



PRO TECH IT

GENERAL TERMS AND CONDITIONS

ProTech IT Group Inc.

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GENERAL TERMS AND CONDITIONS

The General General Terms and Conditions (the "General Terms and Conditions") shall be deemed incorporated into and made a part of each agreement, Scope of Work, amendment, or purchase order executed by **ProTech IT Group Inc.**, with its principal place of business at 200 Broadhollow Rd., Suite 207, Melville New York 11747 ("ProTech IT") and **Customer** (Protech IT and Customer are individually referred to herein as a "Party" and collectively as the "Parties") and shall not be modified, supplemented, or superseded by any terms or conditions in any document except as expressly agreed to in a writing signed by authorized representatives of both Parties and specifying the extent to which such document overrides the terms and conditions of these General Terms and Conditions.

1. DEFINITIONS

Unless defined otherwise, the following terms shall have the following meanings:

1.1. "Affiliate" shall mean, with respect to any entity, any other entity or person controlled by, controlling, or under common control with, such entity. "Control" shall mean the power to direct the management and policies of an entity, whether through voting rights, contract, or otherwise.

1.2. "Agreement" shall mean, with respect to the Services specified in the Scope of Work, (I) the Agreement (including any amendments or modifications hereto), (II) the Scope of Work (including any amendments or modifications thereto), and (III) any appendices attached to the Scope of Work (including any amendments or modifications thereto).

1.3. "Business Hours" shall mean the hours between 9:00 a.m. to 5:00 p.m., Eastern Standard Time every day, excluding Saturdays, Sundays, and US national holidays.

1.4. "Customer Equipment" shall mean any apparatus, cabling, equipment, hardware, material, service, system, communication system, facility, premise, software or other item provided by Customer or by a third party on behalf of Customer or procured or purchased by ProTech IT and passed through to Customer or purchased directly by Customer from ProTech IT or a third-party vendor.

1.5. "Customer Technology" means Customer's proprietary technology, including without limitation, all text, pictures, sound, video, and log files, Customer's software (in source and object forms), user interface designs, architecture and documentation (both printed and electronic), know-how, and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party).

1.6. "Location" means the site(s) occupied, owned or controlled by Customer or its Affiliates to which Service is delivered.

1.7. "ProTech IT Technology" means ProTech IT's proprietary technology, including the Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, business methods, and any related intellectual property rights throughout the world whether owned by ProTech IT or licensed to ProTech IT from a third party).

1.8. "Services" means the work to be performed by ProTech IT as specified in the Scope of Work.

1.9. "Scope of Work" means the Scope of Work executed by ProTech and the Customer and incorporated herein by reference that specifies the Services to be provided by ProTech to Customer hereunder. The Scope of Work shall include (without limitation), a description of the Services, the Location where the Services are to be provided, the applicable fees, as well as any terms and conditions, requirements, considerations, or objectives which differ from or add to the general provisions of the Agreement.

2. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

2.1. **Disclaimer of Warranties.** EXCEPT AS STATED EXPRESSLY HEREIN, PROTECH IT, ITS OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, REPRESENTATIVES, AGENTS,

SUCCESSORS AND ASSIGNS DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY, WHETHER OR NOT ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR CONCERNING QUALITY OR SPEED OF COMMUNICATIONS, OPERATION OR CONDITION OF EQUIPMENT OR SOFTWARE, COMPLIANCE WITH SPECIFICATIONS, OR NON-INFRINGEMENT.

2.2. **Limitation Of Liability.** Customer acknowledges and agrees that it is impossible to guarantee the trouble-free performance of computer hardware, software, networks, environments, security and systems, the security, privacy, specific functionality or performance of any free-standing or integrated system or resource; the reliability, applicability or performance of any technology or technology-related asset; the applicability, outcome or performance of any training or the behavior of any human resources; whether procured, provided, installed, managed, supported, administered, trained and/or supervised by ProTech IT, or in any way associated with ProTech IT services or otherwise. Accordingly, the Parties agree to certain further limitations of liability and damages. IN NO EVENT SHALL PROTECH ITS LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) TO CUSTOMER EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO THE AGGREGATE CHARGES OR FEES ACTUALLY PAID BY CUSTOMER WITH RESPECT TO SUCH SERVICE, FOR THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH DURING WHICH THE EVENT GIVING RISE TO PROTECH'S LIABILITY OCCURS.

2.3. **Damage Exclusions.** IN NO EVENT SHALL PROTECH IT BE LIABLE TO CUSTOMER, (I) FOR ANY FAILURE OR DELAY IN PROVIDING THE SERVICES WHERE SUCH FAILURE OR DELAY IS THE DIRECT OR INDIRECT RESULT OF ANY ACTION BY OR THE FAILURE OF THE CUSTOMER TO COMPLY WITH THE AGREEMENT (II) FOR ANY LOST PROFITS, LOST REVENUE, OR FAILURE TO REALIZE SAVINGS, (III) FOR ANY ADMINISTRATIVE, REGULATORY, OR OTHER PENALTIES, OR (IV) FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEABLE, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SAME, AND WHETHER LIABILITY THEREFOR IS BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE.

2.4. **Exclusive Remedies.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CUSTOMER'S SOLE REMEDIES FOR DEFECTS, FAULTS, OR IMPAIRMENTS IN THE SERVICE SHALL BE LIMITED TO THOSE STATED HEREIN. THE REMEDIES STATED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES.

3. INDEMNIFICATION

Customer shall indemnify, defend, and hold harmless ProTech IT, and its officers, directors, principals, members, managers, employees, subcontractors, agents, representatives, successors and assigns from and against any damage, claim, loss, expense (including reasonable attorneys' fees and damage to any person or property), occurring as a result of: (I) any breach by Customer of its obligations hereunder, (II) any negligent, fraudulent, or willful act or omission by Customer or those authorized by Customer in using the Services (III) damage to property or for bodily injury or death to any person, (IV) failure of any Customer Equipment, (V) the storage, transmission or possession of information, data, messages, software or other content or material on Customer's systems or network that are installed, managed or otherwise serviced by ProTech IT, or on third party systems and networks that ProTech IT uses to provide its services, including but not limited to, claims: (A) for libel, slander, invasion of privacy, identity theft, infringement of copyright, and invasion or alteration of private records or data; (B) for infringement of patents; (C) for security breaches of any kind; or (D) based on handling, storage, transmission or possession of information that contains viruses, malware or other destructive code, media, or any unlawful content; (VI) Customer's breach of any software or hardware licensing requirements of third parties., (VII) Customer's failure to obtain permits, licenses, or consents that Customer may be required to obtain to enable ProTech IT to provide its Services (e.g., landlord permissions, wiring permits, etc.); or (VIII) Customer's breach of any obligation confidentiality obligation hereunder, or any infringement of upon any third party's trade secret, trademark, service mark, copyright, patent or other intellectual property right set forth in the Agreement. ProTech IT shall give Customer written notice of any such claim and Customer has the right to participate in the defense of any such claim at its expense.

4. INTELLECTUAL PROPERTY

4.1. **Customer Works.** Except as the Parties may otherwise agree, any deliverable provided by ProTech IT to Customer not constituting modifications to an existing work constitutes a "Customer Work" and is to be deemed a "work for hire" and the sole, exclusive property of Customer, except for the following items, which do not constitute Customer Works: (i) software, including but not limited to any proprietary code, source code and object code, that is subject to third-party license agreements; (ii) those portions of any deliverable including information in the public domain; (iii) those portions of any deliverable constituting

generic ideas, concepts, business know-how and work processes, and techniques within the computer design, support and consulting business generally; and (iv) those portions of any deliverable containing general computer consulting knowledge and information that ProTech IT had or acquired during the performance of its Service for Customer and that does not include the proprietary business information of Customer, conveyed to ProTech IT by Customer; (v) all documentation created by ProTech IT in support of Customer systems. Customer hereby grants ProTech IT a non-exclusive, limited license to make copies of any Customer Works, for use only by ProTech IT in providing Services to Customer or for ProTech IT's internal purposes or those of its wholly owned Affiliates, subject to third party license agreements, if any.

4.2. **Modifications to Existing Customer Works.** Any writing or work of authorship, regardless of medium, prepared by ProTech IT and consisting of modifications to existing works owned by Customer constitutes a "Customer Modification" and is to be deemed a "work for hire" and the sole and exclusive property of Customer (except, no such writing or work of authorship relating to software owned by or licensed to Customer is to be deemed a Customer Modification if the license agreement governing the software prohibits the granting of such right by ProTech IT). The term "Customer Modification" does not include any ProTech IT-supplied software or technology or modifications thereto, or any writing or work of authorship, regardless of medium, relating to or evidencing any ProTech IT-supplied software or technology.

4.3. **Modifications to Existing ProTech IT Works.** Any writing or work of authorship, regardless of medium, created or developed by ProTech IT or Customer in the course of performance under the Agreement and relating to existing works owned by ProTech IT constitutes a "ProTech IT Work," is not to be deemed a "work for hire," and does and will remain the sole, exclusive property of ProTech IT. To the extent any ProTech IT Work for any reason is determined not to be owned by ProTech IT, Customer hereby irrevocably assigns, transfers and conveys to ProTech IT all of Customer's right, title, and interest in such ProTech IT Work, including, but not limited to, all rights of patent, copyright, trade secret, know-how, and or other proprietary and associated rights in such ProTech IT Work. Customer agrees to execute such documents and take such other actions as ProTech IT may reasonably request to perfect ProTech IT's ownership of any such ProTech IT Work.

4.4. **General Skills and Knowledge.** Subject to ProTech IT's obligations under the Agreement, ProTech IT may utilize any skills, knowledge or ideas of a general nature acquired during the course of providing the Services, and may independently develop the same or similar deliverables for other clients based on skills, knowledge or ideas of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in a similar work performed for another client of ProTech IT.

5. OBLIGATIONS OF THE PARTIES

5.1. **Representations of Customer.** Customer represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during the Term, to install and use the Services as contemplated hereunder; (ii) the performance of Customer's obligations under the Agreement and use of the Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications, and (iii) Customer is authorized and has completed all required corporate actions necessary to execute the Agreement and SOW.

5.2. **Representations of ProTech IT.** ProTech IT represents and warrants that (i) it has the legal right and authority and will maintain the legal right and authority during the term of the Agreement, to provide the Services ordered by Customer hereunder; (ii) the performance of ProTech IT obligations under the Agreement will not violate any applicable law, rule or regulation; and (iii) ProTech IT is authorized and has completed all required corporate actions necessary to execute the applicable Customer Order(s).

5.3. **Location Access.** Customer will allow ProTech IT and its employees, agents, and contractors the right to access and enter Customer's equipment, facilities, premises and Locations as necessary to provide, test, or maintain the Service or to install, operate, test, inspect, configure, maintain, repair, replace, move, or remove any equipment and to provide the Service. Customer represents to ProTech IT that Customer is duly authorized to occupy the Location(s) and that Customer has obtained or will obtain on a timely basis all permissions and consents from third parties necessary to allow ProTech IT access as set forth herein, including permission to cross real property to access the Customer Location(s). Customer will be responsible for providing and maintaining at its own expense the proper environment, including the level of power, heating and air conditioning, necessary for the Services at the Location(s). In the event that Customer fails to meet its obligations regarding the Customer Location(s) hereunder and, as a result, ProTech IT is unable to provide or continue the delivery of Services, then (notwithstanding the absence of Services) Customer will pay all Charges for such Services during such time.

6. NON-SOLICITATION

6.1. Throughout the term of the Agreement and for a period of one year after the termination or expiration of the Agreement, Customer and ProTech IT shall not employ, solicit or offer employment, either directly or indirectly (including without limitation, through the use of any third party) to any employee of the other (or any person who was employed by the other within the past one year), without the prior written consent of the other. Notwithstanding the foregoing, in the event that a court of competent jurisdiction shall declare the agreement represented by the foregoing sentence to be unenforceable, and one Party employs, directly or indirectly, or retains in a consulting or other capacity, any person employed by the other Party within the previous one (1) year, the hiring Party shall compensate the other Party for such employment at a fee equal to one hundred fifty percent (150%) of any such employee's or other Party's then current annual salary, which each Party acknowledges and agrees is fair and just compensation and does not constitute punitive or liquidated damages.

7. CONFIDENTIALITY

Customer and ProTech IT each acknowledge and agree that the Parties' business relationship and any agreements related thereto are governed by the terms of the Confidentiality Agreement executed by Customer and ProTech IT the terms of which are incorporated herein by reference.

8. INDEPENDENT CONTRACTOR

Unless otherwise agreed, ProTech IT will perform all Services solely in ProTech IT's capacity as an independent contractor and not as an employee, agent or representative of Customer. ProTech IT will not be entitled to any privileges or benefits that Customer may provide to its employees, and ProTech IT will remain responsible for payment of all unemployment, social security, federal income (state and local income where applicable) and other payroll taxes or mandatory assessments imposed by any governmental body on employers in regard to those of its employees engaged in the performance of the Services. Neither ProTech IT nor Customer, nor their respective employees or agents, are authorized to act or to appear to act as a representative of the other party, whether in performing the Services or otherwise, except as required for ProTech IT employees to obtain technical support from third party vendors.

9. DISPUTE RESOLUTION

9.1. **Arbitration Procedures.** The Parties shall attempt to settle amicably by mutual discussions any disputes, differences, or claims related to the Agreement within sixty (60) days of the date such dispute arises. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to the Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules (and if Customer is a non-U.S. entity, the International Arbitration Rules) of the American Arbitration Association ("AAA"). There will be one arbitrator (the "Arbitrator"). The Arbitration will be conducted in English. The Arbitrator will not have the authority to award punitive damages to either Party. Each Party will bear its own expenses, but the Parties shall share equally the expenses of the Arbitrator and the AAA. The Agreement will be enforceable, and any Arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. The Arbitration will be held in County of Suffolk, New York, or other location as is mutually agreed by the Parties. Notwithstanding the foregoing, claims for preliminary injunctive relief, other pre-judgment remedies, and claims for Customer's failure to pay for Services in accordance with the Agreement may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties.

9.2. **Period for Bringing Claim.** No claims to be resolved may be made more than one (1) year after the date by which the fault or failure should reasonably have been discovered; failure to make such a claim within the one (1) year period shall forever bar the claim.

9.3. **Continued Service.** Unless ProTech IT is bringing an action for failure to make payments by Customer for Services not otherwise in dispute, ProTech IT shall continue to provide Services under the Agreement, and Customer shall continue to make payments to ProTech IT, in accordance with the Agreement, during the period in which the parties seek resolution of the dispute.

9.4. **Attorneys' Fees.** In the event that a Party to the Agreement commences any action or proceeding to enforce the terms of the Agreement, the prevailing Party shall be entitled to an award of all reasonably attorneys' fees, costs, and expenses incurred in connection therewith.

9.5. **Failure to Arbitrate.** In the event that a duly commenced Arbitration is not concluded as a result of the failure of one of the Parties to pay AAA or other fees associated with the Arbitration, the Parties agree that the requirement that they arbitrate any dispute shall be waived and that the other Party may proceed to a non-jury trial in any court of competent jurisdiction.

10. **MISCELLANEOUS**

10.1. **Notices and Other Communications.** All notices, demands, requests or other communications required or permitted to be given to any party hereto in connection herewith shall, unless expressly provided otherwise in writing shall be sent to such party at the address set forth above and (a) must be in writing and (b) may be served either by (i) depositing the same in the United States mail, full postage prepaid, certified or registered with return receipt requested, or (ii) delivering the same in person, or (iii) sending a telecopy or e-mail of the same, confirmed with a copy thereof delivered either by mail or in person as provided herein. Any notice, demand, request or other communication shall be effective only if and when it is received by the addressee. Any party hereto may change its address or recipient for the purposes hereof by giving notice of such change of address to the other party in the manner provided in this Section.

10.2. **Entire Agreement.** The Agreement, together with the SOW(s), and these General Terms and Conditions constitute the full understanding of the parties with respect to the subject matter hereof and thereof, and supersedes all prior negotiations, understandings and agreements, whether written or oral, among the parties with respect hereto and thereto.

10.3. **Amendments.** No alteration, modification, amendment or change in the Agreement or these General Terms and Conditions shall be effective or binding on any party unless the same is in writing and is executed by all Parties. In the event of a conflict between the terms of the Agreement and the terms of any SOW which is entered into contemporaneously with or after the Agreement, the terms of the Agreement and these General Terms and Conditions will govern unless the SOW expressly references this Section 10.3 and expressly states that particular terms thereof amend the terms of the Agreement or these General Terms and Conditions.

10.4. **Waivers.** No waiver by any Party of an inaccuracy in the representations contained herein, any breach of the covenants set forth herein, or any rights or remedies provided hereunder and no course of dealing shall be deemed a continuing waiver of the same or any other inaccuracy, breach, right or remedy, unless such waiver is in writing and is signed by the Party sought to be bound. The failure of a Party to exercise any right or remedy shall not be deemed a waiver of such right or remedy in the future.

10.5. **Modification and Severability.** If a court of competent jurisdiction declares that any provision of the Agreement, these General Terms and Conditions, or any SOW is illegal, invalid or unenforceable, then such provision shall be modified automatically to the extent necessary to make such provision fully legal, valid or enforceable, and any court of competent jurisdiction is authorized to so reform the Agreement, the General Terms and Conditions, or SOW. If such court does not modify any such provision as contemplated herein, but instead declares it to be wholly illegal, invalid or unenforceable, then such provision shall be severed from the Agreement, the General Terms and Conditions, or the SOW, the Agreement, the General Terms and Conditions and the SOW and the rights and obligations of the Parties hereto shall be construed as if the Agreement, the Terms and Condition, or the SOW did not contain such severed provision, and the Agreement, the General Terms and Conditions, and the SOW otherwise shall remain in full force and effect.

10.6. **Assignment.** Except as otherwise provided herein, no Party shall assign, convey, transfer or otherwise dispose of all or any portion of its interest in, or its rights and obligations under, the Agreement or any other document or instrument executed and delivered in connection herewith without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, delayed or conditioned. Nevertheless, and despite the foregoing, ProTech IT may employ subcontractors to perform the Services.

10.7. **Press Releases.** Notwithstanding the preceding provisions, ProTech IT may publicly refer to Customer, orally and in writing, as a Customer of ProTech IT, and may provide the publicly releasable titles of any SOW. Any other reference to Customer by ProTech IT may be made only in accordance with this Section. The parties shall consult with each other in preparing any press release, public announcement, case study or other form of release of information concerning the Agreement or the

transactions contemplated hereby that is intended to provide such information to the news media or the public (a "Press Release"). Neither party may issue or cause the publication of any such Press Release without the prior written consent of the other party. However, nothing herein prohibits either Party from issuing or causing publication of any such Press Release to the extent that such action is required by applicable law or the rules of any national stock exchange applicable to such party or its affiliates, in which case the party wishing to make such disclosure will, if practicable under the circumstances, notify the other party of the proposed time of issuance of such Press Release and shall consult with and allow the other party reasonable time to comment on such Press Release in advance of its issuance.

10.8. **Captions.** The captions contained in the Agreement, the General Terms and Conditions, and any SOW are for convenience of reference only and shall not affect in any way the meaning, construction or scope of the Agreement, the General Terms and Conditions, or the SOW.

10.9. **Governing Law; Jurisdiction.** The Agreement, the General Terms and Conditions, and any SOW shall be governed by, construed under, and enforced in accordance with the law of the State of New York without reference to the conflict-of-laws provisions thereof. Sole and exclusive personal jurisdiction and venue of any dispute in any way relating to the Agreement, the General Terms and Conditions, or any SOW shall be in the State of New York and in the courts located in Suffolk County, New York, and the United States District Court for the Eastern District of New York.

10.10. **Multiple Counterparts; Signatures.** The Agreement, the General Terms and Conditions, and any SOW may be executed by the Parties hereto in multiple counterparts, each of which shall be deemed an original for all purposes, and all of which together shall constitute one and the same instrument. Facsimile or email signature pages on the Agreement, the General Terms and Conditions, or any SOW shall be deemed to be original signatures.

10.11. **Force Majeure.** Neither Party will be liable to the other for any failure or delay in the performance of any of its obligations under the Agreement and any SOW arising out of any event or circumstance beyond its reasonable control, including war, rebellion, terrorism, civil commotion, strikes, lock-outs or industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather; or requisitioning or other act or order by any government, council, or constituted body. If such failure or delay occurs, then the affected Party will give the other Party notice of the circumstance causing such failure or delay, and such party will be excused from the performance of such of its obligations that it is thereby disabled from performing for so long as the event causing the disability continues; provided, however, that such affected Party commences and continues to take reasonable and diligent actions to cure such failure or delay.

10.12. **Representation by Counsel; Interpretation.** Each Party acknowledges that it has been represented by counsel or has had the opportunity to be represented by counsel in connection with the Agreement, the General Terms and Conditions, and related SOWs and the transactions contemplated by the Agreement and related SOWs. Accordingly, any rule or law or any legal decision that would require interpretation of any claimed ambiguities in the Agreement and related SOWs against the Party that drafted it has no application and is expressly waived by such Parties. The provisions of the Agreement, the General Terms and Conditions, and related SOWs shall be interpreted in a reasonable manner to affect the intent of the Parties hereto.