

## Terms of Service

*Last Updated: February 20, 2025*

These Terms of Service (this “Agreement”) form the legal agreement between Proficio (as defined below) and the legal entity receiving Services (the “Customer” or “you”) as set forth in one or more Orders placed with Proficio or its authorized resell and managed security partners (“Partners”). Proficio and Customer may be each be referred to herein as a “party” or collectively the “parties” in this Agreement.

By placing an Order for, or utilizing, the Services, you are expressly accepting the terms and conditions of this Agreement on behalf of the Customer (and not as an individual), which acceptance shall be effective on the Order effective date. If you do not have authority to legally bind the Customer, or do not agree to the terms and conditions of this Agreement, **DO NOT PLACE AN ORDER FOR THE SERVICES, OR UTILIZE THE SERVICES IN ANY WAY.**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Definitions.** In addition to the above defined terms, the following definitions apply to this Agreement and the Services:

- 1.1 “Change Order”** means a legally binding agreement amending the terms of each Order;
- 1.2 “Customer”** has the meaning defined in the Introduction;
- 1.3 “Endpoint”** has the meaning defined in the Order;
- 1.4 “Initial Term”** means the initial minimum contract term commitment for Proficio Services measured in months or years as set forth in each Order;
- 1.5 “Intellectual Property”** means Proficio’s patents, trademarks, copyrights, trade secrets and other proprietary information such as its content, security libraries, and applications;
- 1.6 “Order”** means a legally binding agreement describing the scope of Services purchased by Customer from Proficio or its Partners. For the avoidance of doubt, an “Order” may include a signed Statement of Work, Partner order form, or other documentation accepted by Proficio evidencing the parties’ obligations;
- 1.7 “Proficio”** means ProSOC, Inc. if the Customer’s primary location is in the United States or any other location other than APAC and EMEA; Proficio Pte. Ltd. if the Customer’s primary location is in APAC; and Proficio Security, Ltd. if the Customer’s primary location is in EMEA;
- 1.8 “SCU”** means Security Content User;
- 1.9 “Security Event Data”** means information, collected during Proficio provision of managed security services, related to security events;
- 1.10 “Services”** means any of Proficio’s cybersecurity solutions including without limitation, its 24x7x365 managed detection and response services (“MDR” or “MXDR”), cyber exposure

monitoring (“CEM”), managed endpoint detection and response (“MEDR”), risk-based vulnerability managed (“RBVM”), and the related portals, threat intel and features thereto, as amended from time to time;

**1.11 “Service Commencement Date”** means the Service start date specified in the applicable Order, or, if the Service Commencement Date is not specified then the date of Customer’s signature or submission of the Order;

**1.12 “Term”** means the Initial Term and related renewals for the Services in each Order.

## **2. Ordering, Scope, and Term.**

**1.1** Customers may purchase Services directly with Proficio or through one its authorized Partners. If purchased through an authorized Proficio Partner, the Order and receipt of Services shall be subject to (a) the terms and conditions of this Agreement, and (b) Customer’s acknowledgement and agreement that Proficio is an intended third-party beneficiary and shall be entitled to the rights and benefits thereunder as if Proficio were a party thereto.

**1.2** Each Order shall include the minimum Endpoint, SCU, or quantity count for each Service offering, the Initial Term or Term commitment, costs, invoicing and payment frequency, and details on the specific Service obligations and limitations. Notwithstanding the foregoing, it is understood and agreed that onboarding time for the Services is included in the Term commitment and onboarding efforts will commence on the Service Commencement Date. Proficio shall have no obligation with respect its Service commitments until onboarding is complete.

**1.3** Unless amended by the terms of an Order, each Order shall (a) continue for a non-cancellable period beginning on the Service Commencement Date and continue until the expiration of the Term commitment, and (b) automatically renew for successive one-year periods of time unless terminated by either party upon ninety (90) days’ written notice prior to the end of the then-current Term.

## **3. Change Orders and True-ups.**

**1.1** Should Customer request or require additional Services during the Term, the parties will evaluate the impact of the change on existing tasks, delivery schedule, and costs. Should the parties agree to proceed with the changes, a Change Order will be required to amend the affected portions of the Order.

**1.2** From time to time, Proficio may audit Customer’s use of the Services and automatically true-up Customer’s account by issuing an invoice on the next billing schedule to Customer, or Partners (as applicable) for the increases. Customer’s then-current increased scope shall become Customer’s new minimum commitment for the remainder of the Term.

**1.3** Additional Services added pursuant to a Change Order will be billed pro-rata and co-terminus for the then current year of the Term of, and thereafter automatically on the same schedule as the original Services.

**4. Invoicing and Payment.** Invoicing and payment terms will be detailed in the Order. Any objection to an invoice (including Change Order invoices) must be made in writing within ten (10)

calendar days of invoice receipt. If there is no objection, payment shall be deemed undisputed, due in full without setoff, and nonrefundable. A late fee of the lesser of 1.5% per month or the maximum amount allowed by state law may be charged on past due balances. Proficio reserves the right and option to suspend Services without obligation if payment is past due from its Partners or Customer by thirty (30) or more days.

## **5. License and Proprietary Rights.**

**1.1** As between Customer and Proficio, Proficio will own all rights, title and interest in and to the Services and associated Intellectual Property. With the purchase of Services, Proficio grants to Customer a limited, non-exclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses) to use the Services and associated Intellectual Property for internal security purposes. Customer shall not, for itself or third party sell, sublicense, distribute or transfer the Services to any third party. Additionally, Customer acknowledges that the Proficio Services and its structure, organization, methodology, content, and applications constitute valuable trade secrets of Proficio. Accordingly, Customer agrees not to: (a) modify, adapt, alter, translate, or create derivative works from the Proficio Services; (b) merge any software provided as part of the Services with other software except as permitted under the Order; (c) distribute, sublicense, lease, rent, loan, or otherwise transfer any software, content or features provided as part of the Services to any third party; or (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or script for any software or content provided as part of the Services. Customer must not remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Proficio or its vendors on or within the Service platform or portal and any documentation furnished by Proficio to Customer.

**1.2** In addition, Customer agrees that Proficio is the owner of all right, title and interest in all Intellectual Property in any inventions, methods, processes, or computer programs, including any source code or object code (and any enhancements and modifications made thereto), contained within the Services which is developed by Proficio in connection with the performance of the Services hereunder and of general applicability across Proficio's Customer base; provided, however, that such Work shall not include Customer's Confidential Information or other information belonging, referencing, identifying or pertaining to Customer.

**1.3** Notwithstanding the foregoing, Proficio may process Security Event Data during and after the Term to develop and enhance its products and services. Customer grants to Proficio a limited, non-exclusive, perpetual, worldwide, irrevocable license to use and otherwise process the Security Event Data during and after the term hereof to develop, enhance and/or improve its security services and the products and services it offers and provides to customers; *provided, however*, that such Security Event Data shall not include Customer's Confidential Information or other information identifying Customer.

## **6. Confidential Information.**

**1.1** Each party may from time to time during the term of this Agreement disclose (the "Disclosing Party") to the other party (the "Receiving Party") certain information regarding the Disclosing Party's business, including, but without limitation, technical information related to the Disclosing Party's security posture, and other nonpublic, confidential, or proprietary information ("Confidential Information"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend. Regardless of whether so marked or identified, however, any information that by its nature, a reasonable person would know or should have known, under the circumstances, was considered Confidential Information, will be

considered Confidential Information of the Disclosing Party whether disclosed orally, visually, in writing, or otherwise.

**1.2** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**1.3** The Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the Order or a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**1.4** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control (other than log data) and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. The Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations.

## **7. Indemnity.**

**1.1 Indemnity by Proficio.** Subject to **Section 9**, Proficio shall defend or settle at its sole expense any claim brought against Customer by a third party alleging the Services performed by Proficio infringe any copyright or misuses or misappropriates a trade secret of such third party under U.S. law, and Proficio shall pay all damages finally awarded or costs of settlement therefor. However, Proficio shall have no liability for any such claim based upon: (a) the use, operation, or combination of the Services or the Deliverables provided by Proficio with hardware, software and/or other materials not supplied or approved by Proficio, (b) any modifications or alterations to the Services or the Deliverables not specifically authorized in writing by Proficio, (c) Proficio's compliance with Customer's specifications, instructions, or designs, (d) Customer's breach of this Agreement, or (e) any hardware, software and/or other materials provided by Customer. The foregoing states Proficio's sole and exclusive obligation with regard to any claim of infringement or misuse or misappropriation of intellectual property rights and Customer's sole remedy.

**1.2 Indemnification Requirements.** Proficio's obligation to provide such indemnification will be conditioned on the following: (a) prompt notice of such claim (including the nature of the claim and the amount of damages and nature of other relief sought) being provided by the Customer; (b) the Customer shall cooperate with Proficio in all reasonable respects in connection with the defense of any such action; and (c) Proficio will have sole control of the defense and settlement of any claims for which it provides indemnification hereunder; provided that no settlement is entered without the prior written consent of the Customer if such settlement requires any admission of fault or wrong doing or any public statement by the Customer, or is not a full and complete settlement of all claims against the Customer. The Customer shall have the right to retain separate counsel and participate in the defense of the action or claim at its own expense.

## **8. Termination.**

**1.1 Termination for Convenience.** Neither party may terminate this Agreement for convenience until the Term commitment (including any renewals) of all Orders expires.

**1.2 Termination for Cause.** Either party, as applicable, shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Agreement and/or any Order as follows:

(i) Upon written notice for material breach of this Agreement and/or any Order by the other party, which is not cured within thirty (30) business days of receipt by the party in default of a written notice specifying the breach; or

(ii) Effective immediately upon written notice if (a) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors to a receiver or to a trustee in bankruptcy, (b) a proceeding is commenced by or against the other party for relief under the bankruptcy or similar laws, and such proceeding is not dismissed within sixty (60) days, or (c) the other party is adjudged bankrupt.

**1.3 No Election of Remedies.** The election by either party to terminate this Agreement in accordance with its terms shall not be deemed an election of remedies, and all other remedies provided by this Agreement or available at law or in equity shall survive any termination.

**1.4 Effect of Termination.** Upon the expiration or termination of this Agreement for any reason:

(i) **Payment of Outstanding Invoices.** All outstanding invoices shall become immediately due and payable; and Customer shall pay all outstanding invoices to Proficio within five (5) days of the expiration of the Agreement or any notice of an earlier termination.

(ii) **No Refunds.** Proficio shall have no obligation to refund Customer (or its resell or managed security partners) for any prepayments.

(iii) **Survival of Terms.** Each party will be released from all obligations to the other arising after the date of expiration or termination, except that expiration or termination of this Agreement will not relieve either party of its obligations under **Sections 4, 5, 6, 8.1.4, 9, and 17-20.**

(iv) **Log Data Post Termination.** Proficio shall have no obligation to retain logs after expiration or termination of each Order. Should Customer request log data after

termination, Proficio will determine whether the logs requested exist. Should they exist, the parties will follow the change of scope process defined in **Section 3**, and logs will be provided in accordance with a mutually agreed upon change Order. Such Change Order will be subject to the terms of this Agreement.

## **9. Limitation of Liability.**

**1.1** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PROFICIO OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR ANY Order FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR SPECIAL DAMAGES AND/OR PUNITIVE DAMAGES, ARISING OUT OF THIS AGREEMENT OR ANY Order, HOWEVER CAUSED AND WHETHER SUCH DAMAGES ARE BASED IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**1.2** IN NO EVENT SHALL PROFICIO'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ANY Order, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR INDEMNIFICATION, EXCEED THE ACTUAL AMOUNTS RECEIVED BY PROFICIO FROM CUSTOMER IN ACCORDANCE WITH THE PARTICULAR Order THAT HAS CAUSED CUSTOMER'S CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT CAUSING LIABILITY.

**1.3** IN NO EVENT WILL PROFICIO HAVE ANY LIABILITY UNDER THIS AGREEMENT OR ANY Order FOR AN ERROR, DEFECT OR ANY LIABILITY CLAIM BASED ON A THIRD-PARTY PLATFORM, SOFTWARE OR HARDWARE. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **10. Limited Warranty.**

**1.1** Subject to **Section 10.1.2** below, Proficio warrants to Customer that the Services will be performed in a professional and workman-like manner and substantially in accordance with the relevant Order. Any claims with respect to the foregoing warranty must be reported in writing to Proficio during the Term. If Customer makes a warranty claim and the Services prove not to be in compliance with the applicable warranty, then Proficio shall have thirty (30) days, at Proficio's sole election, to make commercially reasonable efforts to re-perform, repair, or replace the applicable Services, at no extra charge to Customer. Such remedy shall be Proficio's exclusive obligation and liability, and Customer's sole remedy, for any breach of any of the foregoing warranty. Any modification of the Services by anyone other than Proficio shall void the warranties provided hereunder and shall terminate any obligation of Proficio under this **Section 10.1.1** to cure any breaches of warranty with respect to the Services.

**1.2** EXCEPT AS EXPLICITLY OTHERWISE SET FORTH IN **SECTION 10.1.1** ABOVE AND TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SERVICES PROVIDED BY PROFICIO HEREUNDER ARE DELIVERED "AS IS," AND PROFICIO HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT.

**1.3** SERVICES PERFORMED AS PART OF DEMONSTRATION OR PROOF OF CONCEPT ARE PROVIDED "AS-IS" WITHOUT WARRANTIES OF ANY KIND.

**11. Force Majeure.** Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, riots, crime, terrorism, war, transportation stoppages or slowdowns or the inability to procure parts or materials. These causes will not excuse Customer from paying amounts due and payable to Proficio through any available lawful means acceptable to Proficio

**12. Notices.** Any notice, approval, consent, or other communication required or permitted to be given by either party under this Agreement will be in writing and will be delivered to the address specified on the Order (or an address specified by subsequent notice) and [legal@proficio.com](mailto:legal@proficio.com). Notices will be deemed effective (a) immediately, if delivered in person, (b) three (3) business days after deposit, postage prepaid, if mailed (registered or certified), (c) the next business day if sent by recognized overnight courier (e.g. FedEx), or (d) upon return to the sender of an automatic electronic receipt of delivery or upon any written confirmation of receipt, if sent by email.

**13. Assignment.** Except as otherwise contemplated above, Customer may not assign, delegate, sub-contract or otherwise transfer this Agreement or any of its rights or obligations without Proficio's prior written consent. Any attempt by Customer to do so without Proficio's prior written consent will be void. Proficio may assign this Agreement and its rights and obligations hereunder (whether by operation of law, contract, or otherwise) without Customer's prior consent: (a) to any individual or business entity controlling, controlled by or under common control with Proficio; (b) in the event of a merger, consolidation or the sale of all or substantially all of Proficio's assets or stock; or (c) Proficio may assign the right solely to monies due or becoming due for financing purposes. Any purported assignment in violation of this Section shall be null and void and a breach of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**14. Modifications; Waiver.** This Agreement may be amended by Proficio from time to time and the latest terms and conditions shall apply to Customer's continued use of the Services. The delay or failure of a party to enforce a provision in respect of any breach shall not be interpreted to be a waiver of that provision or any other provision or its right to enforce such provision or any other provision in respect of any other breach. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of any other provisions of this Agreement.

**15. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, such holding will not affect the validity of the remaining valid, legal or enforceable portion of the provision or any other provisions of this Agreement, provided that the parties will endeavor in good faith to substitute for such an invalid, illegal or unenforceable provision a valid, legal and enforceable provision that most closely approximates its purpose, unless Proficio deems the invalid, illegal or unenforceable provision to be essential to this Agreement, in which case Proficio may terminate this Agreement, effective immediately upon notice to Customer.

**16. Audit.** During the Term and for a period of one (1) year thereafter, Proficio will have the right to inspect and audit the books and records of Customer for the purpose of confirming compliance with the terms and conditions of this Agreement. Any such inspection and audit will be limited to the scope of the Order, occur during regular business hours, and conducted in a manner which minimizes interference with normal business activities. Each party shall be responsible for its own fees and costs of conducting the inspection and audit.

**17. Dispute Resolution.**

**1.1** Any dispute, controversy or claim arising out of or relating to this Agreement or the Services, must first be submitted to the appropriate senior business representatives of each party for resolution. If a dispute cannot be resolved by such authorized business representatives within thirty (30) business days, then the aggrieved party may proceed to seek remedies available to it at law or in equity.

**1.2** The prevailing party to any final legal action brought under this Agreement shall be entitled to recover all costs and fees including for attorneys, accountants, and expert witnesses, incurred in connection with such action.

**1.3** Nothing in Section 17 shall prevent Proficio from seeking interim injunctive relief against Customer or filing an action against Customer to collect unpaid and past due amounts in any court having jurisdiction over the other party. Additionally, each party agrees that any breach of Section 6 may result in irreparable harm to the non-breaching party for which there is no adequate remedy at law, and the non-breaching party shall be entitled to seek equitable relief (including without limitation injunctive relief), without bond, in addition to any other rights or remedies it may have arising from such breach from a court of competent jurisdiction. All rights and remedies hereunder are cumulative, may be exercised singularly or concurrently and, unless otherwise stated herein, shall not be deemed exclusive.

**18. Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the jurisdiction in which you are located and the Proficio contracting entity. The following governing law and venue will apply based on the foregoing factors:

Customer Country	Proficio Contracting Entity	Governing Law	Governing Venue
United States of America and Rest of World (Other than APAC and EMEA)	ProSOC, Inc. dba Proficio	California	San Diego County, California
APAC	Proficio Pte. Ltd.	Republic of Singapore	Singapore
EMEA	Proficio Security, S.L.	Spain	Barcelona, Spain

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**19. Entire Agreement.** This Agreement, together with the Order and Change Orders, as applicable, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior written and oral negotiations, correspondence, agreements, understandings, duties, or obligations between the parties respecting the subject matter hereof and will be binding upon and inure to the benefit of the parties. In the event of a conflict or inconsistency between the terms of this Agreement and any other agreement governing the Services including the terms of an Order, Change Order, Customer or Partner agreement, the parties agree to resolve the conflict or inconsistency in this



order or precedence: (a) the Order, (b) this Agreement, (c) the Change Order, and then (d) the Partner (or Customer) terms, as applicable.

**20. Authority; Binding Effect; Approvals.** Each party represents and warrants as follows: (a) it has read this Agreement and understands it; (b) it has had the opportunity to obtain the advice of an attorney regarding this Agreement; (c) it has the necessary power and authority under all applicable laws and regulations to enter into this Agreement and to perform its obligations set forth in this Agreement, including, as to Customer, the obligation to pay for Services; (d) it has authorized and approved the execution of this Agreement by Ordering the Services or upon its signature on the Order; and (e) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**[End Agreement]**