

## Prove Terms of Service 27.9.2017

The following Terms of Service, which include Privacy Statement, and any SOW (as later defined), are legally binding contractual agreement ("Agreement") between you and Prove Expertise Oy ("Prove", "we", "us"). Wherever used in these Terms of Service, "you", "your", "Customer", or similar terms means the person or legal entity purchasing the Services. If you are purchasing the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms of Service.

Hereinafter Prove and Customer may also be referred to individually as a "Party" and jointly to as "Parties".

By purchasing the Services, you agree to these Terms of Service. If you do not accept these Terms of Service in their entirety, you may not purchase the Service. In the latter case, please contact Prove to discuss the contractual arrangements in more detail.

### 1. Definitions

**"Agreement"** means these Terms of Services, the Privacy Statement, and any SOW agreed on between you and Prove concerning the Services.

**"Customer Material"** means all information and data (including text, images, photos, videos, audio, and documents) or any other content in any media and format provided or made available to Prove by or on your behalf in relation to the use of the Services.

**"Deliverables"** means any and all documents, items, materials, and other works and/or results, in whatever form, to be delivered by Prove to Customer as specified in the SOW.

**"Intellectual Property Rights"** means all worldwide intellectual property rights including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

**"Prove Materials"** means (i) materials owned, developed or obtained by or for Prove independently of the Services, (ii) parts or portions of the Deliverables that by themselves provide generic technical information not unique to Customer's business, and (iii) all Intellectual Property Rights owned by Prove.

**"Services"** means services provided to you by Prove as described in the Statement of Work to which these Terms of Service are attached

(**"SOW"**). These Terms of Service shall be applied to all and any SoW between Prove and the Customer.

**"SOW"** means a document issued by Prove and executed or otherwise agreed upon by you, or your authorized representative that specifies, among other things, a description of the Services, the fees, the Term, and any other details specifically related to the Services.

**"Taxes"** means any sales, use and other taxes, value added tax (VAT), export and import fees, customs duties, and similar charges applicable to Services that are imposed by any government or other authority.

**"Third-Party Services"** means products, services, applications, or websites made available by third parties through the Services (i.e., companies or people who are not Prove).

### 2. Prove Services

**2.1 Services.** Subject to the terms and conditions of this Agreement, Prove will provide the Services and the Deliverables to you as specified in the SOW. The Services, the Deliverables, the Customer Material, as well as contact information for Prove and Customer, project description, delivery schedule, staff roles, pricing and payment schedule shall be enclosed and specified in the SOW.

**2.2 Acceptance.** You shall without undue delay give your acceptance or observations to Prove's written notice or report regarding the progress of the Service and to the results of the Service and/or Deliverables. If you do not make a written notice of acceptance or rejection within fourteen (14) days from receipt of the notice or final report (**"Acceptance Period"**), the Service and/or Deliverables included in the notice or report shall be deemed as accepted.

**2.3 Refund Policy.** If you reasonably believe that Prove did not perform the Services or the Deliverables in substantial conformance with the SOW, you may issue a written notice thereof to Prove within the Acceptance Period. You must specifically identify and explain the reasons for non-acceptance. Prove will then use reasonable efforts to correct the issues pointed out by you. If you still are not satisfied after Prove's such efforts, you are then entitled to have a full refund for the payments you have already paid to Prove for the Services.

**2.4 Change Control.** All changes to any SOW, including changes to the specifications and contents of the delivery and the possible effects of the changes to the time schedule, as well as any changes to the price and other terms and



conditions of the SOW and of this Agreement shall be agreed in writing in order to be valid.

**2.5 Delays.** If either Party finds that a delay concerning the Services will occur or is likely to occur, the Party shall without delay inform the other Party in writing of the delay and of the effects of the delay on the delivery time schedule or performance of obligations of the Party.

**2.6 Subcontractors.** Prove may subcontract the performance of the Services, provided always that such subcontractor must be bound by the confidentiality provisions of the Agreement or similar confidentiality obligation.

**2.7 Personnel.** Prove will determine the personnel assigned to perform the Services. If you reasonably believe that Prove personnel is not performing the Services in a satisfactory manner, you shall have the right to request the replacement of such personnel, provided that you specify the reasons of such request.

**2.8 Project Managers.** Each Party shall appoint a Project Manager for each SOW. The Project Manager shall follow and supervise the implementation of the SOW and to inform its own organization and the other Party of matters related to the implementation of SOW.

**2.9 Non-Exclusivity.** You acknowledge that the rights granted to you under this Agreement are non-exclusive and that nothing in this Agreement will be interpreted or construed to prohibit or in any way restrict Prove's right to sell or otherwise make available the Services to any third party or perform any services for any third party.

**2.10 Reference.** Following successful execution of the Services, Prove shall have the right to use the Customer as a customer reference, which right includes, but is not limited to, displaying the Customer logos in conjunction with Prove's online presence; by publishing a customer case study; by publishing recommendation quotes from the Customer; and in similar presentations and PR activities of Prove.

### 3. Intellectual Property

**3.1 Grant of License Rights.** Unless otherwise agreed between Prove and you, Prove hereby grants to you a non-exclusive, non-transferable, irrevocable (except in case of breach of the SOW by you), perpetual license, to use and copy (without the right to sublicense) the Deliverables for your internal business operations only.

**3.2 Feedback.** If you wish so, you may provide suggestions, comments or other feedback concerning the Services to Prove ("**Feedback**"). You hereby grant to Prove a non-exclusive,

worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free and fully paid-up license to use and exploit the Feedback for any purpose. Feedback submitted by you shall not create any confidentiality obligation for Prove.

**3.4 Customer Material.** You shall retain all right, title and interest in and to all and any Customer Material and all intellectual property rights used by Prove in connection with the Services. You warrant that you have the necessary rights to provide Customer Material to Prove for the purposes set forth in this Section. You hereby grant to Prove a non-exclusive, worldwide, and limited license to use and exploit (e.g. access, use, reproduce, perform, display, store and archive) the Customer Material for the purpose of providing Services to you as well as to support and develop the Services (provided that Prove shall use Customer Material in an anonymized and aggregated form).

**3.5 Other Intellectual Property Rights.** Each Party shall retain and own all other Intellectual Property Rights it has not expressly granted to the other Party. For the sake of clarity it is noted that all rights in Prove Materials shall remain in Prove's property. Notwithstanding the foregoing, unless otherwise agreed between you and Prove, this Agreement shall not limit Prove from (i) developing, using or marketing services, materials or products that are similar or related to the Deliverables or the Services; or (ii) using the Deliverables in or performing similar Services for any other projects or entities (provided that such actions do not violate any agreed confidentiality obligations between you and Prove).

### 4. Prove Products and Fees

**4.1 Invoicing.** You agree to pay all fees as and when described per the SOW. Prove shall invoice you for the fees in the currency set forth on the applicable SOW. For paid Services purchased online, you must provide Prove with a valid credit card or other payment method (e.g., PayPal account) to pay for such Services. Unless otherwise stated on the SOW, all invoices shall be payable before commencement of the Services by Prove, and in consequence, Prove has no obligation to commence the Services until it has received full payment from the Customer. Any disputed amounts shall not affect payment of non-disputed amounts. You shall make payments to the entity and address set forth in the invoice.

**4.2 Late Payment.** If you fail to make payments to Prove when they are due, then Prove is entitled to charge interest for late payment at the rate of 16 % per year or the maximum rate permitted by law, whichever is lower, from the due date of the invoice until the date paid. Furthermore, Prove may discontinue the respective SOW if any amounts



payable to Prove are late more than thirty (30) days from the date of the invoice.

**4.3 Taxes.** You are responsible for paying all Taxes associated with your purchase of Services. If Prove has the legal obligation to pay or collect Taxes for which you are responsible under this section, the appropriate amount shall be invoiced to and paid by you, unless you provide Prove with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. Term and Termination

**5.1 Term of the Agreement ("Term").** The term of this Agreement shall commence on the date stated in the SOW and continues until (i) Customer's acceptance of the Deliverables; or (ii) terminated under Section 5.2 or Section 6.1. Furthermore, the Parties mutually terminate the SOW in writing.

**5.2 Termination.** Either Party may terminate the SOW immediately upon written notice if (i) the other Party breaches any provision of the SOW and does not cure the breach within thirty (30) days after receiving written notice from the other Party; or (ii) the other Party commits a material breach of the SOW that is not capable of being cured.

Prove may terminate the SOW in its entirety effective immediately upon written notice to you if: (i) you terminate or suspend your business; or (ii) you are or become subject of liquidation, bankruptcy, or reorganization proceedings.

**5.3 Survival.** Any provision of the SOW which, either by its terms or to give effect to its meaning, must survive, and such other provisions which expressly, or by their nature, are intended to survive termination shall survive the expiration or termination of the SOW.

## 6. Warranties

**6.1 Prove Warranty.** Prove warrants that the Services will be performed in a workmanlike manner in accordance with the applicable legislation as well as the standards of the industry. You must notify Prove of any alleged breach of this warranty before the end of the Acceptance Period. Should it be established that Prove has in breach of this warranty, Prove then shall, at its own discretion, either (i) correct such breach, or (ii) terminate the respective SOW with immediate effect and refund a portion of fees received that corresponds to such breach.

**6.2 Disclaimer of Warranties.** THE EXPRESS WARRANTY SET FORTH IN SECTION 6.1 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER EXPRESS, IMPLIED OR

STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE CONSULTING SERVICES OR DELIVERABLES, OR ANY OTHER MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THE SOW. PROVE WILL NOT BE LIABLE FOR ANY THIRD-PARTY SERVICES OR PRODUCTS IDENTIFIED OR REFERRED TO CUSTOMER BY PROVE. NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF PROVE HAS THE AUTHORITY TO BIND PROVE TO ANY REPRESENTATIONS OR WARRANTIES OUTSIDE THE SOW.

## 7. Limitation of liability

**7.1. Limitation of Liability.** NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, BUSINESS INTERRUPTION, OR LOSS OF PROFITS, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE LICENSED MATERIALS, EVEN IF THEY HAVE BEEN ADVISED OF OR SHOULD HAVE FORESEEN SUCH DAMAGES. HOWEVER, THIS FOREGOING LIMITATION OF LIABILITY CLAUSE SHALL NOT BE APPLIED TO INDIRECT DAMAGES CAUSED BY BREACH OF SECTION 8 (CONFIDENTIALITY) AND SECTION 8.1 (CUSTOMER'S INDEMNIFICATION).

PROVE'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF THE SOW OR SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY PROVE'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE PRICE PAID TO PROVE FOR THE SERVICES RENDERED HEREUNDER.

NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR RESTRICT OR SHALL BE CONSTRUED AS EXCLUDING OR RESTRICTING THE LIABILITY OF PROVE FOR (I) DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF PROVE, ITS EMPLOYEES, OR ITS AGENTS; (II) WILLFUL MISCONDUCT OF PROVE; OR (III) ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

## 8. Indemnification



**8.1 Customer's Indemnification.** You shall defend, indemnify, and hold harmless Prove, its affiliates, directors, officers, employees, and agents from and against all claims, losses, damages, penalties, liability, and costs, including reasonable attorneys' fees, of any kind or nature which are in connection with or arising out of a claim (a) alleging that the Customer Material or your use of the Services infringes or violates the intellectual property rights, privacy rights, or other rights of a third party or violates applicable law; (b) relating to, or arising from, Customer Material; or (c) relating to, or arising from, Third-Party Services.

## **9. Confidentiality**

**9.1 Confidential Information.** Both Prove and you agree that the SOW and all information and Materials related to the SOW constitutes "**Confidential Information**". Confidential Information further includes information either marked as confidential or information reasonably known or understood by the receiving party as being treated by the disclosing party as confidential. Confidential Information shall not include information: (i) that is now or becomes generally available to the public through no fault or breach of the receiving party; (ii) that the receiving party can document was already known to it prior to disclosure by the disclosing party; (iii) that is independently developed by the receiving party without use of any of the other party's Confidential Information; and (iv) that the receiving party rightfully obtains from a third party who has the right to transfer or disclose it.

**9.2 Confidentiality Obligation.** Each Party agrees to keep the other Party's Confidential Information confidential, not to use such information except as authorized by the disclosing Party, and to accord to such information the same safeguards and protections which it accords to its own confidential business or technical information. If the receiving Party is ordered by any court or governmental agency to disclose the other Party's Confidential Information, it will provide prompt written notice to the other Party so as to allow such Party to seek a protective order or confidential treatment for such information.

**9.3 Disclosures to Personnel.** Both Parties may disclose Confidential Information to their personnel on a need-to-know basis for performing the duties required by this Agreement with the provision that such personnel are bound by confidentiality obligations herein.

## **10. General Terms**

**10.1 Assignment.** You may not assign or otherwise transfer any of your rights or obligations hereunder without prior written consent by Prove.

Prove may freely assign or delegate all rights and obligations under this Agreement, fully or partially without notice to you.

**10.2 Severability.** Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid, or unenforceable, the illegality, invalidity, or unenforceability of that provision will not affect the legality, validity, or enforceability of the remaining provisions of this Agreement.

**10.3 Notices.** All notices in connection with this Agreement are to be made in writing. The effective date of any such notice will be the date on which it is received by the addressee.

**10.4 No Waiver.** The failure of a Party to exercise any right or privilege arising out of the Agreement shall not preclude it from requiring that the other Party fully perform its obligations and shall not preclude it from exercising such a right or privilege at any time.

**10.5 Nature of Relationship.** No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

**10.6 Force Majeure.** Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure is caused by an impediment beyond the party's control and which the party could not have reasonably taken into account at the time of the conclusion of this Agreement and whose consequence the party could not have avoided or overcome. If such Force Majeure event continues for cumulative period of sixty (60) days or more, either party may terminate the respective SOW by giving the other party a written notice thereof.

**10.7 Governing Law.** This Agreement and your relationship with Prove shall be governed exclusively by, and will be enforced, construed, and interpreted exclusively in accordance with, the laws applicable in Finland without regard to its conflict of law provisions. Any controversy, dispute or claim arising out of this Agreement or the breach thereof will be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Central Chamber of Commerce. The arbitral tribunal will be composed of a sole arbitrator and the proceedings will take place in Helsinki, Finland. The language of the arbitration will be the English language.

**10.8 Entire Agreement.** This Agreement, together with the main agreement referring to it and any applicable SOW(s) incorporated herein, and the Privacy Statement, comprises the entire agreement between you and Prove and supersedes all prior or contemporaneous





negotiations, discussions or agreements, whether written or oral, between Parties regarding the subject matter contained herein. In the event of any conflict between this Terms of Service and the terms of a SOW, the provisions of the SOW shall prevail. The terms of this Agreement will apply to all orders you submit to Prove and shall supersede any additional terms, which may be incorporated in a purchase order form, or any other form you generate. Any such terms shall be null and void.