**Proto Hardware as a Service (HaaS) Agreement**

This document sets forth the terms and conditions for our Hardware as a Service (“Haas” or “Service”) Agreement. This HaaS Agreement is made by and between Proto, Inc. (“Proto”) and “You” or “Customer” used interchangeably (as defined in the Final Price Sheet) as of the date Proto receives Your Security Deposit. You agree to these terms by accessing or using the Proto Device (defined below).

Documentation. Your Proto HaaS Agreement (the “Agreement”) is made up of the following documents:

1. Final Price Sheet
2. Software License
3. Media Services & EULA
4. Cloud Policy
5. Service Level Agreement
6. Privacy Policy
7. Warranty
8. Definitions. For purposes of this Agreement, the terms defined in this Section 1 shall have the respective meanings as follows:
	1. “Affiliate” means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where “control” means to: (a) own over 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through voting rights or other lawful means (e.g., contract that allows control);
	2. “Authorized User” means your Affiliates, and each of their respective users;
	3. “Cloud Service” means an on-demand service provided by Proto accessible via the internet and provides software, platform, infrastructure and network products and services;
	4. “Device” means the Proto Luma hologram device with artificial intelligence and telecommunications capabilities;
	5. “Documentation” means the technical specifications and use materials officially published by Proto specifying the functionalities and capabilities of the applicable Proto Device as updated from time to time;
	6. “Facility” means Customer’s facility as designated on the Final Price Sheet;
	7. “Order” means the transaction through which You acquire a Proto Device, including through signing a Final Price Sheet, an agreement or statement of work, or transacting through an online ordering tool or marketplace;
	8. “Software” means Proto’s operating system and programs, including upgrades and firmware; and
	9. “Subscription Offers” means Proto offers provided on a term, or subscription, basis under Your Order.
9. Term of Agreement. The term of this Agreement begins on the date Proto receives Your Security Deposit and will continue for a period of time as set forth on the Final Price Sheet. Proto has the right to terminate this Agreement and retain your deposit (if received) should you fail to pay the amount due on your Final Price Sheet at least fifteen (15) days prior to the activation date as set forth on your Final Price Sheet.
10. Use Rights. Proto grants You, for Your direct benefit, a non-exclusive:
	1. license to use the Device, Software, Cloud Service, and related content; and
	2. right to use Subscription Offers, including Cloud Services,

in accordance with Your Price Sheet or as otherwise agreed in writing (collectively the “Use Rights”). Your Use Rights are non-transferable.

You may not: (i) transfer, sell, sublicense, monetize or provide the functionality of the Device to any third party, except as authorized by Proto; (ii) remove, change, or conceal any Device identification, copyright, proprietary, intellectual property notices or other marks; or (iii) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of a Device or the Proto Software.

Customer shall use the Device in material conformance with instructions for use and all such other documentation provided by Proto for the Device. Customer agrees that it will not use the Device and Proto Software or allow the Device and Proto Software to (i) violate applicable laws or the rights of any third party; or (ii) impede or interfere with the security, stability, availability or performance of any Cloud Service, or any other network or service (e.g., denial-of-service attacks, penetration testing or distribution of malware).

1. Suspension. Proto may suspend Your access to Software or Cloud Service if it reasonably believes that You or an Authorized User have materially breached Section 3 (Use Rights).
2. Use by Third Parties. If You permit Authorized Users to access a Device on Your behalf:
	1. You will make sure all Authorized Users follow these terms; and
	2. You are liable for any breach of these terms by an Authorized User.
3. Use with Third Party Products. Proto does not support or guarantee integration with third party technologies or services unless they are included as part of a Proto offer or agreed in writing.
4. Upgrade. If You wish to upgrade a Device, the replacement of the current Device shall be deemed a termination of this Agreement with respect to the current Device and be subject to termination provisions hereof, including the return of the Device; provided that the Agreement for the current Device shall be deemed to terminate, and the Agreement of the replacement Device shall commence, on the date the replacement Device is recorded as delivered by Proto’s designated courier.
5. Delivery. Proto will arrange for delivery of the Device with a common carrier of its choosing. Upon arrival of the Device at your location, the Device shall be inspected for damage in transit by you and you are responsible for completing the Proto HaaS Checklist online (<https://form.jotform.com/222305506371043>) as provided at the time of delivery. The failure to complete the Proto HaaS Checklist at the time of delivery shall be deemed to be a waiver of a damage claim. The risk of loss passes to you at the time the Device is delivered. The estimated delivery date of your Device, if provided, is only an estimate as we do not guarantee when your Device will actually be delivered. Your actual delivery date is dependent on many factors, including common carrier interruptions, and force majeure events.
6. Payment. As full consideration for the right to use the Device, Software and Cloud Services, You will pay Proto the sum set forth in Your Final Price Sheet in the manner set forth in your Final Price Sheet (e.g., monthly payments). You agree to pay a late fee as set forth in the Final Price Sheet for the failure to pay according to the payment schedule set forth on the Final Price Sheet. We may elect to charge you interest at the rate of 2% per month (or the highest rate permitted by law, if less) on all late payments.
7. Maintenance and Repairs. Customer is solely responsible for protecting the Device from damage (ordinary wear and tear excepted). Customer shall use every reasonable precaution to prevent loss or damage to the Device and to prevent injury to persons and property through its use. Customer shall not modify, reverse engineer, or open the Device. Upon request by Customer, Proto shall provide qualified personnel to install, setup, repair, replace, or adjust the Device within a reasonable time to assure its performance in accordance with the specifications. The Customer will be responsible for any damage to the Device due to negligence or recklessness.
8. Termination. The Term will terminate immediately following the period set forth on the Final Price Sheet. Upon termination, you are responsible for completing the Proto HaaS Checklist End online (<https://form.jotform.com/223047345400041>) prior to Proto arranging for a pick-up or shipment. The failure to complete the Proto HaaS Checklist End shall be deemed to be a waiver of a damage claim. Upon termination of this Agreement, for any reason whatsoever, Customer will promptly permit Proto to access the Facility and remove the Device. Any termination of this Agreement, whether for breach or otherwise, will not relieve the Customer of any obligation of this Agreement prior to such expiration or termination. Proto may terminate this Agreement at any time by written notice for Your failure to pay, maintain insurance, or for Your unlawful use of the Device.
9. Survival. Sections 3 (Use Rights), 5 (Use by Third Parties), 9 (Payment), 13 (No Agency), 14 (Third Party Beneficiaries), 15 (Data Ownership and Responsibility), 16 (Ownership of Intellectual Property and Device), 19 (Limited Liability), 20 (Confidentiality and Non-Disclosure), 29 (Dispute Resolution), 30 (Governing Law and Venue), and 31 (Attorneys’ Fees), survive termination of these terms.
10. No Agency. These terms do not create any agency, partnership, joint venture, or franchise relationship.
11. Third Party Beneficiaries. These terms do not grant any right or cause of action to any third party.
12. Data Ownership and Responsibility. The Customer is the sole owner of all data stored on the Device. You are solely responsible for ensuring the complete and permanent deletion of all data from the Device before returning it to Proto. Proto will not be liable to Customer (under statute, contract, tort, negligence or otherwise) in relation to any special, punitive, or exemplary damages, or any indirect, incidental or consequential loss (including but not limited to any business interruption, or any loss or corruption of data, or any loss of actual or anticipated profits, revenue, savings, production, business, contracts, opportunity, goodwill, reputation, publicity, information or use) or any unforeseeable or similar loss arising out of or related to such data left on a Device. The Customer acknowledges and agrees that it is solely responsible for the consequences of its own actions or inaction regarding data deletion and that Proto cannot be held accountable for any harm resulting from Customer’s failure to fulfill its obligations under this Agreement.
13. Ownership of Intellectual Property and Device. Unless agreed in writing, nothing in these terms transfer ownership in any intellectual property rights. You keep ownership of Your data and content and Proto keeps ownership of its Device, Software, Cloud Services, and its content. Proto may use any feedback You provide in connection with Your use of the Device.
14. Performance Standards.
	1. Warranty. Proto warrants that the Device substantially complies with its Documentation, starting from commencement of the Agreement, for the duration of the Agreement. Proto offers a limited warranty as part of this Agreement. To make a claim for breach of warranty, promptly notify Proto within any specified warranty period.
	2. Service Level Agreement. The Device will comply with Proto’s Service Level Agreement, as made a part of this Agreement.
15. Warranty Disclaimer. Proto does not warrant that the Device will meet the requirements of any person and operate on an uninterrupted or error-free basis. You are solely responsible for any and all acts or omissions taken or made in reliance on the Device and/or system or the information contained therein, including inaccurate or incomplete information.
16. Limited Liability.
	1. Excluded Liability. Neither party is liable for: (a) indirect, incidental, reliance, consequential, special or exemplary damages; or (b) loss of actual or anticipated revenue, profit, business, savings, data, goodwill or use, business interruption, damaged data, wasted expenditure or delay in delivery (in all cases, whether direct or indirect).
	2. Liability Cap. Each party’s entire liability for all claims relating to these terms will not exceed the greater of: (a) the fees paid to Proto for the specific Device that is the subject of the claim in the 12 months before the first incident giving rise to such liability; or (b) $25,000 USD. This cap is cumulative for all claims (not per incident) and applies collectively to each party and its Affiliates (not per Affiliate).
	3. Unlimited Liability. Nothing in this section 19 limits or excludes liabilities that cannot be excluded or limited under applicable law, or for: (i) fraudulent misrepresentation or willful misconduct; (ii) breach of confidentiality obligations; (iii) failure to pay Proto; or (iv) misuse or misappropriation by a party of the other party’s intellectual property rights.
17. Confidentiality and Non-Disclosure. By virtue of the agreement, Proto and the Customer may have access to information that is confidential to one another (“Confidential Information”). Confidential information shall include but not be limited to the pricing under the Agreement, Proto’s technologies, services or operations, including without limitation, with respect to Proto’s information and documentation regarding or contained in the Device, and the documentation regarding the Device, and all information clearly identified as confidential at the time of disclosure.

Confidential information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosures and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (iv) is independently developed by the other party.

Each party agrees that (i) it shall not use the Confidential Information of the other party except as necessary for the performance of its activities as expressly authorized by this Agreement, (ii) it shall not disclose or grant the use of the Confidential Information of the other party, except to such of its directors, officers or employees that need to know such Confidential Information for the purpose of performing its activities as expressly authorized by this Agreement, and (iii) it shall not disclose or grant the use of the Confidential Information of the other party to any third party without the prior written consent of the other party. To the extent that disclosure is authorized by this Agreement, prior to disclosure, the party making the disclosure shall obtain written agreement of any such recipient to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement. Each party shall notify the other party promptly upon discovery of any unauthorized use or disclosure of the other party's Confidential Information. Except as otherwise provided in this Section 20, during the term of this Agreement and for a period of three (3) years thereafter, Customer shall not disclose any terms or conditions of this Agreement to any third party without the prior written consent of Proto. The confidentiality obligations contained in this Section 20 shall not apply to the extent that such disclosure is reasonably necessary to comply with an applicable law, regulation of a governmental agency or order of a court of competent jurisdiction, provided that the party making the disclosure shall provide written notice thereof to the other party and a reasonable opportunity to object to such disclosure or to request confidential treatment of the Confidential Information subject to such disclosure, and shall reasonably cooperate with the other party in its efforts to preserve the confidentiality thereof. Upon written notification by the disclosing party, all Confidential Information of the disclosing party, and all copies thereof shall be destroyed or returned and not retained by the receiving party in any form or for any reason and, upon request, it shall furnish written confirmation that it has done so. No license to the receiving party, under any trademark, patent, copyright or other right, which is now or may thereafter be owned by the disclosing party, or any subsidiary thereof, is either granted or implied by this Agreement.

1. Intellectual Property Indemnity.
	1. Claims. Proto will defend any third party claim against You asserting that Your valid use of the Device infringes a third party’s patent or registered trademark (the “IP Claim”). Proto will indemnify You against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, if You: (a) promptly notify Proto in writing of the IP Claim (but failure to promptly notify Proto only limits Proto’s obligations to the extent it is prejudiced by the delay); (b) fully cooperate with Proto in the defense of the IP Claim; and (c) grant Proto the right to exclusively control the defense and settlement of the IP Claim, and any appeal. Proto does not have to reimburse You for attorney fees and costs incurred before Proto receives notification of the IP Claim. You may retain Your own legal representation at Your own expense.

* 1. Exclusions. Proto has no duty regarding any IP Claim to the extent based on: (a) any designs, specifications or requirements provided by You, or on Your behalf; (b) modification of a Device by You, or on Your behalf; (c) the amount or duration of use made of a Device, revenue You earned, or services You offered; (d) combination, operation, or use of the Device with non-Proto products, software, content or business processes; or (e) Your failure to change or replace the Device as required by Proto.
	2. To the extent allowed by law, this section 21 states Your only remedy regarding an IP Claim against You.
1. Insurance. During the Term of this Agreement, Customer will keep the Device insured against all risks of loss or damage under the Customer’s property and contents insurance policy naming Proto as additional insured. Customer will maintain a $1 million per incident coverage naming Proto as additional insured with at minimum an A- rated carrier. Customer shall pay all such premiums for such insurance and must deliver proof of insurance coverage satisfactory to Proto, if requested to do so. If Customer does not provide such insurance, Customer agrees that Proto has the right, but not the obligation, to obtain such coverage and add an insurance fee to the amount due from Customer, on which Proto may make a profit. Furthermore, the Customer will hold Proto harmless from all claims, demands, and suits arising out of the performance of the Customer’s obligations hereunder or for any other damages to the Customer, Proto or any third party that could have been covered by obtaining proper insurance.
2. Taxes. Customer shall pay all use taxes and any other taxes or charges relating to the leasing, rental, possession or use of the Device.
3. Default and Remedies.
	1. Proto may declare Customer in default under this Agreement if: (i) Customer fails to pay any obligations; (ii) Customer breaches any representations, warranties or obligations under this Agreement; (iii) Customer becomes insolvent or ceases to do business as a going concern; (iv) a bankruptcy petition is filed by or against Customer and the petition is not dismissed within forty five (45) days of the filing date; or (v) any material adverse change occurs in Customer’s financial condition or any material change occurs in the ownership of Customer.
	2. Upon the occurrence of one or more of the above events of default, Proto may do one or more of the following: (i) declare all obligations (including but not limited to the Fees) under this Agreement immediately due and payable; (ii) require Customer to return the Device and/or (iii) pursue any other remedy available at law or in equity. If Customer fails to promptly return the Device upon demand by Proto, Proto may peacefully take possession of the Device without notice to or consent of Customer. Waiver of any default shall not be a waiver of any other or subsequent default.
	3. If Proto incurs any actual attorney’s fees or other costs and expenses in connection with the enforcement, assertion, defense or preservation of Proto’s rights and remedies under this Agreement, Customer shall pay all of such fees, costs and expenses to Proto, or if prohibited by law, such lesser sum as may be permitted.
4. Risk of Loss and Location. Customer assumes the entire risk of loss of the Device upon delivery to its Facility. Customer shall advise Proto in writing promptly of the circumstances and the extent of any damage. If the Device is irreparably damaged, lost, or stolen or otherwise, Customer shall pay Proto the cost of the Device at its current retail list price, less the net amount of any recovery actually received by Proto from insurance or otherwise. Customer shall not remove the Device from the Facility specified herein without Proto’s prior written consent.
5. Force Majeure. Neither party is responsible for delay or failure to perform its obligations to the extent caused by events beyond a party’s reasonable control including severe weather events, acts of God, supply shortages, labor strikes, epidemic, pandemic, acts of government, war, acts of terrorism, or the stability of availability of utilities (including electricity and telecommunications). The affected party must make commercially reasonable efforts to mitigate the impact of a force majeure event.
6. Notice. Any notices required to be given under this Agreement by either party to the other may be effected by electronic mail at the email address provided (or such other email address as agreed upon by the parties). Electronic delivery of a notice has the same legal effect as if either party provided a physical copy. Each party will consider a notice to have been received within 24 hours after the time the notice is emailed to the other party. Mailed notices must be addressed to the parties with tracking as set forth on the Final Price Sheet.
7. Assignment. Customer may not assign or otherwise transfer (whether voluntarily, by operation of law or otherwise) this Agreement or any of its rights or obligations hereunder without the prior written consent of Proto. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment or transfer by a party in violation of this Section 28 shall be void. Proto may assign or otherwise transfer this Agreement without the prior written consent of Customer.
8. Dispute Resolution. In the event of a dispute, claim, or controversy arising out of or in connection with this Agreement or the breach, termination, enforcement, interpretation, or validity thereof (other than for disputes, claims, or controversies related to the intellectual property of a party) (collectively, “Disputes”), each party’s senior representatives will engage in good faith negotiations with the other party’s senior representatives to amicably resolve a Dispute. If the parties are unable to resolve a Dispute within thirty (30) days after the first request to engage in good faith negotiations or within such other time period as the parties may agree to in writing, then either party may commence binding arbitration under JAMS’ Streamlined Arbitration Rules and Procedures ([www.jamsadr.com](http://www.jamsadr.com)). The parties will share equally the fees and expenses of the JAMS arbitrator. The arbitration will be conducted by a sole commercial arbitrator appointed by JAMS in accordance with its rules. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator will have the authority to grant specific performance or any other equitable or legal remedy, including provisional remedies. Each party will be responsible for its own incurred expenses arising out of any dispute resolution procedure. Any arbitration proceedings will take place in Los Angeles, California.
9. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflicts of laws and principles that would cause the laws of another jurisdiction to apply. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 29 (Dispute Resolution), any suit, action, or proceeding arising out of or related to this Agreement or the Device related to the intellectual property of a party will be instituted in the applicable courts within the County of San Diego, State of California.
10. Attorneys’ Fees. If any arbitration or action is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
11. Waiver. The waiver by a party of any right hereunder, or of any failure to perform or breach by the other party hereunder, shall not be deemed a waiver of any other right hereunder or of any other breach or failure by the other party hereunder whether of a similar nature or otherwise.
12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For the purposes of executing this Agreement, the parties agree (i) a document signed and transmitted electronically shall be treated as an original document, (ii) the signature of any party on such document shall be considered as an original signature; (iii) the document transmitted shall have the same effect as a counterpart thereof containing original signatures; and (iv) at the request of Proto, Customer who executed this Agreement and transmitted the signatures electronically shall provide the original signature to Proto.
13. Severability. The invalidity or unenforceability of any provision hereof, whether in whole or in part, for any reason, will not affect the remaining provisions. All of the terms and conditions of this Agreement will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted.
14. Electronic Signatures. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
15. Entire Agreement. These terms and conditions contain the complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof and supersede all prior understandings, representations, and warranties, written or oral.