

ProFix Dedicated IT Support tm

Service Agreement

- 1. Agreement.** This Service Agreement covers the terms on which we agree to provide, and you agree to accept, ProFix Dedicated IT Support Services (hereafter called "Services"). You accept this Agreement when you provide your written or electronic signature or pay for any Services. The Agreement includes the terms in this document together with the Terms of Service (as described at <http://www.profixit.com/terms-of-service.html>). You should carefully read all terms in the Agreement, including among other terms, a MANDATORY ARBITRATION of disputes provision. In this document, we use the words "we," "us," "our" or "ProFix" to refer to ProFix IT; and the words you, your, or client to refer to the company or organization you represent agreeing to Commercial Services.
- 2. ProFix Service Center Hours of Operation** means 7:00 a.m. to 7:00 p.m. Eastern Time, Monday through Friday, excluding ProFix observed holidays, unless otherwise defined in this Service Agreement.
- 3. Order** means a written, electronic or verbal order governed by the terms and conditions of the Agreement, submitted or confirmed by you and accepted by ProFix, which identifies specific Services. Verbal Orders are deemed confirmed upon your written acknowledgement or your use of Services.
- 4. Changes to the Agreement.** ProFix may add, change, or cancel any charges, fees, or the terms of this Agreement with 60 days written notice to you. **If you continue to use Services on or after the effective date of the changes, you accept the changes.**
- 5. Charges and Payment.**

 - 6.1 Charges.** Payment for annual or monthly recurring charges are due in advance of Service, based upon the Service Plan you purchase. Nonrecurring charges are due at the time of requested Service. You agree to pay these charges and any applicable federal, state, and local government taxes.

If you pay for Services monthly, you will be charged a prorated portion of any monthly recurring charges in the initial month of service. Upon the expiration or termination of Services for any reason prior to the end of a billing cycle, ProFix will charge you the full monthly recurring charges for Services during the billing cycle (along with all applicable nonrecurring charges plus taxes) and will not pro-rate these charges.
 - 6.2 Payment.** You must pay all charges applicable to your Services, including nonrecurring charges and taxes, in U.S. currency via credit card or check. If your credit card is declined, and another authorized form of payment is not promptly provided, ProFix may charge you late payment fees and/or interest on those charges equal to the maximum rate allowed by law for all late payments. The interest will be applied to the entire unpaid balance. If we don't receive your payment before the next billing cycle, you agree to pay any costs and expenses associated with our collections efforts, including attorneys' fees. ProFix's acceptance of late or partial payment (even those marked, "PAID IN FULL") and late payment charges will not constitute waiver of any of our rights to collect the full amount due under this Agreement.
 - 6.3 Disputed Charges.** Except as otherwise provided by applicable law, disputes concerning any charges must be raised within 60 days of the charge date. You accept all charges not disputed within 60 days of the charge date. To dispute a charge, you must follow the dispute procedures in this Agreement.

- 6. Description of Services - Phone and Remote Support.** This Service requires you to call the ProFix Service Center during the Hours of Operation. Outside of the ProFix Service Center Hours of Operation, we will make reasonable efforts, in our sole discretion, to provide you with the opportunity to speak with a qualified technician, but make no guarantees of availability.
- 7. Restrictions and Excluded Services.** In its sole discretion, ProFix may accept or reject your order for Services for any reason. ProFix reserves the right to limit the amount of time spent on any single issue with each Service.
- 8. Client Acknowledgement; Abuse and Fraud.**

9.1 You authorize ProFix and its authorized agents to provide Phone Support and/or Remote Support for any software or hardware (collectively called "Equipment") related to your chosen Services. As needed, you will provide reasonable cooperation to enable ProFix or its agents to provide Services.

9.2 You understand and agree that prior to contacting or allowing ProFix or its authorized agents to provide Services on your server, smart phone, tablet, network, software, or other Equipment, it is your responsibility to back-up files, including but not limited to data, software, or other information. You acknowledge and agree that ProFix will not be responsible under any circumstance for any loss or corruption of data and/or software. ProFix will make all reasonable efforts to diagnose and solve your server, smart phone, tablet, network, software, or other Equipment related problems. In some cases, Service may not be completed due to a problem with your Equipment or its configuration that is beyond ProFix's control.

9.3 You will not use Services for fraudulent or unlawful purposes, or behave an abusive manner toward ProFix, in ProFix's sole discretion, including multiple contacts with ProFix during a short period of time. If any investigation is required, you will cooperate fully with ProFix or applicable group, authority, or agency. **In our sole discretion, ProFix may place restrictions on your use of Services, and immediately suspend or terminate your Services without notice for violations, suspected violations, or to prevent violations of these terms.**

9.4 To ensure the quality of our Services and for other lawful purposes, we may monitor or record calls between us (for example, your conversations and/or Service sessions with our customer service, technical support, or sales departments).

- 9. Disclaimer of Warranties.** PROFIX PROVIDES ALL SERVICES "AS IS" AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROFIX DOES NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND YOU WILL HOLD US HARMLESS FOR ALL SUCH PROBLEMS.

10. Limitation of Liability.

11.1 Direct Damages. Neither ProFix nor our agents, suppliers or licensors are liable for any direct damages arising out of or in connection with any: (a) act or omission by you, or another person or company; (b) providing or failing to provide Services; or (c) interruption or failure in accessing or attempting to access Services, including any failures caused by Equipment. Certain portions of the Services may be provided by parties that are independent contractors to ProFix. ProFix disclaims and is not liable for all acts or omissions committed by any such independent contractors.

If ProFix is found to be responsible to you for monetary direct damages relating to Services, you agree that any such damages will not exceed the pro-rated monthly recurring charge for your affected Services during the affected period or the one-time charge you paid ProFix for the affected Services.

11.2 NO CONSEQUENTIAL OR OTHER DAMAGES. UNDER NO CIRCUMSTANCES ARE WE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES, OR OTHER EQUIPMENT USED IN CONNECTION WITH SERVICES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, OR COST OF REPLACEMENT PRODUCTS AND SERVICES. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.

11. Force Majeure Events. ProFix will not be responsible for any delay, interruption, or other failure to perform under the Agreement due to acts beyond our control (“Force Majeure Events”). Force Majeure Events include, but are not limited to: natural disasters (e.g. lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts, equipment or services from third party suppliers and other acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; and governmental decrees; and any other cause beyond our reasonable control.

12. Indemnification. You will indemnify and defend ProFix, its directors, officers, employees, affiliates, subsidiaries, agents, and their successors and assigns from and against all claims, damages, losses, or liabilities, including reasonable attorneys’ fees, arising from or relating to any Service, or any act or omission by you related to any Service or any person you authorize or permit to use any Service, including incorrect or misleading information, libel, slander, invasion of privacy, identity theft, intellectual property infringement, and any defective Services and Equipment.

13. Dispute Resolution.

14.1 Dispute Process. If you have a dispute with ProFix relating to any matter, you agree to first notify ProFix Customer Service at (302) 745-4165 or via email to support@profixit.com in an attempt to resolve your dispute. You must describe your dispute in detail and provide ProFix with any supporting documentation. If ProFix has a dispute with you, it will notify you in writing sent to your billing address in an attempt to resolve the dispute. If after following this process, either party is unable to resolve its dispute within 60 days of notifying the other party, either party may take the dispute to binding arbitration as set forth below.

14.2 MANDATORY ARBITRATION OF DISPUTES. INSTEAD OF SUING IN COURT, YOU AND PROFIX AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND (“CLAIMS”) AGAINST EACH OTHER. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO PROFIX’S SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO EQUIPMENT YOU OR PROFIX MAY USE IN CONNECTION WITH PROFIX’S SERVICES. THE REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST PROFIX 'S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES; AND APPLIES TO ALL CLAIMS THAT PROFIX MAY BRING AGAINST YOU. THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT AND ITS PROVISIONS AND, GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR PROFIX FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION. YOU AND PROFIX FURTHER AGREE THAT NEITHER PROFIX NOR YOU WILL JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AND PROFIX AGREE THAT NO CLAIMS WILL BE ASSERTED IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS WILL BE RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE JURISDICTION TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO

RULES FOR CLASS-WIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of the National Arbitration Forum ("NAF" - <http://www.adrforum.com>), or alternatively, as you and ProFix may mutually agree. You and ProFix agree to act in good faith in selecting an arbitrator. Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of NAF, and will be conducted in the State of Delaware. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, except as otherwise required by rules of NAF, as applicable, but the arbitrator can apportion these costs as appropriate. The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction.

IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AND PROFIX AGREE TO WAIVE TRIAL BY JURY. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.

14. Miscellaneous.

15.1 No Third Party Beneficiaries. The benefits in this Agreement do not extend to any third party.

15.2 Governing Law. These terms and conditions will be governed by applicable federal laws and regulations and the law of the State of Maryland, without regard to its choice of law principles except for the provisions in the dispute resolution section of this Agreement, which are governed by the laws described in that section.

15.3 Notices. As required under this Agreement, you must provide notice to ProFix as described in the applicable sections of this Agreement. When we receive notice from you via telephone, such notice will be effective on the date we received your call, as shown by our records. ProFix may provide you notice as required under this Agreement in at least one of the following ways: letter mailed to the most recent address on your account, bill messages, email notification to an address provided by you, recorded announcement, posting on our Website, call to your billed telephone number and speaking to you or leaving a message, or any other reasonable method of notice.

15.4 No Waiver of Rights. If either you or ProFix fails to enforce or waives any requirement under this Agreement that does not waive that party's right to later enforce that requirement in the future.

15.5 Assignment. You may not assign this Agreement to any other person or entity without ProFix's prior written approval.

15.6 Severability. If any provision of the Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

15.7 Survivability. The terms and conditions of this Agreement that by their sense and context are intended to survive the expiration of this Agreement will survive.

15.8 Conflicts. If a conflict exists between or among provisions within this Agreement, specific terms will control over general provisions.

15.9 Software License Agreements.

(a) To utilize any licensed software associated with Services, you must agree to applicable software license agreements governing such software. If you decline, you will not be able to use the Services associated with such software. All software license agreements are between you and the software vendors. ProFix has no obligations or responsibility for such software. Your sole rights and obligations related to such software, in any way, are governed by your software license agreements.

(b) You are responsible for any software not provided by ProFix’s software vendors, including installation, operation, and maintenance. If any of your software impairs Services, ProFix may suspend the associated Services in its sole discretion, and you will immediately cure the problem upon notice from ProFix. You also will continue to pay ProFix for Services during any such impairment or Service suspension. ProFix and our software vendors have no liability if changes in Services causes any Equipment or software you have provided to become obsolete, require alteration, or perform at lower levels.

15.10 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior negotiations or agreements, whether oral or written, relating to its subject matter. No written or oral statement, advertisement, or Service description not expressly contained or referenced and incorporated into this Agreement will be allowed to contradict, vary, explain, or supplement this Agreement.

Name: _____ Email: _____

Company or Organization: _____

Billing Address: _____

Phone: _____ Cell Phone: _____

Signature: _____ Date: _____

ProFix Customer Service and Technical Support Phone Number: (571) 436-1400

ProFix Email Address for Customer Service and Technical Support: support@profixit.com

ProFix Website for additional information: <http://www.profixit.com>