



Proficio
CVR# DK 21969982
Hansensvej 20
3400 Hillerød

SUBSCRIPTION AGREEMENT

The purpose of this Agreement is to establish the terms and conditions under which Customer may purchase PROFICIO's Services and Consulting Services.

THIS AGREEMENT CONSTITUTES A BINDING CONTRACT ON YOU AND GOVERNS THE USE OF AND ACCESS TO THE SERVICES BY YOU, AGENTS AND END-USERS OR LEGAL PERSON IN CONNECTION WITH A PAID SUBSCRIPTION TO THE SERVICES.

By accepting this Agreement, either by legal person accessing or using a Service, or authorizing or permitting any Agent or End-User to access or use a Service, you agree to be bound by this Agreement as of the date of such access or use of the Service (the "Effective Date").

General Terms and Conditions

1 SCOPE

- 1.1** Any software and service deliver from PROFICIO is subject to these General Terms and Conditions of Sale, is hereinafter referred to as the (“Agreement”), being binding on all delivery between PROFICIO and the Customer.
- 1.2** The Services to be delivered under these Agreement is hereinafter referred to as the (“Services”).
- 1.3** The Customer agrees to be bound by this Agreement, and by any modification or deviation from this Agreement. Any modification and deviation from this Agreement shall be agreed in writing between the parties.

2 DEFINITION

- 2.1** “Agreement” means either by accessing or using a Service, or authorizing or permitting any Agent or End-User to access or use a Service, or the written agreement/signed license agreement/signed quotation between PROFICIO and the Customer as to PROFICIO’s delivery of software and services to the Customer, including this Agreement.
- 2.2** “Customer” means legal person, authorizing or permitting any Agent or End-User to access or use a Service being a party to the Agreement with PROFICIO as to PROFICIO’s delivery of supplies and services (“Services”) to that party based on these Agreement.
- 2.3** “Effective Date” means the date of access or use of the Services.
- 2.4** “Services” may comprise, but may not be limited to:
 - I. Delivery of PROFICIO Software as a service (SaaS),
 - II. Consulting services,
 - III. Development of individual software, other deliverables in the Agreement.
- 2.5** “PROFICIO Service” means the services defined in this Agreement and/or in the appendices to this Agreement to be delivered by PROFICIO to the Customer.
- 2.6** “PROFICIO Software” means the software developed by PROFICIO, and to be delivered under the present Agreement to the Customer.
- 2.7** ”Price” means the price for the Services agreed by PROFICIO and the Customer under the present Agreement.

3 SERVICES

Under the present Agreement, the Customer obtains access to the Services as described in the Agreement, and/or in an appendix to the Agreement or signed quotation.

3.1.1 Software as a service (SaaS)

Under the present Agreement, the Customer obtains access to the Software as a service (SaaS) as described in the Agreement.

3.2 Subject to a written notice to the Customer at any time before delivery, PROFICIO shall be entitled to increase the price of the Services to reflect any increase in the cost to PROFICIO.

3.3 If the time of delivery mentioned in the Agreement and associated quotations cannot be kept, consequence of the circumstances occurring before acceptance of the Agreement and associated quotations, PROFICIO shall be entitled to withdraw from the quotation completely or partially by means of a written notice to the Customer.

4 PRICES

4.1 The prices for Services are specified in the Agreement and/or associated quotations.

4.2 All prices are given in Danish kroner (DKK).

4.3 The Customer is responsible for the payment of, any type of tax, value-added tax, national or local tax and Customs duties, and PROFICIO's is responsible for taxes on income in Denmark. PROFICIO will invoice the Customer for such taxes if PROFICIO believe has a legal obligation to do so and the Customer agrees to pay such taxes if so invoiced.

4.4 The Customer is responsible for the payment of any bank fees or other types of cost related to the transfer of payment from the Customer to PROFICIO.

4.5 The Customer shall defend, indemnify and hold PROFICIO harmless against any claim arising from use of Services by Customer or related to tax liabilities associated with any requirement to collect or pay any such taxes and duties based on the Services or any other services granted, including reasonable out-of-pocket expenses in defending any such claim.

5 TERMS OF PAYMENT

- 5.1** The Customer is responsible for payment for Services in advance, unless otherwise explicitly specified in the Agreement.
 - 5.1.1** PROFICIO shall invoice the Customer for payment for Services three (3) months in advance.
 - 5.1.2** If not other payment terms than mentioned above have been agreed between PROFICIO and the Customer, payment shall be made net 30 calendar days at the latest from the date of invoice.
- 5.2** Any delay in payment will carry an addition of interest of one and a half percent (1.5%) per month for each month where payment is not received.
- 5.3** In case of late payment PROFICIO may, after having notified the Customer thereof in writing, suspend the Services and performance of the Agreement, and in addition to interest claim compensation, cf. clause 2 also claim the Costumer for any loss PROFICIO has caused.
- 5.4** Whatever the means of payment used, payment shall not be deemed to have been affected before PROFICIO's account has been fully and irrevocably credited.
- 5.5** If the Customer choose to upgrade the Services to access and use a Service during its Agreement terms and conditions, any incremental Subscription Charges associated with such upgrade will be charged in accordance with the remaining Agreement terms and conditions. In any future Agreement terms and conditions, the Customer's Subscription Charges will reflect any such upgrades.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 Rights Granted

- 6.1.1** PROFICIO shall have any intellectual property rights in the PROFICIO Software. Subject to the terms and conditions of the Agreement, PROFICIO grants to the Customer a limited, non-exclusive, non-transferable, right to use the PROFICIO Software solely for the Customer's own internal business purposes according to the Agreement.
- 6.1.2** PROFICIO shall retain all title, copyrights, trade secrets, patents, trademarks and other proprietary rights in the PROFICIO Software and all modifications, enhancements, and other works deriving from the PROFICIO Software even when such software has been produced specifically for the Customer.
- 6.1.3** The Customer shall not, either directly or through any third party, transfer or sublicense the PROFICIO Software or use the PROFICIO Software in any manner

in business operations for the creation of competitive software or services or for providing third party training.

6.1.4 The Customer shall have the right of use in the PROFICIO Software under the present Agreement.

6.2 Third Party Infringement

6.2.1 PROFICIO shall hold the Customer harmless against any claim from a third party, which is based on infringement of copyright or other intellectual property rights existing at the time of delivery.

6.2.2 This warranty shall be subject to the condition that the Customer notify the PROFICIO in writing immediately when the Customer becomes aware of any violation of rights and that the Customer assists the PROFICIO during the case to the extent necessary.

6.2.3 PROFICIO shall not, however, be liable for any claim in respect of infringement which is based on:

- I. Use of the Services by the Customer in a manner or place which has not been agreed and which PROFICIO should not reasonably have foreseen, or
- II. Combination of the Services with products or services not provided by PROFICIO, or
- III. Changes to or modifications of the Services undertaken by the Customer.

6.2.4 If an infringement of intellectual property rights occurs and the conditions under Clause 6.2.1, second paragraph, are fulfilled, PROFICIO shall, within a reasonable time, at his option:

- Provide for the Customer the right to continue to use the Services,
- Change the Services so that the infringement ceases, or
- Replace the Services with other software with an equivalent function, the use of which does not result in an infringement.

6.2.5 Except as specified in Clauses 6.2.1 to 6.2.3, PROFICIO shall have no liability towards the Customer for any infringement of third parties' rights caused by the Customer's use of the Services. This limitation of PROFICIO's liability shall, however, not apply if PROFICIO has been guilty of gross negligence.

6.2.6 PROFICIO's liability for infringement shall be limited to the Service price. However, in all circumstances, the total amount of the damages and any penalties shall be limited to the maximum payment for the three months of the Service price, and cannot exceed a total sum of three months Service price.

- 6.2.7 The Customer shall indemnify and keep PROFICIO indemnified against all costs, expenses, damages and demands incurred by PROFICIO in respect of:
- I. Any alleged infringement of the patents, trademarks, copyright, design or other industrial property rights used by PROFICIO at the request of the Customer;
 - II. Any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Services;
 - III. Specifications where PROFICIO relies or has relied upon information relating thereto provided by the Customer, and the breach does not arise from the negligence or default of PROFICIO;
 - IV. Any claims arising by reason of or in connection with a defect in the Services or in the end product manufactured and/or supplied by the Customer in which the Services are comprised, which defect is attributable either to the compliance by PROFICIO with the instructions given by the Customer or to the Customer's design of the end product.

7 WARRANTIES

7.1 Software

- 7.1.1 PROFICIO Software is provided on an "as is" basis without warranty of any kind. PROFICIO does not warrant, guarantee, or make any representations regarding the functionality of the software, any results obtained by the use of the software and any software support provided by PROFICIO in terms of correctness, accuracy, reliability, usefulness, or otherwise. Also excluded are any warranties, whether express or implied warranty by PROFICIO, such as merchantability, non-infringement and fitness for a particular purpose. The Customer is solely responsible for the selection of the software, use of software, and results obtained from the software and software. The Customer acknowledges that PROFICIO does not warrant that the services will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software, and no information or advice obtained by the Customer from PROFICIO or through the services shall create any warranty not expressly stated in this agreement.
- 7.1.2 If the delivered PROFICIO Software proves to be defective, PROFICIO shall make commercially reasonable efforts to remedy the defects identified.
- 7.1.3 Clause 7.1.2 only applies to the current version of PROFICIO Software. Defects subsequently discovered in former versions of the PROFICIO Software are not subject to remedy.

7.2 Services

- 7.2.1 PROFICIO and the Customer agree to cooperate in good faith to achieve satisfactory completion of the Consulting Services in a timely and professional manner. PROFICIO will perform the Consulting Services as well as all associated deliverables as described in a quotation or a consultant Agreement, and will be performed in a good, workmanlike manner consistent with industry standards. The Customer shall inform PROFICIO in writing about the error or non-compliance within the time period of thirty (30) days from completion of the consultancy Services. If the Customer fails to notify PROFICIO in writing of the error or non-compliance within the time limits set forth in clause 7.2.1, he loses his right to have the error or non-compliance remedied.
- 7.2.2 On receipt of the notice under clause 7.2.1, PROFICIO shall make commercially reasonable efforts either, to remedy the error or shall return the portion of the Consulting Fees paid to PROFICIO by the Customer for the nonconforming portion of the Consulting Services.

8 LIABILITIES

- 8.1 The parties shall be liable to pay damages in accordance with the general rules of Danish law. For conditions that involve payment of penalties, damages may only be claimed to the extent that the customer documents a loss in excess of the penalty.
- 8.2 The parties shall not in any case be liable for operating loss, consequential damage, or any other indirect loss. Loss of data shall be regarded as an indirect loss.
- 8.3 PROFICIO shall have no liability to the Customer for any loss, damage, costs, expenses, or other claims for compensation arising from any input material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Customer.
- 8.4 The limitations above shall only be applicable if the loss cannot be ascribed to gross negligence or willful conduct by the party causing the loss.
- 8.5 PROFICIO shall not be liable for any damage to products manufactured and sold by the Customer, or to products of which the Customer's products form a part.
- 8.6 The maximum liability of PROFICIO for actual damages, regardless of the form of action, for supplied PROFICIO Software is limited to and cannot exceed a total sum of three months Service price, cf. clause 6.2.6.
- 8.7 The maximum liability of PROFICIO for actual damages, regardless of the form of action, for consultancy services conducted for a Customer is limited to and

cannot exceed the total three months consultancy fee paid to PROFICIO for the consultancy services performed.

- 8.8** Any action by the Customer must be brought immediately after the cause of action arose.

9 DISCLAIMER

- 9.1** The sites including all Services are provided on an “as is” and “as available” basis, without any warranties of any kind to the fullest extent permitted by applicable law, and PROFICIO expressly disclaim any and all warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, title, fitness for a particular purpose, and non-infringement. The Customer acknowledge that PROFICIO does not warrant that the services will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software, and no information or advice obtained by you from us or through the services shall create any warranty not expressly stated in this agreement.

10 TERMINATION

- 10.1** A Party may cancel this Agreement upon written notice to the other Party in accordance with this Agreement, no less than thirty (30) days prior to the end of such Subscription Term.
- 10.2** A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach if such breach remains uncured at the expiration of thirty (30) days from the date of the breaching Party’s receipt of such written notice; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 10.3** The cost of all and any Services completed by PROFICIO up to the date of termination and any costs incurred by PROFICIO as a result of a cancellation by the Customer under clause 14.1 will be payable by the Customer to PROFICIO.
- 10.4** If this Agreement is terminated by the Customer in accordance with this Section, PROFICIO will refund the Customer prepaid fees for Services.

11 GENERAL TERMS

11.1 Documentation

- 11.1.1** PROFICIO shall not be obliged to provide the source code for PROFICIO Software and/or associated PROFICIO Services unless specifically agreed hereto in the Agreement.

11.2 Force Majeure

- 11.2.1 PROFICIO shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of PROFICIO's obligations in relation to the Services, if the delay or failure was due to any cause beyond PROFICIO's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond PROFICIO's reasonable control: Act of God, explosion, flood, tempest, fire or accident or other extreme environmental conditions; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of PROFICIO or third parties); War or threat of war, sabotage, insurrection, civil disturbance or requisition; Import or export regulations or embargoes; Difficulties in obtaining labour, material or machinery; Power failure, Internet breakdown, breakdown in machinery, failure in transportation or theft.
- 11.2.2 In such a situation, PROFICIO is entitled to postpone the delivery time correspondingly or to terminate the Agreement. As soon as any such hindrance has been removed, each party will be bound by the Agreement, unless the Agreement has previously been terminated by a Party. A hindrance lasting more than three (3) months will entitle both parties to terminate the Agreement.

11.3 Non-Disclosure

- 11.3.1 The parties agree to observe confidentiality with respect to each other's Confidential Information during the term of the Agreement and for a period of three (3) years after termination thereof. Subsequently, the parties' obligations will survive and continue in respect of any Confidential Information that is a trade secret under applicable law. Unless, if required by law, the parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any other purpose than for the performance of the Agreement. Either party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of the Agreement.
- 11.3.2 Either party's Confidential Information will not include any information, which (a) is or becomes part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party, either directly or indirectly, from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is proved to be independently developed by the other party; or (e) is disclosed to comply with the requirements of a governmental agency or operation of law; however, if disclosure is required by law, each party shall, to the extent permitted by law,

delay any such disclosure sufficiently to permit the other party to consider the merits of the legal requirement of disclosure, and to give the other party an opportunity, if it so elects, to oppose disclosure.

- 11.3.3 The inclusion of a copyright notice of the PROFICIO Software will not cause, or be construed to cause, it to be a published work. If the Customer publishes or uses screenshots showing Services, a visible reference to PROFICIO, either by way of a copyright notice or a visible statement of PROFICIO's name and logo, must be included.

11.4 Non-Exclusivity

- 11.4.1 Nothing in these Agreement will restrict PROFICIO's right to contract with any third party to provide or perform, on its own behalf, Services, Services and related software products similar or identical to the Services, Services and related software products provided by PROFICIO pursuant to these Agreement.

11.5 Customer References

- 11.5.1 The Customer acknowledges that PROFICIO may wish to use its name in press releases, own website and product brochures with a view to indicate that the Customer is a Customer of PROFICIO, and the Customer agrees that PROFICIO may use its name in such a manner.

11.6 Severability

- 11.6.1 In the event of any provision of these Agreement being deemed invalid or unenforceable, the remaining provisions of these Agreement will remain in full force.

11.7 Waiver

- 11.7.1 Any waiver by either party to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

12 GOVERNING LAW AND DISPUTE SETTLEMENT

- 12.1 This Agreement shall be governed by Danish law.
- 12.2 Any dispute, controversy or difference which may arise between the parties, relating to the Agreement of which these Agreement are made part, or breach, termination or invalidity thereof or the Services, which cannot be settled by the parties themselves, shall be settled by the ordinary Danish courts.
- 12.3 The parties hereby irrevocably submit to the City Court of Copenhagen, Denmark, as the agreed venue in the first instance.

12.4 For the sake of interpretation, if the Agreement shall be translated into other languages than English. In the event of any conflict arising out of the interpretation and/or performance of the Agreement, the version in the English language takes precedence and prevails over any other version in other languages.