

ProChain Enterprise Terms of Service

7 July 2017

This Terms of Service agreement (“Agreement”) contains the terms and conditions that govern your access to and use of the Services and is an agreement between ProChain Solutions, Inc. (“ProChain”) and Edwards Lifesciences LLC (“you” or “Edwards”). This Agreement takes effect when you first log in to ProChain Enterprise (the “Effective Date”). You represent to ProChain that you are lawfully able to enter into contracts. If you are entering into this Agreement for an entity, such as the company you work for, you represent to ProChain that you have legal authority to bind that entity. BY ACCEPTING THIS LICENSE YOU HEREBY AFFIRM AND AGREE THAT THIS AGREEMENT SETS FORTH THE SOLE AND ONLY TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE PROCHAIN ENTERPRISE SERVICES. NO PURCHASE ORDER, AGREEMENT, FORM OR OTHER DOCUMENT OF ANY KIND ISSUED BY YOU SHALL IN ANY WAY BE DEEMED BINDING UPON PROCHAIN OR APPLY TO ANY TRANSACTION BETWEEN YOU AND PROCHAIN OR THE PROCHAIN SERVICES, UNLESS OTHERWISE EXPLICITLY AGREED IN WRITING BY YOU AND PROCHAIN.

1. Use of the Services

ProChain grants to you the right for a limited number of individuals to interact with the Services (“**User Logins**”). The number of authorized User Logins will be indicated explicitly in writing by ProChain or an authorized distributor of ProChain on its invoice for the Services. You may add to the account individual logins associated with a valid e-mail addresses, up to the number of authorized User Logins you are permitted. You may only create one account per valid email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by ProChain’s breach of this Agreement, ProChain and its affiliates are not responsible for unauthorized access to your account. You will contact ProChain immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen. You may terminate your account and this Agreement at any time in accordance with Section 6.

2. Changes to the Services

ProChain changes or removes features or functionality of the Services from time to time. ProChain may change, deprecate, or discontinue the Services. ProChain will notify you of any material change to or discontinuation of the Services. ProChain will offer a pro-rated refund for fees paid in advance for any Services discontinued by ProChain unless such Services are terminated for material breach of this Agreement.

ProChain may change, discontinue or deprecate any APIs for the Services from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for 12 months after the change, discontinuation, or deprecation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).

3. Responsibilities

3.1 Content. You are solely responsible for the development, content, operation, and use of Edwards’ data collected, used, processed, stored or generated in connection with the Services (“**Your Data**”), including compliance of Your Data with the law; any claims relating to Your Data; properly handling and processing notices sent to you or any of your affiliates by any person claiming that Your Data violates such person’s rights; and the technical operation of Your Data, including ensuring that calls you make to the Services are compatible with current APIs for that Service.

3.2 Services. Services and their associated log-in credentials are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may provide User Logins to your agents and subcontractors performing work on your behalf (“**End Users**”), provided that any such End User has obligations to you that prohibit any disclosure and/or use of ProChain Confidential Information. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Data or use of the Services. You are responsible for End Users’ use of Your Data and the Services. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately inform ProChain of the details of the violation and work with ProChain to terminate such End User’s access to Your Data and the Services.

3.3 Backup. Without limiting Section 3.4 below, you are responsible for taking your own steps to maintain appropriate security, protection and backup of Your Data, which may include the use of encryption technology to protect Your Data from unauthorized access and routine archiving Your Data.

3.4 Cloud Security

a. **Undertaking by ProChain.** ProChain shall be responsible for establishing and maintaining a data privacy and information security program that is designed to: (a) ensure the security and confidentiality of the Edwards Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Edwards Data; and (c) protect against unauthorized disclosure, access to, or use of the Edwards Data. Edwards and ProChain agree that ProChain’s use of Amazon as a cloud service provider satisfies this obligation as of the Effective Date.

b. **Loss of Data.** In the event of any compromise or suspected to compromise of the security, confidentiality, or integrity of the Edwards Data or the safeguards put in place by ProChain that relate to the protection of the security, confidentiality, or integrity of the

Edwards Data, ProChain shall, as applicable: (a) notify Edwards as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Edwards in investigating the occurrence; and (c) perform or take any other actions required to comply with applicable law as a result of the occurrence.

c. Security Audits. No less than annually, or at such other frequency as agreed by the parties, ProChain shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Edwards. Upon request by Edwards, and no more than once per calendar year, ProChain agrees to complete, within forty-five (45) days of receipt, a questionnaire provided by Edwards regarding ProChain's data privacy and information security program.

4. Payment

4.1. Service Fees. ProChain will calculate and bill fees in advance on a yearly basis. You will pay ProChain the applicable fees and charges for use of the Services. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. ProChain may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. ProChain may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

4.2 Taxes. In connection with your purchase and/or use of the Service you may be subject to taxes, including, without limitation, sales and use taxes, by any authority which has jurisdiction to impose such taxes. You agree that the obligation and payment of any such taxes shall be your sole and absolute responsibility, and you agree to indemnify ProChain pursuant to Section 7.1(a) to the extent that ProChain incurs any obligations or other liabilities in connection with such taxes.

5. Term and Termination

5.1. Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by you or ProChain in accordance with Section 5.2.

5.2 Termination.

- (a) Termination for Convenience. You may terminate this Agreement immediately for any reason by providing ProChain notice. ProChain may terminate this Agreement for any reason by providing you 30 days advance notice.
- (b) Termination for Cause.
 - (i) Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.
 - (ii) ProChain may also terminate this Agreement immediately upon notice to you (a) for cause, if you are delayed for 30 or more days in the payment of applicable fees or for unauthorized disclosure of ProChain Confidential Information; (b) if it believes providing the Services could create a substantial economic, technical or security risk for ProChain; (c) in order to comply with the law or requests of governmental entities; or (d) if the provision of any of the Services has become impractical for any legal or regulatory reason.

5.3. Effect of Termination.

Upon any termination of this Agreement, all your rights under this Agreement immediately terminate; you remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination; and Sections 3.1, 4.2, 5.3, 6 (except the license granted to you in Section 6.3), 7, 8, 9, 11, 12, and 13 will continue to apply in accordance with their terms. Any additional post-termination assistance from ProChain is subject to mutual agreement by you and ProChain.

6. Proprietary Rights

6.1 Your Data. As between you and ProChain, you or your licensors own all right, title, and interest in and to Your Data. Except as provided in this Section 6, ProChain obtains no rights under this Agreement from you or your licensors to Your Data, including any related intellectual property rights. ProChain shall: (a) keep and maintain Your Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; and (b) use and disclose Your Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement and applicable law. ProChain may disclose Your Data to provide the Services to you or any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

6.2 Adequate Rights. You represent and warrant to ProChain that: (a) you or your licensors own all right, title, and interest in and to Your Data; and (b) you have all rights in Your Data necessary to grant the rights contemplated by this Agreement.

6.3 Services License. As between you and ProChain, ProChain or its affiliates or licensors own and reserve all right, title, and interest in and to the Services. ProChain grants you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Services solely in accordance with this Agreement during the Term. Except as provided in this Section 6.3, you obtain no rights under this Agreement from ProChain or ProChain's licensors to the Services, including any related intellectual property rights.

6.4 License Restrictions. Neither you nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services, (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, or (c) resell or

sublicense the Services. All licenses granted to you in this Agreement are conditional on your continued compliance with this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. **During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against ProChain or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services you have used.**

6.5 Proprietary Marks. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the Services.

7. Indemnification.

7.1. General. You will defend, indemnify, and hold harmless ProChain, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Services; (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Data or the combination of Your Data with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Data; or (d) a dispute between you and any End User, *provided that*, notwithstanding the foregoing, in all cases referred to in this Section 7.1, you shall have no liability to ProChain for any claims, damages, losses, liabilities, costs or expenses ("Losses") to the extent that such Losses were caused by or resulted from ProChain's breach of this Agreement. If ProChain or its affiliates are obligated to respond to a compulsory legal order or process described above, you will also reimburse ProChain for reasonable attorneys' fees.

7.2. Process. ProChain will promptly notify you of any claim subject to Section 7.1, but ProChain's failure to promptly notify you will only affect your obligations under Section 7.1 to the extent that ProChain's failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to ProChain's written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain ProChain's prior written consent before entering into any settlement. ProChain may also assume control of the defense and settlement of the claim at any time.

8. Disclaimers.

EXCEPT AS OTHERWISE EXPLICITLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS." PROCHAIN AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, INCLUDING ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, PROCHAIN AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

9. Limitations of Liability.

PROCHAIN AND ITS AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER PROCHAIN NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) PROCHAIN'S DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR DATA OR OTHER DATA. IN ANY CASE, PROCHAIN AND PROCHAIN'S AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY PROCHAIN UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM, EXCEPT TO THE EXTENT SUCH LIABILITY ARISES FROM PROCHAIN'S (A) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT OR (B) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS OF THIS SECTION MAY NOT APPLY TO YOU.

10. Modifications to the Agreement.

ProChain may modify this Agreement (including any Policies) at any time by notifying you in accordance with Section 12.6. The modified terms will become effective ten (10) days after receipt of such notice. By continuing to use the Services after the effective

date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the ProChain Enterprise login page regularly for modifications to this Agreement.

11. Confidentiality.

You may use ProChain Confidential Information only in connection with your use of the Services as permitted under this Agreement. You will not disclose ProChain Confidential Information during the Term or at any time during the 5 year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of ProChain Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement, your use of the Services, or your relationship with ProChain without prior written permission from ProChain.

12. Miscellaneous.

12.1 Force Majeure. ProChain and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from Fire, flood, strikes, lock-out, epidemic, accident, power outage, shortage of customarily used transportation equipment (or suitable substitute), or other causes beyond the reasonable control of the ProChain or its affiliates.

12.2 Independent Parties. This Agreement does not create a partnership, employment, representation, franchise, agency, or joint venture relationship between the parties. The parties' relationship hereto is solely that of independent contractors.

12.3 No Third Party Beneficiaries. This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

12.4 U.S. Government Rights. The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data," as these terms are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement, with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services.

12.5 Import and Export Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

12.6 Notice.

- (a) ProChain may provide any notice to you under this Agreement by posting a message to your ProChain Enterprise Messages screen or by sending a message to the email address then associated with your account. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when ProChain sends the email, whether or not you actually receive the email.
- (b) To give ProChain notice under this Agreement, you must contact ProChain either by facsimile transmission to 703-878-2585 or by personal delivery, overnight courier or registered or certified mail to ProChain Solutions, Inc., 3320 Noble Pond Way, Suite 204, Woodbridge, VA 22193. ProChain may update the facsimile number or address for notices to ProChain by posting a notice as described in section 12.6(a) above. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.
- (c) All communications and notices to be made or given pursuant to this Agreement must be in the English language.

12.7 Assignment. Neither party shall assign or delegate any of its rights or obligations under this Agreement without the prior written consent of the other party; except that either party shall have the right, without needing the other party's consent, to assign or delegate this Agreement in connection with any merger, acquisition, reorganization or sale of substantially all of the assets of the assigning or delegating party.

12.8 No Waivers. The failure by ProChain to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit ProChain's right to enforce such provision at a later time. All waivers by ProChain must be in writing to be effective.

12.9 Severability. If any provision of this Agreement is held to be unenforceable, the other provisions will remain in effect. If possible, the offending provision will be modified to the slightest degree necessary to make it enforceable, remaining as close as possible to the parties' original intent for the provision. If not possible, the offending provision will be stricken.

12.10 Governing Law; Venue. The laws of the State of Virginia, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and ProChain. Either party may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of ProChain, its affiliates, or any third party's intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

12.11 Entire Agreement; English Language. This Agreement constitutes the entire agreement between you and ProChain regarding the subject matter of this Agreement and supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and ProChain, whether written or verbal, regarding the subject matter of this Agreement. ProChain will

not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document.

13. Definitions.

“API” means an Application Program Interface.

“Content” means data, text, audio, video, images, software or other content.

“ProChain Confidential Information” means any information belonging to ProChain or its affiliates or licensors that is protected under a confidentiality or non-disclosure agreement between you and ProChain.

“Services” means the web services made available by ProChain or its affiliates (including associated APIs) and any other product or service provided by ProChain under this Agreement.

“Term” means the term of this Agreement described in Section 5.1.

“Your Data” means Content you or any End User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account.