



## ProServices<sup>SM</sup> Terms and Conditions

**Adtran ProServices<sup>SM</sup>** is a comprehensive and flexible service program designed to offer complete networking lifecycle support. The ProServices portfolio consists of three distinct service offerings: **ProStart<sup>SM</sup>** (Planning and Implementation), **ProCare<sup>SM</sup>** (Maintenance and Support), **ProCloud<sup>SM</sup>** (Cloud-based Managed Services) and **Elite Cloud<sup>SM</sup>**. Adtran will perform these service offerings (hereinafter each or collectively referred to as **ProServices**) in accordance with the following documents: (i) a Master Service Agreement (or like or similar Agreement) that may be executed between Adtran and its Customer (Customer being defined as a customer that purchased ProServices directly from Adtran or from an Adtran approved Distributor), (ii) these Adtran ProServices Terms and Conditions, and (iii) any one of the Description of Service Offerings (DSOs) available via the Adtran website or by request, that further describes **ProServices**. In the event of a conflict among these documents, the conflict shall be resolved by consulting the above listed items as follows: item (i) shall control over all other listed items; item (ii) shall control over all other listed items *except* item (i); and item (iii) shall control in the absence of item (i) and item (ii). Only the Terms and Conditions stated herein shall govern Adtran's provision of **ProServices**, and any Customer terms and conditions contained in Customer's Purchase Order (PO) or other Customer documentation that are different from, in addition to, or inconsistent with the terms and conditions stated herein are hereby rejected and shall not be binding on Adtran.

**ORDERING.** To initiate the delivery of any ProServices, Customer must submit a PO in a format agreeable to Adtran, which Adtran may then accept or reject at its sole discretion. If within five (5) calendar days following receipt of a PO from Customer, Adtran has not notified Customer that the PO has been rejected, then Customer may assume acceptance; provided, however, Adtran reserves the right to revoke its acceptance in writing and reject the PO should any condition not readily known or apparent at acceptance subsequently appear. At Customer's discretion, Customer may cancel any portion or the entire term of the ProServices plan; however, upon Adtran's acceptance of the Customer's PO, Customer is obligated to pay the full amount of the PO thirty (30) days following the date of invoice therefor. Adtran may withhold or suspend any ProServices if Customer fails to pay within thirty (30) days following the date of any invoice for services or for fees incurred, such as, but not limited to, time and materials charges (T&M), no trouble found (NTF) fees, site not ready (SNR) fees, the cost of replaced equipment not returned, or excessive on-site wait time fees. In addition, Adtran may terminate any ProServices upon thirty (30) days' notice if Customer breaches the terms under which ProServices are provided and fails to correct such default within fifteen (15) days' notice thereof. Adtran may, at its sole discretion, cancel a Customer's PO by giving written notice to the Customer if Customer becomes insolvent, makes an assignment for the benefit of creditors, or ceases performing any required tasks related to the ongoing delivery of ProServices.



**ProCare** and **ProCloud** services will be provided for an initial minimum term of six (6) months or any longer term as stated on the Customer’s PO. Upon expiration of the initial term or any renewal term, ProCare and ProCloud services will, at Adtran’s discretion, automatically renew for successive renewal terms with each renewal term for the same length of time as the immediately preceding term, unless either party gives notice in writing to the other party at least thirty (30) days prior to expiration of the then current term and advises of its intent not to renew. If a renewal purchase order is placed for a different term length than the initial term, the term dictated by the Customer’s PO will dictate but shall not be less than six (6) months. All **ProCare** and **ProCloud** services are 100% non-refundable. At Adtran’s discretion, Adtran may terminate any **ProCare** or **ProCloud** services without notice to Customer if any maintenance or alteration is made to the covered equipment by non-Adtran personnel and without Adtran's prior authorization. If any equipment replaced under the service is not returned to Adtran by Customer at Customer’s expense or any equipment replaced under **ProCare** or **ProCloud** is inspected by Adtran or its agent and found to have physical damage caused by environmental factors, abuse or neglect, then Adtran will invoice Customer for the then current list price of the replaced equipment.

**ProCloud** maintains a Service Level Agreement (SLA) that applies to the use of Adtran’s hosted and managed services (“ProCloud Infrastructure Platform.”). Adtran will use commercially reasonable efforts to make its ProCloud Infrastructure Platform available to Customer with an annual uptime target of at least 99.99%, excluding planned service maintenance. In the event that Adtran does not meet this SLA uptime target, Customer will be eligible to receive a Service Extension as follows:

<b>Annual Uptime Percentage</b>	<b>Service Extension</b>
99.9 – 99.99	5 days
99 – 99.9	10 days
<99	20 days

Annual Uptime Percentage is calculated by subtracting from 100% the percentage of time during any 12-month term (or any otherwise agreed, minimum of six month, prorated term) in which Adtran’s ProCloud Infrastructure Platform was Unavailable, excluding the time associated with a planned maintenance event. A “Service Extension” is a no-charge extension to Customer’s service term. The Service Extension is applied to all Adtran products covered by the ProCloud service that experienced the excessive Unavailability. “Unavailable” or “Unavailability” means the time in minutes during Customer’s use of the ProCloud Infrastructure Platform during which a combination of hardware failures, software defects, and/or Internet outage (in the event such Internet access is Adtran’s responsibility to deliver) render it inaccessible or non-functional for the service for which it is being used by Customer.



To receive a complimentary Service Extension per the terms of this SLA, Customer must notify Adtran and submit a claim in the same service term in which the Unavailability which is the basis for the claim occurred. To be eligible, the claim must include the dates, times, description and duration of each Unavailability incident experienced (the "Claim".) If Adtran validates the Claim, then a Service Extension will be issued within 45 days of the Claim submittal. Service Extensions are Customer's sole and exclusive remedy for any violation of Adtran's SLA. Adtran will use all information reasonably available to validate a Claim and make a good faith judgment on whether the Claim is valid. This SLA does not apply for the Unavailability conditions caused by an interruption or failure of any Customer-procured service associated with accessing the Internet, or unavailability conditions caused by any force majeure event or interruption of Internet access or related problems beyond the demarcation point of Adtran and / or the Adtran Cloud infrastructure supplier. Adtran reserves the right to change the terms of this SLA at any time, provided that the SLA terms described herein are fixed for Customer's use of the ProCloud Infrastructure Platform during the initial term of the service. However, if the service is renewed, the then-current version of this SLA as of the time of renewal will apply throughout the full renewal term.

**SERVICE CHARGES AND PAYMENT.** Payment for ProServices must be made in U.S. dollars and shall be due thirty (30) days from the date of invoice, unless otherwise agreed to in writing by Adtran. In the event Customer requests services outside of the scope authorized in any PO, Customer agrees to pay for such services at Adtran's then-published rates within thirty (30) days following the date of invoice, unless otherwise agreed to in writing by Adtran. Unless otherwise specifically noted herein, **ProCare** and **ProCloud** services shall be invoiced in advance of service commencement based on a monthly, annual, or multi-year pre-pay schedule as identified in the PO. Any **ProCare** and **ProCloud** services delivered on a monthly billing cycle can be cancelled during the contract term, with early termination charges equaling the remaining balance of the monthly charges. The charges shall be fixed for the initial term of **ProCare** and **ProCloud** services and thereafter, Adtran may change charges upon thirty (30) days' notice to Customer. Adtran may invoice for **ProStart** services upon Customer's acceptance of the completed installation. **ProStart** services shall be deemed accepted by Customer if Customer does not notify Adtran of rejection within five (5) days following confirmation by Adtran that the equipment is physically installed, configured, capable of passing Customer's traffic (voice and/or data), and is operating per manufacturer specifications. In an instance where multiple sites and/or installations are included on a single Customer PO, Adtran reserves the right to submit its invoice for any portion thereof which has been successfully accepted or deemed accepted. Furthermore, in the event Adtran determines its progress is unreasonably delayed for reasons outside the control of Adtran, Adtran may either (i) submit an invoice for excessive on-site wait fees; or (ii) in the event Customer fails to cure such delays within ten (10) days following notice thereof, cancel any part or all of any PO upon written notice to Customer. In such an event, Adtran reserves the right to submit its invoice for ProServices not cancelled.



**SERVICES WARRANTY.** Adtran warrants to Customer that its ProServices shall be performed by Adtran, its agents, or subcontractors according to these Terms and Conditions. Adtran warrants that its ProCare services will be performed in a professional and workmanlike manner in accordance with industry standards for similar services. Adtran warrants that its ProStart services will be performed in a professional and workmanlike manner, free from defects in workmanship upon installation and for fourteen (14) calendar days thereafter. If any failure to meet this warranty occurs within the warranty period, Adtran shall repeat the service and at its option, either repair or replace the defective parts or materials without additional charge to Customer. Adtran does not warrant that in the course of providing ProServices that the operation of any item of equipment being serviced will be uninterrupted. Where possible, Adtran will pass through to Customer any third party manufacturer's warranty for materials supplied hereunder. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.** If services, conditions or support other than those addressed in this document have been pledged, the party that pledged the delivery of such additional services is responsible to deliver those services.

**ASSIGNMENT.** Any ProServices offering is assignable only upon the written consent of Adtran, and such consent shall not be unreasonably withheld.

**GOVERNING LAW.** ProServices and all the rights and duties in connection therewith shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of laws provisions. Furthermore, for any disputes that may arise in the course of Adtran's provision of these ProServices, Adtran, Customer, and all interested parties hereby consent to the personal and exclusive jurisdiction of, and venue in, the courts of the state of Delaware. The provisions of the U.N. Convention for the International Sale of Goods shall not apply.

**ARBITRATION.** Any controversy or claim arising out of, concerning, or relating to ProServices or the services and materials provided thereunder, or the breach thereof, shall be settled by arbitration in accordance with Expedited Procedures and the then current rules of the American Arbitration Association, and judgment upon the award by the arbitrator shall be entered in any court having jurisdiction thereof. Any arbitration shall be conducted in Huntsville, Alabama, USA. The costs, fees, and expenses of or associated with the arbitration shall be shared equally by each party.

**SEVERABILITY AND WAIVER.** If any part(s) of these Terms and Conditions is (are) determined invalid in a court of law or by an arbitrator, then the remaining part(s) shall be construed as if the invalid part(s) was (were) not included. No course of dealing or failure of either party to strictly enforce any part herein shall be construed as a waiver of the future performance of that or any other part hereof.



**Adtran'S TOTAL LIABILITY ARISING OUT OF ITS PROVISION OF PROSERVICES AND THE SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE CHARGES PAID BY CUSTOMER FOR SAME. IN NO EVENT WILL Adtran BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE SERVICES AGREEMENT OR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER WHETHER OR NOT Adtran HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**IMPLEADER.** Customer shall not implead or bring any action against Adtran based on any claim by any person for personal injury or death to an employee of Adtran for which Adtran has previously paid or is obligated to pay Worker's Compensation benefits to such employee or claimant and for which such employee or claimant could not otherwise bring legal action against Adtran.

**RELATIONSHIP OF THE PARTIES.** If purchased through a Reseller, CUSTOMER AND/OR END-USER ACKNOWLEDGES AND EXPRESSLY AGREES THAT NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CUSTOMER'S AND/OR END-USER'S SOLE RECOURSE FOR ANY ACTION ARISING FROM OR IN CONNECTION WITH Adtran'S PROVISION OF PROSERVICES SHALL BE AGAINST RESELLER.