



PROVERIS SCIENTIFIC CORPORATION

Terms and Conditions of Sale and Use of Instrumentation Products & Software License Agreement

Notices

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Refer to the "Proveris Patents" section at www.proveris.com/legal.htm for patents covering Proveris Scientific's products and/or technology.

Drafted in the U.S.A.

Introduction

Proveris Scientific Corporation, a Massachusetts corporation having its principal offices at 290 Donald Lynch Boulevard, Marlborough, Massachusetts 01752, U.S.A. ("Proveris") and Customer ("Customer"), in consideration of the mutual obligations set forth hereinafter and intending to be legally bound, hereby agree that the purchase and sale and use of Proveris instrumentation products, licenses granted to use Proveris software, services performed, support provided, and instrument components purchased pursuant to a Complete Instrument Support Plan ("ISP"), an Instrument Combined Support Plan ("ICSP"), a Basic Instrument Service Plan ("Basic ISP"), and support provided pursuant to a Software Support & Maintenance Agreement ("SSMA"), are made under these Terms and Conditions of Sale and Use and Software License Agreement ("Agreement"). Customer's order of a Product (as below defined), ISP, ICSP, Basic ISP, and/or SSMA shall constitute acceptance of and agreement to be bound by this Agreement. This Agreement is effective as of the date Proveris acknowledges a purchase order by Customer and governs instrument, component, accessory, ISP, ICSP, Basic ISP, and SSMA purchases, and software licenses, ordered by Customer.

Definitions

1. "Customer", "You" or "your" means the company purchasing the Instrument(s), ISP, ICSP, Basic ISP, and/or SSMA, and/or licensing the Software and all individuals using an "Instrument" or the "Software" within the scope of their employment with or on behalf of the company.
2. "Software" means Proveris's Viota Software Platform, together with all accompanying "Documentation", utilities, and the database that you have licensed, if any, which specifications are included in Proveris's Instrument and Software Pre-Installation Requirements and Checklist (Form 75-12-1) and made a part of this Agreement.
3. "Software License" means the license Proveris grants to you to use the "Software" pursuant to the terms and conditions of this Agreement.
4. "Instrument" or "Instruments" means Proveris's actuation, measurement, and/or robotic instruments.
5. "Instrument Component" means an Instrument component or accessory provided by Proveris under a warranty or ISP, or purchased by Customer under the terms of an ISP or otherwise.
6. "Product" or "Products" means an Instrument, Instruments, Instrument Component(s), Software, and/or Software License.
7. "Documentation" means, without limitation, Proveris installation and operational qualification documents and forms, service reports, maintenance reports, and any and all other documents produced by Proveris to document services and/or tests performed by Proveris for Customer. "Documentation" also means the documentation accompanying the Software and/or Instruments, including all Software User Guides provided to you, if any.

General Terms

1. **Title.** Title to the Instruments and Instrument Components passes at Proveris's shipping dock. Proveris retains a right of possession in the Instruments and/or Instrument Components until Customer makes full payment.
2. **Taxes, Fees, Local Requirements.** Product prices are exclusive of, and Customer will pay, applicable sales, use, service, value added or like taxes, unless Customer has provided Proveris with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities. Customer will also be responsible for obtaining, and will be liable for paying all costs and fees in connection with obtaining, all approvals and registrations required for the import, implementation, sale and/or use of Products under local laws and regulations. Customer, not Proveris, will be liable for any failure to obtain any or all required approvals and/or registrations. Customer will indemnify Proveris for any damages or losses Proveris may suffer arising from Customer's failure to obtain any required approval and/or registration.

3. **Prices and Payment.** Customer will make payment in full according to the payment structure outlined in the applicable Proveris quotation. All sums not paid when due will accrue interest daily at the monthly rate of 1.5% on the unpaid balance until paid in full, except in the case of a good faith dispute regarding a specific charge that has been described to Proveris in writing prior to the date upon which payment ordinarily must be made. All orders will be accepted only in the United States and all payments must be made in U.S. Dollars. In the event of any order for several units, each unit(s) will be invoiced when shipped. Proveris will bill Customer for any travel expenses, duties, insurance, customs and shipping charges at actual cost unless otherwise noted on the applicable Proveris quotation.
4. **Orders.** All orders are subject to acceptance by Proveris. Proveris's booking of an order as demonstrated by the provision to Customer of an Order Acknowledgement will constitute its acceptance of an order.
5. **Delivery.** For international shipments, unless the applicable Proveris quotation provides for different shipment terms, international shipment terms are FCA (Incoterms 2010) to entry point to Customer's country ("Destination") and Customer shall bear the risks of export, carrying out customs formalities, and clearance. All shipping, insurance, duty, and customs charges pre-paid by or billed to Proveris will be invoiced to Customer for reimbursement by Customer. For domestic shipments, unless the applicable Proveris quotation provides for other shipment terms, Proveris will deliver the Products to a carrier at Proveris's plant and Customer will pay all freight and insurance charges and other necessary fees. Orders are entered as close as possible to the Customer's requested shipment date, if any. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents, including signed agreements, and, where applicable, down payments. Claims for shipment shortage will be deemed waived unless presented to Proveris in writing within fifteen (15) days after delivery.
6. **Force Majeure.**
 - a. If any Force Majeure occurs in relation to either party that affects or may affect the performance of any of its obligations under this Agreement, it will notify the other party as soon as practicable, if possible, as to the nature and extent of the circumstances in question.
 - b. Neither party will be deemed to be in breach of this Agreement, or will be otherwise liable to the other party, by reason only of any delay in performance, or the non-performance of any of its obligations hereunder, to the extent that the delay or non-performance is directly attributable to any Force Majeure about which it has duly notified the other party unless notification is not readily possible due to Force Majeure in which case this Agreement will not be deemed to be breached, and the time for performance of that obligation will be extended accordingly.
 - c. If the performance by either party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of ten (10) working days, the parties will enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances.
 - d. If the performance by either party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for sixty (60) days or more, consecutively or cumulatively, in any one year, then the other party will in its discretion have the right to cancel this Agreement upon written notice. Customer will be relieved of any obligation to pay a restocking charge if such Force Majeure occurs. Customer will not be relieved, however, from its obligation to pay for a Product that has already been delivered to the Destination or installed, or for service already performed by Proveris.
 - e. For the purposes of this Section, "Force Majeure" means a circumstance that is not within the reasonable control of the party concerned including, without limitation, any acts or restraints of governments or public authorities; war; insurrection or unrest; revolution; riot or civil commotion; natural catastrophes; acts of God; fire; interruptions of transportation; or, inability to obtain necessary labor or materials.
7. **Ownership Rights.** The Products and Documentation are protected by United States patent and copyright laws and international treaty provisions. Proveris and its suppliers own and retain all right, title and interest in and to the intellectual property in the Products, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Your possession, installation, and/or use of the Products does not transfer to you any title to the intellectual property in the Products, nor any title to the Software.

Software License Terms

8. **Software License**
 - a. Upon Proveris's acceptance of a purchase order for a Software License, Proveris will grant to Customer one non-exclusive, non-transferable right and license to the specified version of the Software, only in conjunction with the use of Proveris's Instruments and subject to the terms and conditions of this Agreement.
9. **Use and Restrictions.**
 - a. The Software may not be used with any devices other than the Instruments.
 - b. Customer may not transfer or re-license the Software or any of the rights granted to it hereunder unless and until Customer receives the prior written authorization of Proveris. No authorized transfer will be effective until:
 - i) the transferee agrees in writing to pay for a new Software License and to be bound by all terms and conditions set forth in Proveris's then applicable Software license agreement; and
 - ii) Proveris has certified that it has conducted an installation qualification and operational qualification of the Instrument(s) on the transferee's site.
 - c. The Software may only be installed by qualified Proveris personnel and may only be installed on a computer workstation supplied or approved by Proveris as part of the Instrument(s). Absent Proveris's consent, Customer may not install the Software on new or additional compatible Instruments. Any such unauthorized Software installation will immediately void any applicable Instrument warranty and any obligation by Proveris to provide Customer with service and support for that Software installation and for the new or additional compatible Instrument on which Customer installed the Software.

- d. The Software may only be used in conjunction with the Instruments and any associated analyst workstations and Customer's computer network, and the Instruments may only be used for the purposes of testing including, but not limited to, automated actuation of spray pattern, plume geometry, and/or shot weight measurements. Customer may not use the Software for time sharing, subscription, or rental purposes.
- e. Customer may not disable any safety features contained in the Products and will at all times use the Products in accordance with any applicable Documentation.
- f. Customer may not reverse engineer, decompile, or disassemble the Software or Instruments, except to the extent the foregoing restriction is expressly prohibited by applicable law. Customer may not modify, or create derivative works based in whole or in part upon, the Software and/or Instruments. Customer may not copy the Software or Documentation, except for internal use by Customer. Customer may store the Software and Documentation at one or more locations designed for the secure storage of property, regardless of whether or not such locations are owned or operated by Customer. Customer may use the Software at one or more locations or on one or more computer systems, whether or not owned or operated by Customer, during testing or operation of a disaster recovery plan for its computer facilities. Customer may not remove any proprietary notices or labels on the Software, Documentation, and/or Instruments.
- g. Oracle® Corporation Provisions.
 - i) If supplied by Proveris, the database in the Software is provided by Oracle® Corporation ("Oracle"). To the extent permitted by law, Oracle disclaims liability for any damages, whether direct, indirect, incidental, or consequential, and any loss of profits, revenue, data or data use arising from the use of the Oracle database and programs.
 - ii) Proveris reserves the right, at its sole expense, to periodically conduct audits upon reasonable advance written notice during normal business hours to verify Customer's compliance with the terms of this Agreement and to report Customer's use to Oracle or to assign Proveris's right to audit Customer's use of the Oracle program(s) to Oracle, if Proveris supplied the database in the Software. Proveris will attempt to schedule any such audit when convenient for Customer. Customer shall provide reasonable assistance and access to information in the course of such audit.
 - iii) The publication of results of any benchmark tests run on the Oracle program(s) is prohibited.
 - iv) If Proveris supplies the database in the Software, Oracle is a third party beneficiary to this Agreement only to the extent required for Oracle to protect and enforce its rights under the Oracle Application Specific Full Use Program Distribution Agreement between Oracle and Proveris (the "ASFU Agreement").
 - v) Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the Software and is licensed only for use with the Software pursuant to the terms of the third party license agreement specified in the Software.
 - vi) Proveris (and Oracle with respect to the database if Proveris supplies the database for use with the Software) retains all ownership and intellectual property rights to the Software.
 - vii) To the extent permitted by applicable law, Oracle disclaims all liability for any damages, whether direct, indirect, incidental, or consequential, arising from the use of an Oracle database supplied by Proveris.

10. License Term and Termination.

- a. The Software License is perpetual, unless terminated pursuant to Paragraph 10.b., 10.c., or 10.d of this Agreement.
- b. The Software License will terminate if Customer fails to comply with any of the limitations or other requirements described in Paragraph 9 of this Agreement, and is given notice pursuant to Paragraph 27 and thirty (30) days to correct the defect or problem. Upon termination of the Software License, Customer must destroy all copies of the Software and the Documentation, except one copy of the client Software and one copy of the Documentation for legal purposes and reference.
- c. In addition to other remedies provided by law, Proveris may at its sole discretion terminate this Agreement with Customer upon any of the following events, any one of which will constitute an "Event of Default" under this Agreement:
 - i) except as otherwise permitted herein, any attempted sale, assignment, or transfer of rights granted to Customer by Proveris under the terms of this Agreement without Proveris's prior written consent;
 - ii) if Customer is acquired by or acquires a competitor of Proveris;
 - iii) Customer's termination, dissolution, or liquidation (as a matter of law or otherwise);
 - iv) failure to perform any undisputed Software License, service, or Instrument payment obligation if such failure is not cured within thirty (30) days after Proveris provides Customer with notice of this Event of Default;
 - v) if Customer engages in the development and/or marketing of software or instruments that compete with the Software or any Proveris Instrument.
- d. Customer may terminate the Software License at any time for its convenience, without any refund of license or support fees paid, by delivering to Proveris all copies of the Software and the Documentation or by destroying all copies of the Software and the Documentation and providing to Proveris its notarized certificate that it has done so, except for one copy of the client Software and one copy of the Documentation for legal purposes and reference.

11. Events Upon Termination.

- a. Upon any termination of the Software License, any obligations Proveris has to you under an ISP or SSMA then in effect will terminate, you must stop using the Software, and you must deliver to Proveris all copies of the Software and the Documentation or destroy all copies of the Software and the Documentation and provide to Proveris confirmation in writing, signed by someone with authority to bind Customer, that you have done so; or you must provide Proveris with access to the Instrument(s) during normal business hours

for disabling the method executive and/or removing the Software, except for one copy of the client Software and one copy of the Documentation for legal purposes and reference.

- b. Neither Proveris nor you will, by reason of termination of this Agreement, be liable to the other for compensation, reimbursement, or damages on account of the loss of present or prospective profits on business or anticipated business, or on account of expenditures, investments, lease, or any type of commitments made in connection with the business of either, provided, however, that such termination will not affect the rights of Proveris with respect to any indebtedness then owing by you to Proveris, including for any incomplete SSMA or ISP term.
 - c. Upon any termination of the Software License, Customer and Proveris will undertake the following:
 - i) Each party must end all use of the other party's corporate name, trademarks, and trade names or other corporate and product identifiers, whether in print or electronic form (including, without limitation, internet usage); and
 - ii) Each party must cease all use of any proprietary or confidential information previously furnished by the other party, if any; and
 - iii) Each party must take such action as is necessary to terminate any registration with any governmental authority regarding the relationship created hereunder.
12. **Source Code.** Solely in the event that you are required by law or a regulatory agency to review the source code to the Software (the "Source Code"), and solely for the purposes thereof, Proveris will make the Source Code available for review, subject to the following conditions:
- a. Prior to reviewing the Source Code, you must enter into Proveris's standard non-disclosure agreement. Without limiting the foregoing, you may not disclose the Source Code to any party and may not use any information learned as a result of its review of the Source Code for any purpose other than the regulatory review.
 - b. The review must take place at Proveris's designated facility during Proveris's normal business hours under supervision of Proveris personnel.
 - c. You must provide Proveris with 30 days prior written notice, which notice must set forth in detail the regulatory requirements for the review.
 - d. You may not in any way copy or extract the Source Code.
 - e. You acknowledge that the Source Code embodies valuable confidential and secret information of Proveris, the development of which required the expenditure of considerable time and money. The database may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of this Agreement.
13. **Licenses to U.S. Government.** If applicable, this paragraph applies to all acquisitions of the Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government (collectively, the "Government"). You agree on behalf of the Government that the Software and the Documentation are respectively "commercial computer software" and "commercial computer software documentation" within the meaning of the acquisition regulation(s) applicable to this procurement. These terms and conditions alone will govern the Government's use of the Software and will supersede any conflicting contractual terms or conditions. If the license granted by these terms and conditions fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government must return the Software unused to Proveris. Contractor/Manufacturer is Proveris Scientific Corporation, 290 Donald Lynch Boulevard, Suite 100, Marlborough, MA 01752.

Warranties/Limitations

14. **Intellectual Property Warranty.** Proveris warrants that it has title and the right to convey the Software License granted herein under the terms and conditions set forth herein, and that to the best of its knowledge the Software Proveris has developed does not infringe any patents, copyrights, trademarks, or other intellectual property rights of any third party.
15. **Software Release Warranty.** Proveris warrants that before it commercially released the Software licensed under this Agreement, it tested the Software in accordance with then current relevant standard operating procedures in place at the time of release under Proveris's Quality Management System.
16. **Limited Warranty.** Proveris warrants the Instrument hardware against defects in materials and workmanship for a limited one (1) year period beginning on the date Proveris ships the Instrument to your facilities ("Start Date"). Proveris warrants that, for a period of ninety (90) days from the Start Date, the Software will substantially conform to the Documentation. This limited warranty is void if failure is due to accident, abuse, or misapplication, including without limitation disabling any Instrument safety features or otherwise failing to use the Instrument and/or Software in accordance with the Documentation, including all safety specifications contained therein. The warranty provided herein does not cover damages, defects, malfunctions, or service failures caused by your failure to follow Instrument installation, operation, or maintenance instructions; your modification of the Instrument or any part thereof; your relocation of the Instrument from the location Proveris installed the Instrument; your abuse, misuse, or negligent acts; and power failures or surges, fire, flood, accident, actions of third parties, or other events outside Proveris's reasonable control. With respect to any returns of the Instrument or Instrument Component pursuant to the warranty set forth above, you must first obtain a Return Material Authorization number from Proveris, which process will not cause unreasonable delay nor will approval be unreasonably withheld, before returning the Instrument or Instrument Component to Proveris. Contact Proveris's service organization for warranty issues: support@proveris.com. If after examining and testing the returned Instrument or Instrument Component, Proveris concludes that it is defective, you will be notified and the Instrument or Instrument Component will be repaired or replaced at Proveris's expense.
17. **Customer's Remedies.** Proveris's sole obligation and your exclusive remedy for any breach of warranty will be the repair or replacement of the defective Instrument or Instrument Component. Any replacement Instrument or Instrument Component will be warranted for the greater of thirty (30) days or the balance of the original warranty period.

18. **No Other Warranties.** To the maximum extent permitted by applicable law, Proveris disclaims all other warranties, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Proveris does not warrant that the Software, the Instruments, or any Instrument Component thereof will meet your requirements or operate uninterrupted or error-free or that the Documentation is complete and accurate. The warranty and remedies set forth herein are exclusive and in lieu of all others, oral or written, express or implied. No agent or employee of Proveris is authorized to change or add to the warranty and remedies set forth herein. Any software other than the Software furnished with or accompanying the Instruments is not warranted by Proveris.
19. **Limitation of Liability.** UNDER NO CIRCUMSTANCES OR LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL PROVERIS BE LIABLE TO YOU OR TO ANY OTHER PERSON EMPLOYED BY OR RELATED TO YOU FOR (a) ANY DAMAGES ARISING OUT OF YOUR DISABLING OF ANY INSTRUMENT SAFETY FEATURES OR OF ANY OTHER FAILURE TO USE THE SOFTWARE AND/OR INSTRUMENT IN ACCORDANCE WITH THE DOCUMENTATION, INCLUDING ALL SAFETY SPECIFICATIONS CONTAINED THEREIN, OR (b) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN IF PROVERIS WILL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGES OR LOSSES OF ANY NATURE. IN NO EVENT WILL PROVERIS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE PRICE PROVERIS CHARGED CUSTOMER FOR THE INSTRUMENT CAUSING THE DAMAGES. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. You acknowledge that the applicable purchase price and/or license fee for the Instrument and/or Software reflects this allocation of risk. The foregoing provisions will be enforceable to the maximum extent permitted by applicable law. If the foregoing limitation of liability is not enforceable because a Proveris Product sold or licensed to you is determined by an arbitrator or court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event will Proveris's liability for property damage exceed the greater of \$50,000 or the fees paid for the specific Product that caused the damage.

Software Support & Maintenance Agreement / Instrument Support

20. **Initial Software Support & Maintenance.** During the Limited Warranty period described in Paragraph 16, Proveris will provide Customer with access to all Viota Software updates and fixes made generally available by Proveris to its customers, if any, and call-in technical support during normal Proveris business hours for Proveris trained Software users or Customer employees who have been trained by Proveris trained users, only if Customer purchases a SSMA. The SSMA does not include training, which is available at additional cost. Software updates will include any necessary updates to the Oracle® Corporation database if Proveris supplied the database during the Software installation. Software upgrades are not included in the SSMA. Software support and maintenance will be provided to Customer after expiry of the SSMA only if Customer has an ISP or ICSP covering all Instruments operating through the particular Software installation. Proveris will not provide any software support and/or maintenance during the Limited Warranty period without a SSMA.
21. **ISP/ICSP.** Upon expiry of the Limited Warranty period described in Paragraph 16 and the SSMA, if ordered by Customer, Customer may obtain service and support for Instruments and the Software if it purchases an ISP or ICSP. The ISP or ICSP will become effective when Proveris issues an Order Acknowledgement for a purchase order from Customer for an ISP or ICSP or when the Limited Warranty period expires, whichever date is later. Proveris will not provide any support for the Software or any Instrument unless Customer purchases an ISP or ICSP.
- Customer may terminate an ISP or ICSP upon a material breach of the ISP or ICSP by Proveris not remedied within thirty (30) days after receipt of written notice of breach pursuant to Paragraph 27 of this Agreement. In such a termination, Customer will be entitled to a refund of the unearned portion of the fees paid for the ISP or ICSP year then in effect.
 - Upon termination of an ISP or ICSP by Customer for cause under Paragraph 21.a. above, Proveris will refund to Customer any unearned fees paid by sending Customer a check or wire transfer within sixty (60) days of termination.

Miscellaneous

22. **Indemnification.** You will indemnify and hold harmless Proveris from and against any direct damages claim ("Liability") arising from your negligent use of the Software and/or a Proveris Instrument, or your use of the Software and/or an Instrument in a manner other than the intended use of the Software and/or Instrument. You will also reimburse Proveris for all reasonable expenses incurred by Proveris at your request. You will provide Proveris with written notice of any such claim for Liability no later than ten (10) days after you are made aware of any such claim. If you are required to defend any action or proceeding pursuant to this section, to which action or proceeding Proveris is made a party, Proveris will be entitled to appear, defend, or otherwise take part in the matter involved, at its election and by counsel of its own choosing, providing that such action by Proveris does not limit or make void any liability of any insurer of either party in respect to the claim or matter in question. Proveris will give you prompt written notice of any claim for Liability of which it becomes aware that triggers indemnification hereunder.
23. **Relationship of the Parties.** It is expressly acknowledged by the parties that (i) neither party is an employee or agent of the other party, and will not become an employee or agent of the other party by reason of any services provided hereunder; (ii) in connection with its performance hereof, you are acting in the capacity of an independent licensee of the Software; and (iii) this Agreement does not create a franchise relationship between Proveris and you. You are not a legal representative of Proveris, and may not assume obligations of any kind, expressed or implied, on behalf of Proveris. Proveris will not incur any liabilities to you or any third party in connection with any malfeasance, misrepresentations, willful misconduct, or negligent acts of you. Each party's employees will at all times be and remain that party's employees and not an employee of the other party. Each party will pay all wages, salaries, and other amounts due to its employees and will be responsible for all reports, payments, and other obligations respecting such employees.

24. **Applicable Law/Jurisdiction/Arbitration.**

- a. The export of the Software and/or Instrument(s), or any component thereof, from the United States and re-export from any other country is governed by the U.S. Department of Commerce under the export control laws and regulations of the United States and by any applicable law of such other country, and neither the Instrument, Software, nor any component thereof will be exported or re-exported in violation of any such laws or regulations.
 - b. This Agreement is governed by and interpreted in accordance with the laws of The Commonwealth of Massachusetts, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act, are expressly excluded.
 - c. Proveris and Customer agree that any controversy or claim arising out of or relating to the interpretation, breach, or enforcement of this Agreement will be resolved by arbitration administered by the American Arbitration Association in accordance with the its Commercial Arbitration Rules, before one arbitrator who is an attorney. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and Proveris and Customer hereby irrevocably submit to the exclusive jurisdiction of such courts in any action or proceeding regarding the arbitration award and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The arbitration will be conducted in the English language and will take place within Massachusetts. **PROVERIS AND CUSTOMER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.** No action pursuant to this Paragraph 24 may be brought by either party more than one year after the cause of action has arisen.
25. **No Third Party Beneficiaries.** With the exception of Paragraph 9.g.iv., this Agreement is for the sole benefit of the parties hereto and their permitted successors and assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
26. **Publicity.** You must expressly credit Proveris Scientific Corporation in any peer-reviewed publication, trade journal article, and/or advertisement that includes any photograph, drawing, or rendering of, or any screen shot, results, or data generated from, a Proveris Product.
27. **Notices.** Notices must be in writing (including by facsimile) and sent to each party at its address below, which may be changed upon written notice. All notices required hereunder will be deemed received (a) within three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested; (b) within one (1) business day after being sent by a nationally recognized overnight courier; or (c) the same business day when delivered personally or when sent by confirmed facsimile transmission to the address set forth below (unless a Party has provided notice of a change of address in accordance herewith). All Notices must be in the English language.
28. **Test Services.** Any method development, actuation parameter determination, cross over study, and/or similar services provided by Proveris for Customer as part of an Instrument purchase and not pursuant to a separate Contract Test Services Proposal (“Test Services”), are provided “As Is” and Proveris makes no warranty, express or implied, that any data provided to Customer in connection with such Test Services will meet Customer’s requirements. Any Test Services Proveris may provide are provided only as a convenience and Customer is responsible for ensuring that the test method(s) it uses for its product(s) and the Product(s) meet its/their intended purpose(s). In the performance of any Test Services, if Proveris uses any generic, off-the-shelf, and/or non-Customer owned products or spray devices, Proveris owns all data generated from the use of such products or spray devices. Upon delivery to Customer of a portion or all of the data generated from such products or spray devices as part of the provision of Test Services, Proveris grants to Customer a limited perpetual, non-exclusive license to use the data only for Customer’s internal test purposes with a Proveris Product.
29. **Miscellaneous.** This Agreement sets forth all rights and is the entire agreement between Proveris and you and supersedes any other prior or contemporaneous written or oral agreements or communications with respect to the subject matter herein, including but not limited to any inconsistent or conflicting terms contained in any purchase order for any Product or service contemplated by this Agreement. Neither Party’s right to require performance of the other Party’s obligations under this Agreement will be affected by any previous waiver, forbearance, or course of dealing. Headings included in this Agreement are for convenience only and are not to be used to interpret the agreement between the parties. This Agreement may not be modified except by mutual written consent of the parties. No provision hereof will be deemed waived unless such waiver is in writing and signed by the waiving party. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. The parties confirm that it is their wish that this Agreement has been written in the English language only.