

MSX GROUP

TERMS & CONDITIONS – PROSPERO® SOFTWARE

Subject to these terms and conditions, the MSX Group (“**MSX**”) agrees to provide you or the entity on whose behalf you are entering into these terms and conditions (“**Customer**”) the Software and Support that Customer has ordered from MSX Group pursuant to the Order. “**Order**” means any order placed through MSX (including online, via phone, or by mail) for Software or Services. These Terms and Conditions, together with each Order, constitute the “**Agreement**” between MSX and Customer.

PLEASE CAREFULLY READ THESE TERMS AND CONDITIONS. BY ACCESSING OR USING THE SOFTWARE OR SUPPORT, BY SIGNING AN ORDER THAT REFERENCES THESE TERMS AND CONDITIONS, OR BY CLICKING A BOX THAT STATES THAT YOU ACCEPT THESE TERMS AND CONDITIONS, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

Please review this Agreement with care – this Agreement establishes important rights and obligations between Customer and MSX. Additional fees, in excess of the fees set forth in the Order, may apply to additional MSX software licenses, products, and services that are not expressly provided for in the Order. MSX suggests that you print a copy of these Terms and Conditions for your records.

1. LICENSE AND RESTRICTIONS

1.1 Evaluation. If Customer has acquired the Software as part of an evaluation or trial period, then the following terms apply: The “**Evaluation Period**” is 30 days from the date on which Customer first installs or otherwise makes use of the Software. Subject to the terms of the Agreement, during the Evaluation Period, MSX grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to install and use the Software, solely: (a) as installed at the Customer’s address identified on the Order or within a specifically designated hosting environment; and (b) for Customer’s internal business purpose of determining whether or not to purchase a license to the Software from MSX. The following additional restrictions apply to all evaluations:

1.1.1 During the Evaluation Period, the Software is provided STRICTLY AS-IS, WITH ALL FAULTS. Customer is not entitled to any warranty, Support, indemnity, or benefits established in these Terms and Conditions, and the limitations and disclaimers set forth in Section 7.2 below apply.

1.1.2 Without limiting the foregoing, during the Evaluation Period, MSX may in MSX’s discretion provide reasonable, limited technical support at no charge to Customer.

1.1.3 MSX may terminate the Evaluation Period immediately if Customer breaches any terms of the Agreement; in any event, the limited license granted pursuant to this Section 1 immediately ceases at the end of the Evaluation Period unless Customer purchases a license from MSX (in which case the license set forth in Section 1.2 comes into effect). Unless Customer purchases a license from MSX, then immediately upon the termination or expiration of the Evaluation Period, the limited evaluation license granted hereunder terminates and Customer shall immediately cease all use of, and delete all copies, of the Software from Customer’s systems.

1.2 Commercial License. If Customer purchases a commercial-use license to the Software from MSX (which is confirmed by MSX issuing a license key to Customer), then subject to the Agreement, MSX grants Customer a non-transferable, non-exclusive, non-sublicensable license to access and use the computer programs specified in the Order, which includes applicable Updates and Enhancements, and the applicable Documentation made available by MSX (collectively, the “**Software**”), all in accordance with the licensed use and restrictions identified in an applicable Order (“**Licensed Use**”). The Licensed Use may include restrictions on the number and types of Users of the Software, duration of use for the software, and the number of copies of the Software that Customer may make. All rights not specifically granted herein are reserved by MSX. Customer is at all times responsible for all use of and access to the Software by any users that access the Software through Customer’s registration (“**Users**”). “**Documentation**” means the published technical and user documentation for the Software as well as the release notes provided with Updates or Enhancements.

1.3 Limitations and Restrictions. If Customer has licensed the Software for on-premise use, then in accordance with the Licensed Use and subject to the terms and conditions of the Agreement, Customer may (a) install and operate, on a server or other networked computer accessible by multiple networked computers on Customer's computer network, one production instance of the elements of the Software designated as networked elements on the Order, limited to the types and number of Users specified by the Licensed Use, (b) install and operate on individual computers of Users the components of the Software that are intended for single operators (such as laptops), limited to the types and number of Users specified by the Licensed Use, and (c) (i) operate one instance of the Software in parallel as a backup in case the first instance fails, (ii) operate one additional instance of the Software as a development/test environment, and (iii) make a reasonable number of non-operating backup copies of the Software solely for backup purposes. If Customer has licensed the Software for use within a specified Hosting environment provided by MSX, Customer may (a) operate the Software by connecting to and utilizing designated hosted resources provided by MSX, limited to the type and number of Users specified by the Licensed Use and (b) request a second hosting environment designated for non-production/sandbox purposes. Customer shall use the Software only for the Licensed Use, and only for the benefit of the entity specified in the Order. Customer shall not, and shall not allow any Users or third parties to, share or use the Software for the benefit of other subsidiaries, divisions, or affiliates of Customer, or for any other third party.

1.4 Additional Restrictions. To the extent the following are enforceable under applicable law, and in addition to any other restrictions stated in this Agreement, Customer shall not, and shall not permit any User or third party, to: (a) modify or create any derivative work of any part of the Software, (b) rent, lease, or loan the Software; (c) decompile or reverse engineer the Software or otherwise attempt to gain access to the source code of the Software; or (d) sell, license, sublicense, publish, display, distribute, assign or otherwise transfer to a third party the Software, any copy thereof, or any rights thereto, in whole or in part. To the extent any of the foregoing restrictions are prohibited by applicable law, Customer shall notify MSX in writing in advance of any intention of Customer to undertake any of the foregoing.

2. DELIVERY AND ACCEPTANCE

MSX shall deliver the Software electronically via MSX's website. Without limiting the express warranties in the Agreement, the Software is deemed accepted upon delivery. Unless otherwise set forth in this Agreement, Customer is responsible for installing the Software and license keys in accordance with the Documentation and the installation instructions provided by MSX. Customer acknowledges that the Software uses a license key mechanism used to set up and restrict the functionality of the Software. Customer agrees not to use unauthorized license keys or otherwise circumvent MSX's license key mechanism. Unless utilizing an MSXprovided Hosting environment, Customer is responsible for providing all applicable hardware and any third party software required for the operation of the Software, including as such requirements may be updated by MSX; such requirements are available for review on MSX's website at: <http://msxgroup.com/prospero-system-requirements/> (the "**Minimum Requirements**").

3. MAINTENANCE AND SUPPORT; ADDITIONAL SERVICES

3.1 Support Terms. MSX shall provide Support in accordance with the following Software license type:

3.1.1 Annual Support Terms – Perpetual License. If Customer has purchased the Software as a perpetual, non-subscription license, Customer shall procure MSX's maintenance and technical support services ("**Support**") for an initial term of one year after the effective date of the Order. Support shall renew automatically for additional one-year terms unless Customer elects to terminate Support by providing MSX with at least thirty days written notice prior to the end of the applicable annual Support term. Upon termination of Support, Customer may continue to use the Software without Support in accordance with the Agreement; however, if the Customer elects to continue without Support, then MSX has no obligation to provide any Support, and Customer shall not be entitled to receive any Updates or Enhancements to the Software.

3.1.2 Annual Support Terms – Subscription License. If Customer has purchased the Software as a Subscription license, Customer shall procure MSX’s maintenance and technical support services (“**Support**”) for an initial term equal to the duration of the Subscription. Support shall renew automatically upon renewal of the Subscription license. Upon termination of the Subscription, Customer will no longer be able to utilize the Software.

3.2 Support and Maintenance. Support may be further detailed on MSX’s website at <http://msxgroup.com/support/>; if MSX’s website contains additional descriptions of Support, then such terms govern Customer’s Support. As part of Support, MSX may in its discretion make Updates and Enhancements available to Customer. “**Update**” means any minor update, fix or bug patch to the Software either (a) made generally available (without any additional charge) to MSX’s customers of the Software who are eligible to receive Support, or (b) made available to Customer via MSX-supplied hosting environment updates, or (c) made available to Customer to address any error in the Software, including any fixes pursuant to MSX’s warranty obligations. “**Enhancement**” means any new functionality or changes to the existing functionality of the Software made generally available (without any additional charge) to MSX’s customers who are eligible to receive Support. Customer acknowledges that MSX makes no commitments as to the exact functionality or timing of Updates and Enhancements to the Software, all of which are subject to MSX’s sole discretion. The specific content, features and functionality reflected in the Software are subject to change and discontinuation by MSX in its sole discretion. MSX reserves the right to charge Customer for any Software released by MSX as any new functionality, features, or programming, including any upgrades, new modules, or similar offerings not generally made available to Customers as part of standard Support.

3.3 Fees for Support. The fees for Support (“**Support Fees**”) are described on the Order and are charged in advance for a one-year annual term of Support purchased by Customer. If Customer has purchased a Subscription license, Support Fees are included as part of the fees documented in the Subscription agreement. MSX may increase the Support Fees for renewal periods in MSX’s discretion by reporting such revised Support Fees to Customer in advance of any renewal period for Support. If the Customer allows Support to lapse and then seeks to reinstate Support, Customer shall pay for the Support Fees that would have been due for the period of the lapse in Support.

3.4 Limitations. MSX shall not be obligated to provide Support if (a) Customer’s hardware and software systems do not meet the then current Minimum Requirements as defined in MSX’s website, (b) Customer is delinquent in any of its payment obligations under the Agreement, or (c) Customer has violated the license hereunder or otherwise exceeded the Licensed Use.

3.5 Additional Services. Customer may engage MSX to perform additional services for Customer, such as training, implementation, or consulting services, which are addressed in a separate agreement between the parties.

4. FEES AND PAYMENTS

4.1 License Fees. Customer shall pay MSX the fees for the Software identified in the Order (the “**License Fees**”). All License Fees are non-cancelable and non-refundable. Except to the extent Customer pays for Support, Customer agrees that Customer has not relied on the future availability of any software, programs, updates or upgrades in entering into any payment obligations under this Agreement.

4.2 Payment Terms. All payments of License Fees and Support Fees are due at the time Customer places the Order. MSX has no obligation to provide any Software, license keys, or Support, and Customer has no rights to download, install, or operate the Software or receive any Support, until Customer has paid the applicable License Fees and Support Fees. All payments must be made in U.S. dollars.

4.3 Taxes. The fees identified in an Order for Products and Services do not include any applicable sales, use, excise, VAT, or other taxes or duties levied or based on this Agreement or the Software or Services provided by MSX, and Customer shall pay MSX all such taxes, exclusive of income taxes or taxes based on MSX’s income (or, if Customer pays such taxes directly, provide reasonable written assurance to MSX that such amounts have been paid). If Customer is a tax-exempt entity and provides MSX with a valid certificate evidencing such tax-exempt status, then MSX shall not assess Customer for taxes not payable as a result of Customer’s tax-exempt status.

4.4 Licensed Use; Additional Fees. If at any time Customer's use of the Software is in excess of the Licensed Use, then Customer shall immediately notify MSX and promptly purchase additional rights from MSX for the expanded use at MSX's then-standard pricing (including any applicable charges for Support).

4.5 Audit. MSX or its representative may, upon reasonable prior written notice, examine Customer's records and computer systems using the Software during Customer's normal business hours to verify Customer's use of the Software complies with the terms of this Agreement, and Customer shall promptly comply with the requirements of such an audit. To the extent such examination reveals that Customer's use of the Software requires additional licenses from MSX, then Customer shall promptly purchase a license from MSX for the additional Licensed Use at MSX's then-standard fees (plus additional Support Fees as applicable). Any such examination shall be at MSX's sole expense unless such examination reveals that Customer's use of the Software would have required additional licenses from MSX with an aggregate license and support fee total in excess of five percent (5%) of Customer's then-current subscription, in which event Customer shall also reimburse MSX for all reasonable expenses of the examination.

5. OWNERSHIP

Except for the express limited licenses granted by the Agreement, MSX and its licensors retain all right, title, and interest in the Software (including any work of authorship or invention conceived of, developed, or created by MSX) and Services, and all Updates and Enhancements, reproductions and corrections thereof, and all related patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill, and other intellectual property. The license granted under the Agreement does not provide Customer or Users with title to or ownership of the Software or any Services, but only a right of limited use under the terms and conditions of the Agreement. There are no implied licenses granted by this Agreement.

6. TERM AND TERMINATION

6.1 Term. The Term of the Agreement shall be determined in accordance with the following Software license type:

6.1.1 Term - Perpetual License. Customer's license to the Software is perpetual, subject to termination as set forth in this Agreement (the "**Term**"). Support is for terms of one-year each, subject to renewal on an annual basis.

6.1.2 Term – Subscription License. Customer's license to the Software is for the initial period covered in the Order (the "**Initial Term**"), and thereafter shall automatically renew for successive twelve-month terms (each, a "**Renewal Term**"), unless . Customer gives notice of non-renewal to MSX at least 30 days prior to the end of the then current term (the Initial Term and any Renewal Terms are the "**Term**").

6.2 Termination for Breach. Customer's license to the Software terminates immediately upon any breach of the Agreement, including any use in excess of the Licensed Use. Additionally, MSX may terminate this Agreement if Customer is in material breach of any provision of the Agreement and fails to cure such breach within 30 days' of MSX's notice.

6.3 Effect of Termination or Expiration. Upon termination or expiration of the Agreement: (a) all licenses to the Software granted hereunder immediately terminate, and (b) Customer shall permanently remove all copies of the Software from Customer's systems (and, upon MSX's request, provide certification thereof). Notwithstanding the termination of the Agreement for any reason, the rights and duties of the parties under sections 3, 4, 5, 6.3, and 9-13 survive such termination and remain in full force and effect. For Customer's who have opted to utilize MSX-supplied hosting environments, all Customer data shall be removed from MSX environments upon termination or expiration of the Subscription agreement.

7. MSX WARRANTIES AND REPRESENTATIONS

7.1 Software. MSX warrants that the Software shall perform materially as set forth in the Documentation for 90 days from the effective date of an Order. Customer's exclusive remedy for any breach by MSX of the warranty given in this section shall be for MSX, at MSX's option, to either (a) repair or replace the Software so that the Software performs materially as described in the Documentation, or (b) provide a full refund of the Fees for any affected Software, provided that Customer shall delete all copies of the Software from Customer's systems and shall have no license or right to use the Software following such refund.

7.2 LIMITATIONS. SUBJECT TO THE EXPRESS WARRANTY SET FORTH IN THIS SECTION, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW: (A) MSX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SOFTWARE OR SUPPORT PROVIDED BY MSX; (B) MSX DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR OTHERWISE, INCLUDING TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT; (C) MSX MAKES NO WARRANTY THAT THE SOFTWARE, SERVICES, OR ANY USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE; AND (D) MSX DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING ANY PRESENT OR FUTURE USE, INTEGRATION, OR COMPATIBILITY WITH ANY OTHER PRODUCTS OR SERVICES.

8. INDEMNITY

8.1 By MSX. MSX shall, at its own expense, defend any action brought by an unaffiliated third party against Customer, and MSX shall pay any final judgment awarded, or settlements entered into by MSX, in such actions, solely to the extent that such action is based upon a claim that the Software infringes a third party's U.S. copyrights or misappropriates a third party's trade secrets. Notwithstanding the foregoing, MSX shall have no obligation under this section or otherwise with respect to any infringement claim based upon: (i) any use of the Software not in accordance with the Agreement; (ii) any use of the Software in combination with products, equipment, software, content or data not supplied by MSX; or (iii) any use of any release of Software other than the most current release made available to Customer. THIS SECTION STATES MSX'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

8.2 Conditions. The obligations in this section are expressly conditioned upon Customer: (a) giving MSX prompt notice of any such action; (b) giving MSX sole control of the defense and any related settlement negotiations; and (c) providing reasonable cooperation and assistance to MSX in the defense of such action.

9. LIMITATIONS ON LIABILITY

9.1 LIMITATIONS. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, (A) IN NO EVENT SHALL

MSX OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING LOST PROFITS OR GOODWILL, LOSS OF DATA, BUSINESS INTERRUPTIONS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE OR SERVICES, AND (B) MSX'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO MSX BY CUSTOMER FOR THE SPECIFIC SOFTWARE AND SERVICES FROM WHICH THE LOSS ARISES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIMS OR LIABILITY. THE

LIMITATIONS SET FORTH IN THIS SECTION APPLY WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAILS OF THEIR ESSENTIAL PURPOSE.

9.2 SOME EXCLUSIONS MAY NOT APPLY. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT, OR LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS THAT ARE LAWFUL IN CUSTOMER'S JURISDICTION APPLY TO CUSTOMER AND IN SUCH INSTANCES MSX'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED.

9.3 Time for Bringing Actions. No action, regardless of form, arising under the Agreement may be brought by either party more than one year after the facts supporting the cause of action become known, or reasonably should have become known, to the claimant, except that an action for non-payment may be brought without any limitation on time.

10. CONFIDENTIALITY

10.1 Confidential Information. “**Confidential Information**” means information that is disclosed or made available by one party (“**Disclosing Party**”) to the other party (“**Receiving Party**”) under this Agreement, or which Receiving Party has access to in connection with this Agreement, including without limitation (a) information relating to the business of Disclosing Party, and (b) all information of Disclosing Party that should reasonably have been understood by Receiving Party to be proprietary and confidential to Disclosing Party or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information may be disclosed in written or other tangible form or by oral, visual or other means. Confidential Information of MSX includes, without limitation, the Software, Documentation, license keys, database format and schema, and all routines, subroutines, directories, tools, programs, or any other technology included therein.

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

10.3 Return of Confidential Information. Upon the earlier of the termination of this Agreement or the request of Disclosing Party, the Receiving Party shall (a) at Disclosing Party’s direction, either delete, destroy, or return to Disclosing Party all Confidential Information and any copies and extracts of such Confidential Information; and (b) promptly following Disclosing Party’s request, provide written certification to Disclosing Party of such actions. The Receiving Party shall not retain any copies of such Confidential Information or extracts thereof, except that the Receiving Party may (but is not required to) keep copies of the Confidential Information solely for archival purposes in accordance with the Receiving Party’s reasonable record-keeping procedures, provided that the Receiving Party (i) shall at all times treat such retained copies as Confidential Information pursuant to this Agreement, subject only to the exceptions and exclusions stated in this Section; and (ii) shall not use or access such Confidential Information for any reason other than for such archival purposes, in connection with any claims or defenses of claims arising in connection with this Agreement, or as required by law.

11. DISPUTE RESOLUTION AND GOVERNING LAW

This Agreement will be governed by the laws of the State of Colorado and the United States, without regard to or application of conflicts of law rules or principles that would require the application of the laws of another jurisdiction. The parties explicitly disclaim the application of the UN Convention on the Sale of Goods. Any action or lawsuit related to this Agreement must be brought exclusively in either the federal or state courts for the City and County of Denver, Colorado, and each party hereby irrevocably submits and waives any objection to the exclusive jurisdiction and forum of such courts. If any provision of this Agreement is held to be unenforceable, the parties intend that provision be reformed in order to comply with the law and to the extent possible give effect to the original intent and economic impact of the original provision, and the remaining provisions will remain in full force. The prevailing party in any lawsuit or proceeding arising from or related to this Agreement is entitled to receive its costs, expert witness fees and reasonable attorneys’ fees, including costs and fees on appeal in proportion to the total amount of all claims between the parties on which the prevailing party was successful.

12. EXPORT

The Software may be subject to export restrictions. Customer shall comply with all applicable export and import control laws and regulations in its use of the Software and, in particular, Customer shall not export or re-export the Software without all required government licenses, and Customer shall comply with the export laws, restrictions, national security controls, and regulations of all applicable governmental agencies or authorities.

13. GENERAL

The Agreement sets forth the entire understanding of the parties with respect to the subject matter covered by this Agreement and supersedes any and all prior understandings, representations, proposals, communications and agreements, whether written or oral, between the parties with respect to such subject matter. MSX shall not be considered to be in default as a result of its delay or failure to perform its obligations under this Agreement when such delay or failure arises out of causes beyond its reasonable control. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The parties intend that this Agreement and all its related documents be drafted in English. (Il est de l’intention expresse des parties à la présente Accord et tout document s’y rattachant soient écrit en langue anglaise.) Customer shall not assign or otherwise transfer this

Agreement, or any rights or obligations under this Agreement, without the prior written consent of MSX, and any such attempted assignment or transfer without such consent shall be null and void; however, Customer may assign this Agreement and the Software to any entity that purchases or succeeds to all or substantially all of Customer's business or assets. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Agreement is found to be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.