

## End User Licence Agreement (EULA)

For Commercial and Professional Use

01-JAN-2023, version 1.30

### Chapter 1. General provisions

#### Article 1 - Applicability of the EULA

1. This End User Licence Agreement (hereinafter: "EULA") applies to the use of ProSim Products and any and all legal relationships and/or (other) agreements between ProSim and Licensee.
2. Deviations from and additions to this EULA shall only be valid if they are agreed upon with ProSim in writing.
3. The applicability of any purchasing or other conditions of Licensee is specifically excluded.
4. All offers and other communications of ProSim are subject to confirmation unless ProSim has indicated otherwise in writing.
5. If any provision of this EULA is null and void or is voided, the other provisions of this EULA shall remain fully in effect. ProSim and the Licensee shall in such case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

#### Article 2 - Definitions

In this EULA the following terms shall apply in the following meaning:

**Abuse:** any use of the Products different from the intended use as per the Licence Agreement and or the governing Terms & Conditions and EULA. Abuse may consist of but is not limited to making or using unauthorized copies of the Products, making unauthorized changes to the Products, using or certifying a device for a different purpose or level than permitted per the User Licence type and class, making use of the Products without being Licenced, making use of the Products while being licensed to a different person, entity or Flight Simulation Device serial number;

**Customer:** the person or legal entity that has concluded any agreement with ProSim, subject to the Terms and Conditions, for the delivery of a User Licence to use a Product, and possibly a Support Subscription for the benefit of the Licensee. The Customer may be a Partner, a Training Device Manufacturer or it may be the Licensee itself;

**Customer Order Confirmation:** the confirmation issued by ProSim after receipt and acceptance of the Order Intake Form;

**EULA:** the End User Licence Agreement applicable to the Licensee;

ProSim Training Solutions B.V.  
Address: Rotterdamseweg 388D  
2629 HG Delft  
The Netherlands

Website: [www.prosim-ar.com](http://www.prosim-ar.com)  
Email: [info@prosim-ar.com](mailto:info@prosim-ar.com)  
Phone: +31-(0)85-8770808  
Chamber Commerce: 86848046

Bank name: Rabobank  
IBAN: NL03RABO0318920093  
BIC: RABONL2U  
VAT number: NL864113067B01

**Flight Simulation Device:** the equipment with a specific and unique identifier such as the simulator serial number, as registered with ProSim, on which the Products may be installed and/or used by Licensee;

**Licence Agreement:** the agreement resulting from ProSim's issuance of a Customer Order Confirmation which assigns the User Licence to ProSim Products to a Customer / Licensee;

**Licence Type:** the User Licence specified in the Licence Agreement for which the Products may be used in strict accordance with the Use Description in the Licence Type Matrix included in this EULA;

**Licensee:** the person or legal entity that is entitled to operate the Products in accordance with the Licence Agreement and the applicable EULA and provided the Licensee is registered as such with ProSim. The Licensee may or may not be a Customer;

**List Price:** the price of a Product as stated on the Price List and applicable to a (potential) Licensee and basis for price calculation of certain User Licence options and the Support Subscription;

**National Aviation Authority (NAA):** a government statutory (civil aviation) authority in a country that maintains an aircraft register and oversees the approval and regulation of civil aviation and certification;

**Order Intake Form:** the form provided by ProSim for the benefit of notifying ProSim of a Customer Product order containing information about the requested User Licence, options and Support Subscription, the Licensee and the Flight Simulation Device and desired certification level. Returned forms shall include the relevant and valid EULA signed on every page by the prospective Licensee, and printed with the Licensee contact person name, signature and date on the last page;

**Price List:** statement of List Prices per Product and as regularly (at least for each calendar year) updated by ProSim;

**Product(s):** any (software) products licensable and/or services offered or delivered by ProSim to Licensee or through a Customer to a Licensee;

**ProSim:** the company ProSim Training Solutions B.V.;

**SDK Licence:** the licence to use the Software Development Kit (SDK) for personal use by Licensee for private home use only as further detailed in article 20 of this EULA;

**Support Subscription:** the paid subscription which comes into being together with the Licence Agreement, under which Licensee is granted the right to use updated versions of the Products, navigational data (depending on the User Licence type and class) and support services that are provided by ProSim under the agreed provisions, after the first year the Support Subscription is subject to an annual tacit renewal and may be terminated in writing at least one month before each renewal;

**Software Development Kit (SDK):** the materials provided by ProSim for the benefit of developers under applicability of the provisions of this EULA as set out further in article 20 of this EULA;

**Terms and Conditions:** the Terms and Conditions of ProSim applicable to any agreement with the Customer;

**Trial Licence:** a temporary licence to use the Products up to a maximum of 30 days for the purpose of evaluation only and under which any operational use is expressly prohibited;

**Use Description:** the description of the User Licence use of the ProSim Products allowed by ProSim to the Licensee as set out in the Licence Type Matrix and under as further set out in more detail in the provisions of this EULA;

**User(s):** person(s) acting under or that are deemed to be acting under the responsibility of Licensee in the broadest sense of the word, bound by the EULA and without prejudice to the user's own responsibility;

**User Licence:** the right to use a specific Product assigned by a Licence Agreement under the conditions as set out by the EULA.

### Article 3 - Price and payment

1. Prices and payment for the licence to use the Products by Licensee and any possible services and applicability of the Support Subscription are determined by the Licence Agreement between Licensee and the (third) party with which Licensee has concluded an agreement to that effect. The (third) party must have an agreement between itself as Customer and ProSim. The grant of licence to use the Products by ProSim to Licensee and any other rights is dependent on the (continuing) existence of a valid agreement between the (third party) Customer for the use of the Products by Licensee and upon termination or expiry of which the grant of licence to use the Products and any other rights shall end and Licensee shall cease or all use.
2. ProSim is entitled to suspend any and all rights and any and all services provided to Licensee if payment for the licence to use the Products and Support Subscription is not timely received by ProSim.

### Article 4 - Confidentiality

1. The Licensee and ProSim must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to ProSim if and insofar as ProSim is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the agreement by ProSim. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been deemed as such by one of the parties.
2. The Licensee acknowledges that Products originating from ProSim is confidential in nature, contains trade secrets, and needs to be handled confidentially.

### Article 5 - Privacy, data processing and access codes

1. Licensee entitles ProSim to collect data relevant and necessary for its performance under this EULA. ProSim may collect Products usage statistics for the purpose of tracing piracy, Abuse or misuse of its Products and the conditions applicable to it use.

2. The Licensee is fully responsible for the data that it processes using the Products. The Licensee guarantees vis-à-vis ProSim that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The Licensee indemnifies ProSim against any claim of a third party instituted for whatever reason in connection with this data or the performance of the agreement.
3. The access or identification codes and the licence keys provided to the Licensee by or on behalf of ProSim are confidential and must be treated as such by the Licensee, and may only be made known to authorised personnel in the Licensee's own organisation.
4. The Licensee is at all times responsible to adequately secure its systems and infrastructure and to have adequate active antivirus software protection at all times.
5. The Licensee shall be liable for any loss arising from failure to comply with the obligations under this article.

#### Article 6 - Risk transfer

1. The risk of loss, theft, misappropriation or damage of items, information including licence keys, documents or Products supplied or used shall remain with or pass to the Licensee at the time at which the Licensee or an auxiliary person of the Licensee comes into actual possession of the items and information referred to.

#### Article 7 - Intellectual Property Rights

1. All intellectual property rights to the Products and to websites, data files, testing and examination materials, as well as other materials like reports and offers, developed or made available to the Licensee are held exclusively by ProSim, its licensors or its suppliers. The Licensee shall have the rights of use expressly granted under this EULA and the applicable law.
2. The Licensee may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property rights pertaining to the Products or have any such indication removed or changed.
3. ProSim may at any time take technical measures to protect the Products and information made available to the Licensee for the purpose of limitation of use by Licensee in terms of the content or duration of the right of use of these items. The Licensee may not remove or bypass such technical measures or have such technical measures removed or bypassed.
4. ProSim indemnifies the Licensee against any claim of a third party based on the allegation that the Products or other materials developed by ProSim itself infringe an intellectual property right of that third party, subject to the condition that the Licensee immediately informs ProSim in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to ProSim. The Licensee shall provide the powers of attorney and information required to ProSim and assist ProSim to defend itself against such claims. This obligation to indemnity shall not apply if the alleged infringement concerns or is caused by:
  - (i) materials made available to ProSim by the Licensee for use, modification, processing or maintenance, or
  - (ii) changes made or commissioned by the Licensee in the Products or other materials without ProSim's written permission, or

(iii) any use of the Products that falls outside the scope of the agreed user licence rights and restrictions.

If it is irrevocably established in court that the Products or other materials developed by ProSim itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of ProSim, there is a good chance that such an infringement is occurring, ProSim shall if possible ensure that the Licensee can continue to use, or use functional equivalents of the Products or materials supplied. Any other or further obligation to indemnify or any liability on the part of ProSim due to infringement of a third party's intellectual property right is excluded.

#### Article 8 - Cooperation and information

1. The Licensee guarantees that the information it has provided or that has been provided on its behalf to ProSim is or are accurate, complete, truthful and at all times up-to-date.
2. The Licensee is responsible for the management, including checking the settings, and use of the Products and/or services provided by ProSim, and the way in which the results of the use of Products and/or services are used. The Licensee is at all times responsible for appropriately instructing its Users and for the use made of the Products.
3. The Licensee shall itself and under its own responsibility install, organise, parameterise and tune the Products on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.
4. ProSim is entitled to use Licensee as a reference and/or refer to the use of the ProSim Products by Licensee in publications, including press releases, or advertisements.

#### Article 9 - Termination and rescission

1. Each party shall only be authorised to rescind an agreement due to an attributable failure in the performance of the agreement if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach that has been issued, is culpably failing to fulfil essential obligations under the agreement.
2. ProSim may rescind the agreement in writing, without notice of default being required and with immediate effect, if the Licensee is Abusing or has Abused its rights under the licence or if Licensee makes, or cooperates to, unauthorized use of the Products.
3. If, at the time of rescission, the Licensee has already received goods or services in the performance of the agreement, these goods or services and the associated payment obligations shall not be undone unless the Licensee proves that ProSim is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by ProSim prior to rescission in connection with what it already properly performed or delivered in the performance of the agreement shall remain payable in full and shall become immediately due and payable at the time of termination.
4. Either of the parties may terminate the agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies.

ProSim may also terminate the agreement, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the Licensee's company. ProSim is never obliged to repay any amount in money already received or pay any amount in compensation due to rescission or termination as referred to in this paragraph. If the Licensee goes irrevocably bankrupt, its right to use the Products and other materials made available to it shall end, as shall its right to access and/or use ProSim's services, without termination by ProSim being required.

#### Article 10 - Liability

1. ProSim's total liability due to an attributable failure in the performance of the agreement or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the Licensee, shall be limited to compensation for direct loss up to a maximum of ProSim's List Price of the licence of use (excluding VAT) at the time of delivery of the Products.
2. ProSim's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of the Licensee's customers is excluded. ProSim's liability for corruption, destruction or loss of data or documents is likewise excluded.
3. ProSim's liability for any loss from, or any loss resulting out of, the use of the Products other than the use as expressly stated in this EULA or agreed with ProSim, is excluded.
4. The exclusions and limitations of ProSim's liability described paragraph 1 ,2 and 3 of this article are entirely without prejudice to the other exclusions and limitations of ProSim's liability described in this EULA.
5. The exclusions and limitations referred to in paragraph 1 up to and including paragraph 4 of this article shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of ProSim's management.
6. Unless performance by ProSim is permanently impossible, ProSim shall only be liable due to an attributable failure in the performance of the agreement if the Licensee declares ProSim to be in default in writing without delay and grants ProSim a reasonable term to remedy the breach, and ProSim culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give ProSim the opportunity to respond adequately.
7. For there to be any right to compensation, the Licensee must always report the loss to ProSim in writing as soon as possible after the loss has occurred. Each claim for compensation against ProSim shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the Licensee has instituted a legal action for damages prior to the expiry of this period.
8. The Licensee indemnifies ProSim against any and all claims of third parties due to product liability as a result of a defect in a product or system that the Licensee offers to a third party and that consisted in part of the Products or other materials supplied by ProSim.
9. The Licensee shall take out and will maintain liability insurance that is appropriate and customary by prevailing standards. The liability insurance policy must provide cover third party claims for at least € 1,250,000 per claim and for a minimum annual payment of 200% of this amount. On request, the Licensee will immediately present proof to ProSim of the payment of premiums and, save where

barred by statutory obligations, at the same time report any previous claims under the same policy in the current policy year.

#### Article 11 - Force majeure

1. None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure on the part of ProSim means, among other things:
  - a) force majeure on the part of suppliers of ProSim;
  - b) the failure to properly fulfil obligations on the part of suppliers that were prescribed to ProSim by the Licensee;
  - c) defects in items, equipment, Products or materials of third parties the use of which was prescribed to ProSim by the Licensee;
  - d) government measures;
  - e) power failures;
  - f) internet, data network or telecommunication facilities failures;
  - g) war and
  - h) general transport problems.
2. Either of the parties shall have the right to rescind the agreement in writing if a situation of force majeure persists for more than 60 days. In such an event, that which has already been performed under the agreement shall be paid for on a proportional basis without the parties owing each other anything else.

#### Article 12 -Transfer of rights and obligations

1. The Licensee may not sell, transfer or pledge its rights and obligations under this EULA or any right of use to a third party.
2. ProSim is prepared upon written request of the Licensee to transfer the EULA to a third party upon the following conditions:
  - a) the transfer is part of a transfer of the (entire) Flight Simulation Device for which the licence is registered, and
  - b) the Products are covered under a valid Support Subscription
  - c) the third party has provided all adequate and required information including a filled out Order Intake Form, and
  - d) no other reasonable objections for ProSim exist for granting a requested transfer such as e.g. but not limited to applicable export restrictions.
3. In specific cases, to be determined at ProSim's sole discretion, a transfer fee may be applicable.

#### Article 13 - Applicable law and disputes

1. This EULA and any further agreement between ProSim and Licensee shall be governed by Dutch law.
2. Any dispute that may arise on the basis of this EULA or as a result of any further agreements between ProSim and Licensee shall be resolved by the Court of Rotterdam, The Netherlands.



## Chapter 2. The Products

<b>USER LICENCE TYPE MATRIX</b>	
<b>User Licence Type</b>	<b>Use Description</b>
Non-commercial Use	<p>Private home use only by Licensee.</p> <p>The Licensee is entitled to use the Products for its own private use only in its capacity of private person or consumer.</p> <p>The grant of licence specifically does not include facilitating or allowing the – paid or unpaid – use by others except together with family and friends at its own registered home address. The Licensee bears the burden of evidence that use by others than Licensee itself is within the scope of this Licence Type. Any other use is forbidden.</p>
Commercial Use Class A	<p>Any use except for training.</p> <p>The Licensee is entitled to offer and use the Products for offering paid or unpaid entertainment use by others but only for enjoyment or fun, not for any form of formal or informal credit or non-credit training use or purpose. Any other use is forbidden.</p>
Commercial Use Class B	<p>Any use except for credit training.</p> <p>The Licensee is entitled to use the Products for offering paid or unpaid entertainment and training use (such as system and cockpit familiarization) but only for non-credit training use or purposes provided it does not count for earning credit(s) towards a degree or certificate and so far the use is in accordance with NAA regulations. Credit training consists of all forms of training that require a certification of the Flight Training Device by the NAA.</p>
Professional Use Class A	<p>Allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Generic: EASA BITD or FAA AATD</p>
Professional Use Class B	<p>Allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Generic: EASA FNPT II (MCC).</p>
Professional Use Class C Standard	<p>The device shall not have primary flight controls, allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Type specific: EASA FTD 1 or FAA Level 4</p>
Professional Use Class C Enhanced	<p>Allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Type specific: EASA FTD 1 or FAA Level 4</p>
Professional Use Class D	<p>Allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Type specific: EASA FNPT II MCC or FAA Level 5</p>
Professional Use Class E	<p>Allows training use in accordance with NAA regulations and NAA certification (only) for:</p> <p>Type specific: EASA FTD 2 or FAA Level 6</p>



#### Article 14 - User rights and Licence Type

1. ProSim grants the Licensee the right to use the Products for the duration of the agreed licence term and to its Product updates if these are provided following an applicable Support Subscription.
2. The right to use the Products is non-exclusive and shall not be pledged or sublicensed.
3. The right of use of the Products is determined by the Licence Type granted. Licensee is not allowed to use the Products for any other use than permitted under the Use Description of the applicable Licence Type. The Licence Types are as stated in the Licence Type Matrix.

4. If the Licence Type allows Certification, certification is allowed only for a one-time request for Certification with a NAA for the specified level. The Licensee shall notify ProSim immediately of such requests for certification by a NAA made, and the award or withdrawal of a certification, and supply ProSim with a copy of the NAA issued certificate.

ProSim will have no responsibility for any NAA requirements related to qualification of the Flight Simulation Device. The provision of the Products will not be interpreted as implying that any NAA qualification can be acquired, nor will ProSim have any liability or obligation to the Licensee in the event that Licensee is unable to obtain any such qualification.

5. The Licensee is entitled to terminate its right of use at any time in writing. ProSim is under no obligation to pay a refund or any compensation due to the Licensee's termination.
6. Upon rescission or termination of the agreement or upon termination of the licence for use the Licensee shall cease all use of the licenced Products and delete all Products and other materials provided by ProSim.
7. Only the Licensee shall be entitled to use the Products. Use by others is permitted dependent on the Licence Type. Amongst other details, using the Order Intake Form, the Licensee shall be registered with ProSim by its incorporated company name and actual address. The Licensee shall designate a contact person or contact persons who shall act in that capacity. ProSim is entitled to request and the Licensee shall be under obligation to provide sufficient evidence of the Licensee's identity and of its use of the Products.
8. Regarding Products which consist of software, ProSim's obligation to make available and the Licensee's right of use extend only to the compiled, binary software Products and the Product's licence keys as provided by ProSim. The Licensee's right of use does not extend to the Product's source code. The Product's source code and/or technical documentation shall under no circumstances be made available to the Licensee or others.
9. The Licensee is responsible for Users and all use or Abuse of the Products it permits, fails to or does not prevent. The Licensee shall actively inform Users of the obligations and restrictions under the EULA and monitor that all use shall be in compliance with the EULA and in accordance with applicable safety standards and best practices.
10. Licensee is solely responsible for compliance with all laws and regulations concerning its use of the Products and for compliance with United States export laws, rules, and regulations and other national or international export laws, rules and regulations (such as embargoes) if and when applicable.

## Article 15 - Restrictions

1. The Licensee shall comply strictly, at all times, with the obligations and restrictions of article 14, 15 of this EULA. If the Licensee fails to comply with these obligations and restrictions, the Licensee shall be liable towards ProSim for a penalty of € 5,000 (five thousand euros) for each day the Licensee fails to comply with the obligations and restrictions with a maximum of € 100,000 (one hundred thousand euros) per year. This penalty is without prejudice to any other rights and remedies available to ProSim.
2. The Products shall only be used on one Flight Simulation Device with the specific and unique ID of the simulator serial number provided to ProSim in writing using the Order Intake Form.
3. In the event of any malfunction to or intended change of the Flight Simulation Device the Licensee shall notify ProSim immediately. The Licensee is not allowed to install the Products on any other Flight Simulation Device without previous written consent by ProSim.
4. The Licensee shall only be able to use the Products after having activated the Products on its Flight Simulation Device via the activation server with the product licence key. The Products shall function only and insofar as a connection to the activation server is made at least once every 30 (thirty) days. Connection to the activation server requires an internet connection capable of reaching the host <https://activation.prosim-ar.com>.
5. The Licensee agrees that the Products automatically checks Licensee's compliance with the terms and conditions of this EULA by connecting to the activation server. ProSim is at any time entitled to take technical measures to protect the Products against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The Licensee shall never remove, or bypass technical measures intended to protect the Products or have such technical measures removed or bypassed.
6. The Licensee may only use the Products in and for its own company or organisation and only insofar as doing so as is necessary for the intended use. The Licensee shall not use the Products for third parties, for example in the context of Software as a Service (SaaS) or outsourcing, unless allowed under the Licence Type granted.
7. The Licensee may only use the Products for education or professional training purposes if this right is granted under the Licence Type. In case the Licensee would like to use the Products for the aforementioned purposes, the Licensee shall contact ProSim to arrange the provisions applicable. In all cases it is the responsibility of the Licensee to validate the Products with the applicable NAA standards and requirements. ProSim's liability for any loss from, or resulting out of, the use of the Products for the aforementioned purposes is in any case excluded.
8. The Licensee may never sell, rent out, dispose of or grant limited rights to, or make available to third parties (any version or copy of) the Products and the carriers on which the Products is or will be recorded. The Licensee may also not grant, whether or not remotely (online), a third-party access to the Products or place the Products with a third party for hosting, not even if the third party concerned only uses the Products for the Licensee, unless agreed otherwise in writing.
9. The Licensee nor its Users or any (other) third party may reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Products.

10. If so requested, the Licensee shall cooperate without delay in an investigation into compliance with the EULA carried out by or for ProSim. Should ProSim so demand, the Licensee shall grant ProSim access to its premises and systems. Insofar as such information does not concern the use of the Products itself, ProSim shall treat all confidential business information that it obtains from the Licensee or at the Licensee's business location in the context of an investigation as confidential. Licensee shall in all cases immediately notify ProSim in writing in advance when using the Products for any other use than allowed under the agreed Licence Type.
11. The parties maintain that the EULA concluded between the parties, insofar as the object of this EULA is the making available of Products for use, shall never be deemed a purchase agreement.
12. The Licensee is strictly prohibited to advertise or offer any services (commercial or non-commercial and paid or unpaid) that consist of or include making available the Products for any use that is not allowed under the specific Licence that Licensee holds.
13. For certain Licence Types the Licensee is required to close a further third-party contract, such as for the benefit of using third-party software or data (e.g. use of an aircraft OEM data pack). The licence term and terms and conditions for the use of the Products is expressly limited to the validity and/or license term and term and conditions for the use of such third-party software or data. Third-party providers may have additional requirements which the Licensee needs to fulfil before ProSim may deliver specific Products to the Licensee, such as compliance with export regulations, end user approval processes or insurance requirements. Such Licensee compliance is not subject to ProSim responsibility and shall not affect Licensees obligations towards ProSim nor will ProSim have any liability or obligation towards the Licensee in the event that Licensee fails to comply.
14. Without prior written consent of ProSim, the licensee is strictly prohibited from using the Products for television productions, documentaries, movies, series or other similar works, especially in relation to aviation safety or accidents.

#### Article 16 - Acceptance

1. ProSim shall make the Products available to the Licensee via the internet. At ProSim's discretion, user documentation shall be made available in digital form.
2. The Licensee shall accept the Products in the state that it is in when delivered ("as is, where is"), therefore with all visible and invisible errors and defects. The Products shall be deemed to have been accepted by the Licensee upon delivery.
3. ProSim does not guarantee that the Products are suitable for actual use and/or the intended use other than explicitly granted or agreed. ProSim also does not guarantee that the Products will operate without interruption.
4. Except if provided for by law, the Licensee may not and is not entitled to change all or part of the Products without the prior written permission of ProSim. ProSim is entitled to refuse or to stipulate conditions for such permission. The Licensee shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with ProSim's permission.

## Chapter 3. Provision of services, updates and support

### Article 17 - Performance

1. If the Licensee and ProSim have agreed to the provision by ProSim of services to the Licensee ProSim shall perform its services with care and to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the Licensee. All services by ProSim shall be performed on the basis of an obligation to use best endeavours unless and insofar as ProSim has expressly promised a result in the written agreement and the result concerned has also been defined with sufficient determinability in the agreement.
2. ProSim shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or licence keys unless the misuse is the direct result of deliberate intent or recklessness on the part of ProSim's management.

### Article 18 - Updates of Products, Support Subscription and re-enrolment

1. Updates of the Products shall be made available at ProSim's discretion and only if and insofar as the Licensee is entitled to Product updates under an applicable Support Subscription. Updates shall be made available by means of an update key.
2. If the Support Subscription is not or is no longer applicable and later Licensee wishes to re-enrol, Licensee shall enter into a new Support Subscription which retroactively starts the day after the previous Support Subscription has ended by:
  - (i) paying the amount of Support Subscription fees that would have been paid for the period of time that Licensee had not enrolled in the Support Subscription, or
  - (ii) paying a reinstatement fee to be determined by ProSim.
3. Updates include fixing errors in the Products and other maintenance. In the agreement between the parties an error shall mean a substantial failure of the Products to meet the functional or technical specifications of the Products expressly made known by ProSim or agreed upon in writing. The Licensee shall report errors discovered in the Products in detail. Following receipt of the report, ProSim shall strive to the best of its ability to fix errors and/or implement improvements of the Products in accordance with its usual procedures. Depending on the urgency and ProSim's update and release policy, the results shall be made available to the Licensee in a manner and within a term determined by ProSim. ProSim is entitled to install temporary solutions, program bypasses or problem avoiding limitations in the Products. The Licensee shall itself install, organise, parameterise and tune the corrected Products or the new update of the Products made available, and, if necessary, modify the equipment and operating environment used. The Licensee shall extend the cooperation required by ProSim in the context of maintenance, including temporarily ceasing use of the Products. The maintenance work performed by ProSim does not affect the Licensee's own responsibility for managing the Products, including checking the settings and the way in which the results arising from operating the Products are used. The Licensee shall itself install, organise, parameterise and tune the Products and support software required and, if necessary, modify the equipment, other Products and support software and operating environment used in this regard, and effect the interoperability that it desires.

4. After a new update of the Products has been made available, ProSim shall no longer fix errors in the previous update and/or provide support and/or perform maintenance services with respect to previous updates.
5. ProSim may require that the Licensee enters into a further written agreement with ProSim for an update with new functionality and that a further payment be made for this this update. ProSim may incorporate functionality from a previous update of the Products in unaltered form, but does not guarantee that each new update includes the same functionality as the previous update. ProSim is not obliged to maintain, modify or add certain features or functionalities of the Products specifically for the Licensee.
6. ProSim may require that the Licensee modifies its system (equipment, software and the like) if doing so is necessary for the proper functioning of a new update of the Products.

#### Article 19 - Support Services

1. Support Services shall be made available at ProSim's discretion and only if and insofar as the Licensee is entitled to support under an applicable Support Subscription. The support services shall only be available to the registered contact person of the Licensee. ProSim shall respond to properly substantiated requests, put forward to ProSim using ProSim's support portal, for support within response times and service window defined in the Support Subscription. ProSim does not guarantee the accuracy, completeness or timeliness of replies or the support offered.
2. ProSim may refuse support or charge for the costs of support in accordance with its usual rates if such support services are required as a result of user errors or improper use on the part of the Licensee, or as a result of other causes that cannot be attributed to ProSim.

#### Article 20 – Licence for the Software Development Kit (SDK)

For the benefit of solution development ProSim has an SDK that consists of file(s), documentation and other material(s) to support the interfacing with ProSim Products. The use of the SDK is intended for creating software for private home use only by Licensee itself. The provisions of this article 20 are applicable if the Licensee is provided a SDK Licence in addition to the other provisions of this EULA. The grant of a Licence for the SDK does not itself grant a right to use the Products and the SDK Licence is only valid in combination with a valid licence to use the Products.

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- Use the SDK to design or develop any product or functionality which (potentially) competes against or may replace any (part) of ProSim's Products or Product options.
- Reverse engineer, decompile, disassemble or otherwise reduce the software included in the SDK to a human-readable form, or modify, adapt or translate the SDK materials, except to modify and create software, unless such reverse engineering is expressly allowed by law in Licensee's jurisdiction;

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