the initial renewal period and each subsequent renewal period are together and each referred to as a "Renewal Cloud Services Period"), unless Customer gives written notice of non-renewal to Prophix at least forty-five (45) days prior to the end of the Initial Cloud Services Period or any Renewal Cloud Services Period, or Prophix gives written notice of non-renewal to Customer not less than sixty (60) days prior to the end of the Initial Cloud Services Period or any Renewal Cloud Services Period. In the event either Party gives notice of non-renewal as specified above the Cloud Services Period shall expire as of the end of the then current Cloud Services Period. Collectively, the Initial Cloud Services Period and any Renewal Cloud Services Period shall constitute the "Cloud Services Period" for each Agreement or Order. The Cloud Services Period is subject to the termination rights of the Parties under the Agreement or an Order.

7.2 Prophix's then current applicable list prices for the Cloud Services shall apply in respect of a Renewal Cloud Services Period. Prophix will notify Customer not less than sixty (60) days prior to the expiry of the Initial Cloud Services Period and each Renewal Cloud Services Period of the pricing applicable during the next Renewal Cloud Services Period.

7.3 Upon the end of the applicable Cloud Services Period, Customer no longer has the right to access or use the Cloud Services; however, for a period of up to 30 days after the end of the applicable Cloud Services Period, Prophix will make available Customer Content then in the Cloud Services for the sole purpose of retrieval by Customer. At the end of such 30-day period, and except as may be required by law, Prophix will delete or otherwise render inaccessible any Customer Content that remain in the Cloud Services. Prophix reserves the right to charge services fees for transitional services requested by Customer and provided by Prophix.



7.4 If Prophix knows, or reasonably suspects or believes that Customer or any Authorized Users have breached any provision of the Agreement, or if in Prophix's reasonable judgment, the Cloud Services or any component thereof are about to suffer a significant threat to security or functionality, Prophix may, at its sole discretion: (i) restrict, limit, temporarily suspend or terminate Customer's password, account, and/or access to or use of the Cloud Services (such suspension or termination will hereinafter collectively be referred to as a "Suspension"), or (ii) remove offending material or take other remedial action (such removal or remedial action will hereinafter collectively be referred to as a "Removal"). Prophix may, at its sole discretion, acting reasonably based on the circumstances giving rise to the Suspension or Removal, provide advance notice to Customer of any such Suspension or Removal. Prophix will use reasonable efforts to re-establish the affected Cloud Services promptly after Prophix determines, in its reasonable discretion, that the situation giving rise to the Suspension or Removal has been cured; however, during any suspension period, Prophix will make available to Customer all Customer Content existing in the Cloud Services on the date of Suspension or Removal.

7.5 If either Party breaches the Agreement in any material respect and fails to correct the breach within 30 days of written notice of the breach by the other Party, or immediately upon written notice if the breach is not capable of cure, then the non-breaching Party may terminate the Agreement. 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 30 days after Prophix's initial notice thereof to Customer. Either Party may terminate the Agreement upon written notice: (a) 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 (b) 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. If Prophix terminates the Agreement in accordance within this Section Customer must pay within 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 and expenses. The non-breaching Party may agree in its sole discretion to extend the 30-day period for so long as the breaching Party continues reasonable efforts to cure the breach.

7.6 In any case where either Party claims the other Party has not performed its obligations under the Agreement, the Parties will work together in good faith towards resolving the issues, if possible, in a mutually satisfactory manner. Each Party will appoint a management level individual (the "Escalation Contacts") to whom any unresolved disputes will be escalated where necessary. Where the claim cannot be resolved by the individuals first involved within a period of 10 days, the dispute will be escalated to the Escalation Contacts for resolution.

8. CONFIDENTIALITY

8.1 By virtue of the Agreement, the Parties may have access to Confidential Information. For the purposes of the Agreement, "Confidential information" means information of one Party (the "Discloser") which is disclosed or made available to the other Party (the "Recipient"), whether orally, in writing or any other form, which a reasonable person would regard as, or which is clearly marked as being, confidential, secret or proprietary. Without limiting the generality of the foregoing, (i) the Agreement constitutes Confidential Information, (ii) the Cloud Services (including, without limitation, all information relating to the Cloud services and their performance) constitute Confidential Information of Prophix and (iii) the Customer Content residing in the Cloud Services constitutes Confidential Information of Customer. Each party agrees to disclose only Confidential Information that is required for the performance of obligations under the Agreement.

8.2 A Party's Confidential Information shall not include information that:

- (a) is or becomes a part of the public domain through no act or omission of the Recipient;
- (b) was in the Recipient's lawful possession prior to the disclosure by the Discloser and had not been obtained by the Recipient either directly or indirectly from the Discloser;
- (c) is lawfully disclosed to the Recipient by a third party without restriction and not in violation of any duty owed to the Discloser or to others;
- (d) can be demonstrated by documented evidence to have been developed by the Recipient prior to disclosure of, or without reference or reliance upon, the Confidential Information of the Discloser; or



(e) can be demonstrated by documented evidence to be rightfully known by the Recipient prior to the date of disclosure.

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 Recipient will use the Discloser's Confidential Information solely for the purposes set out in or contemplated by the Agreement or set out under Prophix's Privacy Policy (the "Prophix Privacy Policy"), the current version of which can be found at www.prophix.com/privacy-policy. Neither Party shall, in the course of 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 Recipient may disclose Confidential Information to its respective employees, agents or subcontractors who have a need to know and are required to protect it against unauthorized disclosure in a manner no less protective than required under the Agreement. Prophix reserves the right to modify the Prophix Privacy Policy from time to time at its discretion and will post the current version at all times at the link referred to herein. The Recipient may disclose the Discloser's Confidential Information solely to the extent permitted hereunder or as required by law, judicial or arbitral process, provided reasonable efforts are made to notify the Discloser. The Recipient of any Confidential Information will promptly notify the Discloser of any misuse, misappropriation, or disclosure of the Discloser's Confidential Information in contravention of the Agreement which may come to the Recipient's attention.

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

9.1 In performing the Cloud Services, Prophix will maintain administrative, physical, and technical safeguards to protect the security and confidentiality of Customer Content residing in the Cloud Services, as outlined in the Prophix Privacy Policy. Upon request, Prophix will provide to Customer copies of its most recent SOC (or successor or similar) audit reports concerning Prophix's operations, all of which reports shall constitute Confidential Information of Prophix and be dealt with as such by Customer. Prophix will promptly notify Customer of any actual or suspected breaches of security that may result in the unauthorized access, use or disclosure of Customer Content and will cooperate with Customer in the investigation and remediation of any such breach of security. Prophix will also cooperate with Customer in responding to reasonable inquiries from Customer (or from Customer's regulators or data controllers) regarding Prophix's compliance with its data security obligations under the Agreement. 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 the Agreement.

9.2 Each Party agrees to comply with its respective obligations under all applicable 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 consents required to provide Prophix with all Customer Content, including all Personal Data contained in Customer Content, and to permit Prophix to use it in accordance with the Agreement. Customer shall 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. Customer and Prophix will enter a Data Processing Agreement (in Prophix's standard form) if so required under Privacy Laws.

9.3 Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Content, 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 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 Content outside of the Cloud Services.

9.4 Customer Content will not include health, payment card or similarly sensitive personal information, or data of any other kind, in either case that imposes specific data security or other obligations for the processing of such data on Prophix, unless otherwise specified in the Agreement or unless the specific information and details of the related obligations are specifically disclosed in writing to Prophix and approved by Prophix for inclusion in Customer Content. 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 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.

10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

10.1 Prophix warrants that the functionality of the Software will in all material respects be as described in the Documentation. If the Software provided to Customer does not function as warranted, Customer must promptly provide written notice to Prophix that describes the deficiency in the Software.

10.2 Prophix represents and warrants that:

- (a) it has title to the Cloud Services or has acquired the right to license portions of the Cloud Services from third parties and Prophix has full power and authority to grant to Customer the rights granted hereunder;
- (b) it has not placed, nor is Prophix aware of, any disabling code or any viruses in the Cloud Services which would alter, destroy, or inhibit the Cloud Service, or its use by Customer; and
- (c) to its knowledge, the Cloud Services do not infringe upon any Canadian, European, United Kingdom or United States copyright, registered patent, trademark, software mark or trade name owned by a Canadian, European, United Kingdom or United States third party.

10.3 Customer represents, warrants and covenants to Prophix that:

- (a) Customer exists under the laws of its incorporating jurisdiction and is not under any contractual, governance, statutory or other obligation or restriction that would preclude Customer from entering into, or either Party's performance of the terms of, the Agreement or would interfere with the use of Customer Content provided under the Agreement;
- (b) Customer owns or is properly licensed to all the rights of Customer Content at all times during the Term;
- (c) Customer Content is not, nor will be, in violation of any applicable laws or third-party intellectual property rights;
- (d) Customer's use of the Cloud Service does and will comply with all applicable laws, including Privacy Laws and Section 9 of the Agreement; and
- (e) neither the Agreement nor the performance of obligations, or the exercise of rights under the Agreement will violate, conflict with, or result in the breach of any term, condition, or provision of any agreement or legal obligation (whether or not existing at the effective date) to which Customer is a party or by which it may be bound, or constitute a default thereunder.

10.4 If the Software does not function as warranted in Section 10.1 above, Prophix will, upon notice from Customer of such failure, use commercially reasonable efforts to diagnose, correct or provide a reasonable workaround for same. If Prophix is unable to correct or provide a reasonable workaround for same within 30 days of receipt of notice thereof, Customer may terminate the Agreement provided Customer delivers written notice of such termination to Prophix within 30 days. The foregoing constitutes Customer's sole and exclusive remedy and Prophix's sole obligation for any such failure. Prophix has no obligation or liability whatsoever to the extent any failure arises or results from improper or unauthorized use, breaches of the Agreement by Customer, Customer's negligence or wilful misconduct, or failures, errors, or misconfigurations of hardware, equipment or software not owned, controlled or licensed by Prophix.

10.5 Prophix does not offer financial or accounting advice. 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. Prophix does not warrant that the operation of the Cloud Services will be entirely secure, completely error free, or uninterrupted.

10.6 EXCEPT FOR THE WARRANTIES SET OUT IN SECTIONS 10.1 AND 10.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROPHIX DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS, WARRANTIES OR



CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE ARISING BY STATUTE, IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. PROPHIX HAS NO RESPONSIBILITY OR LIABILITY FOR ANY LOSS, DAMAGE OR CLAIM ARISING FROM (I) FAILURES, INTERRUPTIONS OR DISRUPTIONS OF THE INTERNET, ANY SHARED NETWORK OR COMMON CARRIER FACILITIES OR (II) CUSTOMER CONTENT OR (III) ANY PRODUCTS OR SERVICES, NOT PROVIDED BY PROPHIX PURSUANT TO THIS AGREEMENT OR (IV) ANY MISUSE OR MISCONFIGURATION BY YOU OR ANY THIRD PARTY OF THE CLOUD SERVICES OR ANY OTHER PRODUCT OR SERVICE.

11. LIMITATION OF LIABILITY

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, (REGARDLESS OF THE BASIS OR TYPE OF CLAIM AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN ADDITION, EXCEPT FOR ANY CLAIM BASED UPON GROSS NEGLIGENCE, WILFUL MISCONDUCT, A PARTY'S INDEMNIFICATION OBLIGATIONS (PURSUANT TO SECTION 12), OR A BREACH OF SECTION 8 (CONFIDENTIALITY), NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR AN AMOUNT THAT EXCEEDS THE PORTION OF THE CLOUD SERVICES FEES PAID BY CUSTOMER AND ATTRIBUTABLE ON A PRO-RATED BASIS TO THE PERIOD OF 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE OBLIGATION. IN ANY CASE WHERE THE CLAIM IS BASED UPON GROSS NEGLIGENCE, WILFUL MISCONDUCT, A PARTY'S INDEMNIFICATION OBLIGATIONS (PURSUANT TO SECTION 12), OR A BREACH OF SECTION 8 (CONFIDENTIALITY), NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR AN AMOUNT THAT EXCEEDS USD\$1,000,000. THESE EXCLUSIONS AND LIMITATIONS ARE MEANT TO APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF THE FAILURE OF ANY SPECIFIC REMEDY.

12. INDEMNIFICATION

12.1 Subject as herein provided, Prophix will defend, indemnify and hold Customer harmless from and against any claim brought against Customer by a third party, any final award of damages or settlement amount, and any liabilities or expenses incurred by Customer (including reasonable attorneys' fees) as a result of such claim, which alleges that the use of the Cloud Services infringes any intellectual property right of a third party. If the use of the Cloud Services is (or in Prophix's opinion is likely to be) enjoined due to such a claim, Prophix will either, at its election, (i) procure the right to continue using the Cloud Services under the terms of the Agreement, (ii) replace or modify the Cloud Services so that they are non-infringing (but functionally equivalent), or (iii) cancel Customer's rights with respect to the infringing Cloud Services and refund Customer the unused portion of the fees paid for the Cloud Services of which the use is legally prohibited.

12.2 Prophix will not indemnify Customer if and to the extent the claim against Customer is based upon:

- (a) the Customer's uses of the Cloud Services in any manner that is in breach of the Agreement, or outside the scope of use identified in the Documentation; or
- (b) Customer Content, Third Party Content, Third Party Products or other products or services not provided by Prophix pursuant to this Agreement, or the use of the Cloud Services with any of the foregoing.

12.3 Customer will defend, indemnify and hold Prophix harmless from and against any claim brought against Prophix by a third party, any final award of damages or settlement amount, and any liabilities or expenses incurred by Prophix (including reasonable attorneys' fees) as a result of such claim, which:

- (a) is described in Section 12.2,
- (b) alleges that the access, use, or provision of any Customer Content in connection with Customer's use of the Cloud Services violates any applicable law, regulation, or the rights of others, including intellectual property rights, or
- (c) arises from or is related to (i) the failure to obtain any necessary rights, consents or permissions in respect of Personal Data or Customer Content, or (ii) Customer's violation of its obligations under the Agreement or (iii) Customer's business activities or its relations with third parties.

12.4 the Party seeking indemnification under this Section ("Indemnified Party") will be indemnified in accordance with this Section by the other Party (the "Indemnifying Party"), if the Indemnified Party does the following:

- (a) notifies the Indemnifying Party promptly in writing, not later than 30 days after the Indemnified Party receives notice of the claim (or sooner if required by applicable law);
- (b) gives the Indemnifying Party sole control of the defense and any settlement negotiations; and
- (c) gives the Indemnifying Party the information, authority and assistance the Indemnifying Party needs to defend against or settle the claim.

12.5 This Section 12 provides Prophix's entire responsibility and Customer's sole remedy for any infringement claim or action regarding the Cloud Services.

13. CLOUD SERVICES TOOLS AND SERVICE ANALYSES

13.1 Prophix may use software, and utilities (collectively, the "Tools") to monitor and administer the Cloud Services and to help resolve Customer's Prophix service requests. The Tools will not collect or store any of 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 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 form for security and operations management, to create statistical analyses, and for research and development purposes (the "Service Analyses"). Prophix may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content or Confidential Information in a form that could serve to identify Customer or any individual. Prophix retains all Intellectual Property Rights in Service Analyses.

14. AMENDMENT OF CLOUD TERMS

Prophix reserves the right to modify, add to, subtract from or otherwise amend these Prophix Cloud Services Terms at its sole discretion from time to time. Prophix will at all times post the current version of the Prophix Cloud Services Terms at <http://legal.prophix.com/PSI-CST>. Prior versions of the Prophix Cloud Services Terms will also be either posted online or made otherwise available to Customers upon request. Whenever a new Order takes effect, the Prophix Cloud Services Terms in effect at the time of the Order will apply both to the new Order, and also to all existing Orders for that Customer, so that at any given time there is one version of Prophix Cloud Services Terms in effect for the Customer. Where no new Orders take effect for a customer, modifications to these Prophix Cloud Services Terms will become effective immediately upon the start of the next Renewal Cloud Services Period. If Customer objects to the updated Prophix Cloud Services Terms, as its sole and exclusive remedy, Customer may choose not to renew.

15. FORCE MAJEURE

Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; 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, for clarity, labor disputes shall not be deemed a Force Majeure event. Both Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either Party may cancel unperformed Cloud Services upon written notice. This Section does not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the Cloud Services.

16. GOVERNING LAW AND JURISDICTION

The Agreement shall be exclusively governed by and construed in accordance with the laws of the jurisdiction specified below (the "Jurisdiction") 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*, the application of which is expressly excluded. Each party specifically attorns to the exclusive jurisdiction of the courts of the Jurisdiction over all matters arising in relation to the Agreement or the Cloud Services.



Address of Customer in Agreement

Canada
United States of America
South America
United Kingdom
European Union (excluding UK)
Rest of World

Jurisdiction

Province of Ontario, Canada
State of Delaware, United States
Brasil
England
Denmark
Province of Ontario, Canada

17. NOTICE

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:

- (i) Prophix, at the address or email address set out on in the applicable Order
Attention: Prophix Legal (legal@prophix.com)
- (ii) the Customer, at the address or email address set out in the applicable Order or failing which to the most current address or email address on record with Prophix.

17.2 All notices under the Agreement shall be in writing in the English language and shall be duly given if sent by email to the respective addresses of the parties described above. Any notice given shall 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” shall mean 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 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 shall be null and void. Notwithstanding the foregoing, either Party may assign the Agreement in connection with the sale of substantially all of its assets, or in a merger, amalgamation or similar transaction provided 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. Prophix may delegate or subcontract its obligations hereunder, provided however that no such assignment or delegation relieves Prophix of such obligations.

19. MISCELLANEOUS

19.1 The relationship between Prophix and Customer is that of independent contractor 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 Prophix may identify Customer as its customer on its websites and marketing, advertising and promotional materials and media. Customer also agrees that Prophix may use Customer’s trademarks, trade names and logos solely in connection with the provision of the Cloud Services as directed by Customer.

19.3 If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of the Agreement.

19.4 The Parties agree that breach of the Agreement may cause the non-breaching Party irreparable harm for which money damages will not make it whole. The non-breaching Party shall 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 law or in equity.



19.5 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 at law or in equity.

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 shall not affect the construction or interpretation of the Agreement.

19.7 The Parties hereto agree that the provisions of Section 4 (Ownership and Restrictions), Section 6 (Fees and Taxes), Section 7 (Renewal and Expiry of Cloud Services; Remedies and Termination), Section 8 (Confidentiality), Section 9 (Data Protection), Section 10 (Warranties, Disclaimers and Exclusive Remedies), Section 11 (Limitation of Liability) and Section 12 (Indemnification) shall survive and remain in full force and effect after the termination or expiration of the Agreement.

20. ENTIRE AGREEMENT

20.1 This Agreement, together with the appendices and exhibits incorporated herein (including reference to information contained in a URL), constitutes the complete and final agreement pertaining to the Cloud Services purchased by Customer and supersedes all prior or contemporaneous proposals, agreements, understandings, negotiations or representations, written or oral, regarding such Cloud Services. 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.

20.2 No third-party beneficiary relationships are created by the Agreement.

20.3 In the event of a conflict or inconsistency between an Order and these Prophix Cloud Services Terms, the Order will prevail, provided that the Order specifies the applicable provision in these Prophix Cloud Services Terms that it intends to modify. Any different or additional terms and conditions set forth in any purchase order, confirmation, order form or similar form, even if dated after the Effective Date, will have no force or effect on the Agreement unless such document specifies the applicable provisions of the Agreement that it intends to modify and is signed by duly authorized representatives of both Parties.

21. CURRENCY

All monetary amounts referred to in the Agreement are in US Dollars unless stated otherwise.



Appendix 1 – Prophix Service Level Terms

Prophix Service Level Terms

These Prophix Service Level Terms form part of the Prophix Cloud Services Terms to which it is an Appendix. Unless otherwise indicated, all capitalized terms used in this Appendix shall have the meanings as defined in the Prophix Cloud Services Terms of which it forms part.

Patches

Prophix will at its discretion periodically apply patches, bug fixes, updates, maintenance and service packs necessary for the proper function and security of the Cloud Services.

Service Commitment

Prophix will use reasonable efforts to (i) ensure the Monthly Uptime Percentage for the Cloud Services is not less than 99.5% (the "Uptime Commitment"), (ii) maintain the Cloud Services to minimize its unavailability, and (iii) provide information (circumstances permitting) when access to the Cloud Services will be restored.

Definitions

- (a) "Monthly Uptime Percentage" for a given Service Instance is calculated by subtracting from 100% the percentage of 1-minute periods during the month in which the Service Instance was not Available, based on the total time in the month. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any of the Exclusions (defined below).
- (b) "Service Instance" means a Cloud Services instance.
- (c) "Available" means that the Cloud Services are up and running, and able to receive requests.

Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of Cloud Services, or any other performance issues that, in whole or in part:

- result from a Suspension or Removal by Prophix in accordance with the Agreement or a breach by Customer of the terms in the Agreement;
- are caused by factors outside of Prophix's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Prophix and its providers;
- result from any voluntary actions or inactions of Customer or any third party (e.g. database restores, during professional or support services, not scaling storage when the storage is close to full, etc.);
- result from Customer not following the guidelines described in the Documentation;
- result in long recovery time due to insufficient resource capacity purchased for Customer's recommended solution workload;
- result from Customer's equipment, software or other technology and/or third-party equipment, software or other technology (other than third party equipment within Prophix's direct control); or
- result from any regularly scheduled or security/emergency maintenance as provided for pursuant to the Agreement; or
- result from any breach by Customer of the terms of the applicable Prophix Cloud Services Agreement or Prophix Cloud Services Terms.

(collectively, the "Exclusions").