



Proact IT Group AB - Standard Terms and Conditions v 1.2

Proact IT Group AB – v1.2

15 August 2018

Contents

| | |
|---|----|
| 1. INTERPRETATION..... | 3 |
| 2. BASIS OF CONTRACT | 5 |
| 3. CUSTOMER'S OBLIGATIONS | 5 |
| 4. CHARGES AND PAYMENT..... | 6 |
| 5. CUSTOMER DATA..... | 7 |
| 6. PERSONAL DATA PROCESSING | 7 |
| 7. TRANSFER OF UNDERTAKINGS..... | 8 |
| 8. CONFIDENTIALITY | 9 |
| 9. INTELLECTUAL PROPERTY | 9 |
| 10. THIRD PARTY PRODUCTS | 9 |
| 11. EXCLUSIONS AND LIMITATION OF LIABILITY | 10 |
| 12. INDEMNITIES | 10 |
| 13. TERMINATION OF THE CONTRACT..... | 11 |
| 14. DISPUTE RESOLUTION | 12 |
| 15. CHANGES | 12 |
| 16. NOTICES | 12 |
| 17. LEGAL INVALIDITY | 12 |
| 18. TRANSFER AND SUB-CONTRACTING | 12 |
| 19. RIGHTS OF THIRD PARTIES | 12 |
| 20. FORCE MAJEURE | 13 |
| 21. GENERAL PROVISIONS | 13 |
| 22. LAW AND JURISDICTION..... | 13 |
| 23. WARRANTY | 13 |
| 24. DELIVERY | 14 |
| 25. OWNERSHIP AND RISK..... | 14 |
| 26. WARRANTY | 14 |
| 27. TROUBLESHOOTING AND ONSITE ATTENDANCE | 15 |
| 28. PARTS REPLACEMENT..... | 15 |
| 29. EXCLUDED MAINTENANCE..... | 15 |
| 30. END OF LIFE EQUIPMENT | 16 |
| 31. REINSTATEMENT FEES | 16 |
| 32. LATE CANCELLATION OR AMENDMENT | 16 |
| 33. TERM OF MANAGED SERVICES CONTRACT | 16 |
| 34. IMPLEMENTATION & ACCEPTANCE | 16 |
| 35. EQUIPMENT | 17 |
| 36. BACKUPS..... | 18 |
| 37. SLAS AND TERMINATION FOR PERSISTENT BREACH | 18 |
| 38. PLANNED MAINTENANCE | 18 |
| 39. FLEXIBILITY AND CHARGES..... | 19 |
| 40. NON-SOLICITATION OF PERSONNEL | 19 |
| 41. PAYMENT FOR DEDICATED EQUIPMENT ON EARLY TERMINATION..... | 19 |
| 42. AUDIT | 19 |
| 43. PUBLIC CLOUD SERVICES..... | 20 |
| 44. INSURANCE AND RISK | 21 |
| 45. LIABILITY | 21 |
| 46. TERMINATION | 21 |
| 47. COUNTRY SPECIFIC PROVISIONS | 21 |

THESE STANDARD TERMS AND CONDITIONS together with any additional terms set out or referred to in the Contract set out the basis on which Proact shall provide goods and/or services to the Customer.

GENERAL TERMS

1. INTERPRETATION

In these Standard Terms and Conditions the following definitions and rules of interpretation shall apply:

1.1 Definitions:

| Term | Definition |
|---------------------------------|---|
| Authorised Person | a person nominated by the Customer in writing with authority to make binding decisions on its behalf or, if no such nomination is made, any person with actual or ostensible authority to make binding decisions on its behalf. |
| Charges | the rates and charges set out in the Contract which are to be paid by the Customer to Proact |
| Confidential Information | (i) the existence and terms of the Contract; (ii) any information that would be regarded as confidential by a reasonable business person relating to: the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (iii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); or (iv) any information developed by the parties in the course of carrying out the Contract; in each case other than information which: (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of the Contract); (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; (d) the parties agree in writing is not confidential or may be disclosed; or (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party |
| Consultancy Services | ad-hoc information technology services performed by Proact's engineers and consultants for the Customer |
| Contract | an agreement for the provision of goods and/or services by Proact to the Customer and which refers to or otherwise incorporates these Standard Terms and Conditions |
| Customer | the legal entity set out in the Contract who purchases the goods, services and/or Managed Services, from Proact |
| Customer Data | information provided by the Customer for processing by Proact under the terms of the Contract |
| Data Controller | as defined in Article 4(7) GDPR |
| Data Processor | as defined in Article 4(8) GDPR |
| Data Protection Law | any applicable laws relating to the protection of Personal Data from time to time including the GDPR |
| Fair Market Value | <p>If calculated during the Minimum Service Term: the price at which Proact states (acting reasonably) that it would have sold the equipment for if it had been sold on the date it was initially deployed, plus associated maintenance and support services, less depreciation on a straight-line basis over a period equal to the Minimum Service Term from the Service Commencement Date (if deployed on or before the Service Commencement Date) or the date of deployment (if deployed after the Service Commencement Date); or</p> <p>if calculated at or after the end of the Minimum Service Term: Proact's assessment (acting reasonably) of the value of the equipment in an open market sale, assuming (whether in practice true or not) that the equipment is in a reasonable condition for its age and usage and that the unexpired term of any third party warranty or support existing in respect of the equipment can be transferred to the purchaser;</p> |

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| | together in each case with all costs and expenses which Proact would reasonably incur in order to effect a transfer of title of the equipment to the Customer |
| Finance Agreement | An asset finance agreement for the provision to the Customer of goods owned by Proact Finance |
| GDPR | Regulation (EU) 2016/679 |
| Intellectual Property Rights | patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not, in the United States of America, the United Kingdom or any country in the European Economic Area |
| Lessor | a third party who provides equipment to one of the parties for use in the Managed Services by that party |
| Managed Services | a service comprising the proactive management of information technology assets by Proact on behalf of the Customer; and Proact's "Premium Support Plus" and "Unmanaged STaaS" services |
| Minimum Commitment | the minimum financial commitment for Managed Services entered into by the Customer as set out in the Contract |
| Minimum Service Term | the minimum period of delivery of the Managed Services from the last occurring Service Commencement Date as set out in the Contract |
| Outstanding Lease Costs | the total liability from time to time of Proact to a lessor under the terms of a lease by Proact of any equipment used in a Managed Service |
| party / parties | a party or the parties to the Contract as applicable |
| Payment Term | 10 days from the date of each invoice or as otherwise set out in the Contract |
| Personal Data | any of the Customer Data which is personal data as defined in Article 4(1) GDPR |
| Proact | the subsidiary legal entity of the Proact Group which is set out in the Contract and which is to provide the goods and/or services to the Customer |
| Proact Group | Proact IT Group AB (Publ) (org no: 556494-3446) a publicly listed corporation incorporated in accordance with the laws of Sweden and with its principal place of business at Kistagången 2, Box 1205, SE-164 28, Kista, Sweden |
| Proact Finance | Proact Finance AB (org no: 556396-0813) a company incorporated in accordance with the laws of Sweden and with its office at Kistagången 2, Box 1205, SE-164 28, Kista, Sweden |
| Public Cloud Service | a service forming part of the Managed Services and comprising computing infrastructure services delivered by a Public Cloud Service Provider |
| Public Cloud Service Provider | a third party computer infrastructure service provider who provides services to the public on a large scale including (but not limited to) Amazon Web Services, Google Inc or Microsoft Azure. |
| Security Breach | any security breach in respect of Personal Data reasonably determined by Proact to be likely to result in a risk to the rights and freedoms of natural persons so as to justify notification to the relevant supervisory authority in accordance with Article 33 GDPR or other applicable law |
| Service Commencement Date | a date communicated by Proact to the Customer on which some or all of the Managed Services set out in the Contract will be ready for use. |
| Service Credits | the sums (if any) which are specified in the Service Level Agreement and which shall be credited to the account of the Customer by Proact in the event that Proact fails to meet the SLAs (if any) set out in the Contract |
| Service Level Agreement (SLA) | an agreed level of service (if any) stated in the Contract to apply to Managed Services to be provided and further defined in the Proact Service Level Agreement set out in full at http://www.proact.eu/terms |
| Support Services | technical support and "break/fix" services |
| Supported Equipment | any equipment (including its component parts) in respect of which Proact has agreed in the Contract to provide Support Services |
| Term | the term of the Contract, which shall begin on the date of last signature of the Contract and shall continue for the period set out in the Contract |
| Third Party Products | hardware or software provided by Proact but which is not manufactured or developed by Proact |

- 1.2 Clause and section headings shall not affect the interpretation of these Standard Terms and Conditions.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a provision of law is a reference to it as amended extended or re-enacted from time to time and shall include all subordinate law or regulations made thereunder from time to time.
- 1.6 A reference to applicable law shall refer only to mandatory provisions of law.
- 1.7 A reference to writing or written includes fax and email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses are to the clauses of these Standard Terms and Conditions.
- 1.10 Any reference to these Standard Terms and Conditions or to any other agreement or document referred to in these Standard Terms and Conditions is a reference to these Standard Terms and Conditions or such other agreement or document as varied in accordance with the provisions of these Standard Terms and Conditions from time to time.
- 1.11 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

2. BASIS OF CONTRACT

- 2.1 A Contract shall be formed either:
 - 2.1.1 upon the date of last signature of a written agreement between the parties; or
 - 2.1.2 when Proact issues a written acceptance, or otherwise completes processing of a purchase order.
- 2.2 For the avoidance of doubt any quotation given by Proact shall not constitute an offer and may be withdrawn at any time by Proact and any purchase order issued by the Customer shall constitute an offer to purchase goods and/or services in accordance with the quotation (if any) provided by Proact, and these Standard Terms and Conditions.
- 2.3 In the event and to the extent only of any conflict or inconsistency between the provisions of:
 - 2.3.1 the clauses of these Standard Terms and Conditions;
 - 2.3.2 the body of the Contract; or
 - 2.3.3 any other document specifically referred to in the Contract; thenthe order of precedence shall be as set out in this clause 2.3 with 2.3.1 having the highest priority provided that where any clause in the Contract is expressly stated to have priority over another specifically referenced provision then that clause in the Contract shall take precedence.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer warrants that:
 - 3.1.1 it has ensured that the terms of the Contract and any specifications submitted by the Customer are complete and accurate;
 - 3.1.2 it has verified that any assumptions stated in the Contract are accurate and any estimates are appropriate;
 - 3.1.3 it shall perform any customer prerequisites or other obligations set out in the Contract;
 - 3.1.4 it has taken and shall continue to take all reasonable steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan) onto and prevent any unauthorised access to any equipment owned or managed by Proact or provided by Proact for the Customer's use as part of a service;
 - 3.1.5 it shall keep any property owned by Proact which is located at the Customer's premises from time to time in safe custody at its own risk until returned to Proact and shall not relocate, dispose of or use such property other than in accordance with Proact's instructions or agreement and shall not remove or obscure any tag or identifying mark on such property;

- 3.1.6 it shall not, without Proact's prior written approval, allow any person other than a representative of Proact to modify, repair, maintain or make any addition to any equipment owned or managed by Proact or provided by Proact for the Customer's use as part of a service;
- 3.1.7 it shall comply with and where required will formally accept by clicking, or where necessary signing and returning to Proact or the vendor of a Third Party Product, any standard software licence agreement, end user licence agreement or end user licence terms which may apply to the Customer's use of a Third Party Product;
- 3.1.8 it will not without the prior written approval of Proact sell, resell, distribute or lease the goods and/or services;
- 3.1.9 it shall cooperate with Proact in order for Proact to fulfil its obligations under the Contract which cooperation shall include (without limitation):
 - 3.1.9.1 providing Proact, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Proact to carry out its obligations under the Contract;
 - 3.1.9.2 providing Proact with such information and materials as Proact may reasonably require and shall ensure that such information is accurate in all material respects;
 - 3.1.9.3 adequately preparing its premises for the supply of the goods and/or services;
 - 3.1.9.4 obtaining and maintaining all necessary licences, permissions and consents which may be required for the goods and/or services before any start or delivery date agreed with Proact;
 - 3.1.9.5 providing support feedback upon request and permitting Proact to submit the same to third parties on the Customer's behalf; and
- 3.1.10 it shall comply with all applicable health and safety regulations and take all reasonable precautions to ensure that any of its premises which Proact may attend are operated in a safe manner.

4. CHARGES AND PAYMENT

- 4.1 Proact shall invoice the Customer and the Customer shall pay to Proact the Charges as set out in the Contract. If no invoicing profile is specified then Proact shall be entitled to invoice the Customer on delivery for goods, and/or monthly in arrears for services delivered as relevant.
 - 4.2 Where Charges are stated in the Contract to be provided on a 'time and materials' basis or where the Customer asks Proact to conduct additional work outside the scope of a Contract then:
 - 4.2.1 the Charges for services shall be calculated in accordance with Proact's standard daily rate from time to time in whole days only;
 - 4.2.2 Proact shall be entitled to charge its higher standard daily rate (typically double) where the services are carried out either partly or in whole outside of normal business hours; and
 - 4.2.3 Proact shall be entitled to charge the Customer for the cost of any goods or materials it procures in connection with delivery of the service to the Customer.
 - 4.3 Proact shall be entitled to charge the Customer for any travelling expenses, hotel costs, subsistence or similar expenses reasonably incurred in the delivery of any services to the Customer.
 - 4.4 To the extent that any services delivered by Proact under the Contract take longer to deliver than would otherwise have been the case as a consequence of the Customer's failure to comply with any prerequisites or other requirements set out in the Contract, Proact shall be entitled to charge for such additional time at Proact's standard daily rates from time to time.
 - 4.5 The Customer shall pay undisputed Charges to Proact within the Payment Term.
- Payment
- 4.6 The Charges and all other payments set out in the Contract are exclusive of value added tax or any other similar tax, levy, impost, duty, charge or fee. The Customer shall pay any such applicable sums in addition to the Charges or other payments at the rate and in the manner prescribed by law from time to time. The Customer shall make all payments due under the Contract without withholding or deduction of, or in respect of, any sums unless required by law. If any such withholding or deduction is required the Customer shall, when making the

payment to which the withholding or deduction relates, pay to Proact such additional amount as will ensure that Proact receives the same total amount that it would have received if no such withholding or deduction had been required

- 4.7 Interest shall be payable on any late payments of the Charges or any other sums due from the Customer to Proact under the Contract at the rate of 5% per annum above the Euro Interbank Offered Rate (Euribor) 12 month lending rate or any applicable statutory interest rate, whichever is higher.
- 4.8 The Customer shall pay all invoices submitted by Proact by electronic transfer or by such other payment mechanism as may be reasonably required by Proact from time to time.
- 4.9 The Customer shall not be entitled by reason of any set off, counter-claim, abatement, or other similar deduction to withhold payment of any amount which is due to Proact.

Default

- 4.10 If payment of all or part of the Charges or any other payment due under the Contract is overdue then, unless the Customer has notified Proact in writing that such payment is in dispute within the Payment Term, Proact shall have the right upon giving at least 30 days prior notice in writing of its intention to do so, to:
- 4.10.1 suspend further deliveries of goods and/or services being provided to the Customer under any Contract until such payment is made; or
- 4.10.2 treat such non-payment as an irremediable material breach of the Contract.
- 4.11 The Customer shall be liable for all costs reasonably incurred by Proact as a result of the suspension and any subsequent restart of any services pursuant to clause 4.10.1.

5. CUSTOMER DATA

- 5.1 The Customer shall be solely responsible for the accuracy, quality, integrity and legality of the Customer Data.
- 5.2 The Customer grants to Proact a non-exclusive right during the term of the Contract to access the Customer's Data for the sole purpose of complying with Proact's obligations under the Contract.
- 5.3 The Customer warrants that:
- 5.3.1 it has the appropriate authority and all relevant consents in accordance with applicable law in connection with all Customer Data including any Personal Data to permit the Customer to transfer the same to Proact to process for all purposes set out in the Contract; and
- 5.3.2 such processing by Proact shall not infringe any third party's Intellectual Property Rights.
- 5.4 The Customer understands that they may not use Proact's services for the processing of payment card data unless the terms of the Contract state that the service is provided for that purpose.

6. PERSONAL DATA PROCESSING

- 6.1 The Customer shall ensure that it has all necessary consents and notices in place to enable lawful transfer of Personal Data to Proact for the duration and purpose of the Contract.
- 6.2 Proact shall process the Personal Data only on the written instructions of the Customer, and within the scope of the contracted services, unless otherwise required by Data Protection Law. Where Proact is relying on Data Protection Law or any other applicable law as the basis for processing Personal Data, Proact shall (where not prohibited by law) promptly notify the Customer before performing such processing
- 6.3 The Customer acknowledges that Proact is under no duty to investigate the completeness, accuracy or sufficiency of any specific instructions given in accordance with clause 6.2, and that Proact shall not be under any obligation in respect of any instructions given in relation to the processing of Personal Data other than in accordance with clause 6.2.
- 6.4 Proact shall implement and maintain appropriate technical and organisational measures which may include, where appropriate, the obligations imposed on a Data Processor by Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR) as applicable.
- 6.5 (subject to clause 6.12) Proact will not transfer Personal Data to a jurisdiction or territory that is outside of the European Economic Area or the United Kingdom other than where this has been expressly agreed in writing or with prior written consent from the Customer.
- 6.6 Proact will provide reasonable assistance to the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations

- under Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- 6.7 Proact will notify the Customer without undue delay on becoming aware of a Personal Data breach.
- 6.8 The notification referred to clause 6.7 shall:
- 6.8.1 describe the nature of the issue including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
 - 6.8.2 communicate the name and contact details of the person from whom more information can be obtained;
 - 6.8.3 describe the likely consequences of the issue;
 - 6.8.4 describe the remedial action taken or proposed to be taken.
- 6.9 In the event of a Security Breach, the parties shall cooperate to the extent reasonably required in connection with the notification obligations and any other action required under the GDPR or other applicable law.
- 6.10 Each party's obligations under clause 6.9 shall be performed at that party's own expense, except to the extent that the Security Breach arose out of any negligence or wilful default of the other party or any breach by the other party of its warranties in the Contract.
- 6.11 Proact shall maintain complete and accurate records and information insofar as reasonably required to demonstrate its compliance with this clause 6 and allow for audits by the Customer or the Customer's designated auditor. Audits shall be conducted during normal business hours at Proact's facilities, and the Customer, or its designated auditor as applicable shall comply with Proact's reasonable security requirements and not unreasonably interfere with Proact's business activities. The Customer shall not be permitted to conduct or mandate an audit more than once in any 12 month period.
- 6.12 The Customer consents to Proact appointing any company controlled by Proact, under common control with Proact or which controls Proact as a third-party processor of Personal Data under this agreement. Proact confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this agreement. As between the Customer and Proact, Proact shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.12.
- 6.13 Other than as set out in clause 6.12 the Customer does not consent to Proact appointing any third party processors of Personal Data under the Contract.
- 6.14 Notwithstanding anything in these Standard Terms and Conditions, this clause 6 shall continue in full force and effect for so long as Proact processes the Personal Data.
- 6.15 Except to the extent required by law, upon termination or expiry of the Contract, or upon the date on which the Personal Data is no longer relevant to, or necessary for, the performance of the Contract (whichever is earlier), Proact shall cease processing all such Personal Data and at the request of the Customer, and in accordance with the Contract, use all reasonable endeavours to delete or return the Personal Data to the Customer. The Customer is responsible for any costs arising as a result of Proact complying with its obligations under this clause 6.15.
- 6.16 Proact will not be required to delete any data on backup media that is encrypted, or data media that is unmounted from an application and would be purged automatically within 90 days.
- 6.17 The Customer shall indemnify and hold harmless Proact in full and on demand from and against all losses as a result of any breach by them of this Clause 6 and/or Data Protection Law.
- 6.18 Proact shall indemnify and hold harmless the Customer in full and on demand from and against all losses as a result of any breach by them of this Clause 6 and/Data Protection Law.

7. TRANSFER OF UNDERTAKINGS

The parties agree that none of the provisions of the Contract, nor the implementation, operation or termination of the services under the Contract is intended to transfer an undertaking from either party to the other and it is accordingly their understanding that laws implementing the Transfers of Undertakings Directive (2001/23/EC) will not apply.

8. CONFIDENTIALITY

- 8.1 Each party shall keep the other party's Confidential Information confidential using at least the same level of security that it applies to its own Confidential Information and shall not for the term of the Contract and for a period of five years after it is terminated:
- 8.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Contract; or
 - 8.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 8.
- 8.2 Each party may disclose the other party's Confidential Information:
- 8.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with the terms of this clause 8; and
 - 8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including pursuant to the rules of any regulated stock exchange to which either party is subject.
- 8.3 The Customer agrees to cooperate with Proact in the preparation of a press release regarding the award of business to Proact and the publication of a case study document that will be available for distribution in hard copy and/or electronic format to Proact's customers and potential customers. The content of such documents will be agreed in writing by the Parties (acting reasonably) prior to release.

9. INTELLECTUAL PROPERTY

- 9.1 The Customer acknowledges that Proact is a reseller of goods and services provided by third parties and that insofar as any goods or services include or comprise Intellectual Property Rights owned by third parties, the Customer's use of such Intellectual Property Rights and thus the goods and services shall be conditional upon compliance with the licence terms of the third party and the Customer shall comply with such terms.
- 9.2 Save as expressly granted under the Contract, neither the Customer nor Proact shall acquire any right, title or interest in the other party's pre-existing Intellectual Property Rights or the pre-existing Intellectual Property Rights of any third party.
- 9.3 Any Intellectual Property Rights in or arising from any material provided by Proact in the provision of, or in connection with, the Contract shall become and remain vested in Proact and the Customer shall have a non-exclusive, non-transferable, revocable, personal licence to use any such Intellectual Property Rights during the Contract, subject to the terms of the Contract, and so far only as is necessary for it to receive the benefit of the Contract.
- 9.4 If any of the goods or services provided by Proact under the Contract infringes, or in Proact's reasonable opinion is likely to infringe, the Intellectual Property Rights of a third party, Proact shall at its expense and option either:
- 9.4.1 procure the right for the Customer to continue using the goods and/or services;
 - 9.4.2 replace the goods and/or services with non-infringing equivalents;
 - 9.4.3 modify the goods and/or services to make them non-infringing; or
 - 9.4.4 where none of the preceding options is available to Proact on terms reasonably acceptable to Proact, collect the infringing goods and/or cease delivery of the infringing services and repay to the Customer any Charges paid in advance for the goods and/or services less a reasonable sum to account for the Customer's use thereof prior to collection or termination.
- 9.5 If the Customer installs or uses any software not provided by Proact under the terms of the Contract on Proact's infrastructure then the Customer shall ensure that it has all necessary rights to do so.

10. THIRD PARTY PRODUCTS

Where goods or services provided to the Customer under the Contract include any Third Party Products Proact shall, so far as it is able to do so, ensure that the benefit of any warranty in respect of that Third Party Product received from the vendor is provided for the benefit of the Customer. No warranty shall be provided by Proact to the Customer directly in respect of any Third Party Product and any such warranty whether express or implied is hereby excluded to the fullest extent permitted by law.

11. EXCLUSIONS AND LIMITATION OF LIABILITY

Exclusions of liability

- 11.1 Nothing in the Contract excludes or limits the liability of Proact for:
- 11.1.1 death or personal injury caused by Proact's negligence;
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 any other liability which cannot lawfully be excluded or limited.
- 11.2 Save as provided for in clause 11.1 or under any express indemnity, Proact shall not be liable to the Customer under any theory of liability (including contract, negligence, breach of statutory duty, misrepresentation, restitution or otherwise) for any:
- 11.2.1 damage caused by errors or omissions in any information, instructions or scripts provided to Proact by the Customer;
 - 11.2.2 actions taken by Proact at the Customer's direction;
 - 11.2.3 delay or failure in performance of the Contract by Proact to the extent that such delay or failure is caused by any act or omission by the Customer or failure by the Customer to perform any obligation under the Contract;
 - 11.2.4 loss of or corruption to the Customer Data except where back-up services are specifically provided by Proact under the terms of the Contract;
 - 11.2.5 loss of profits;
 - 11.2.6 loss of future business;
 - 11.2.7 loss of goodwill or similar losses;
 - 11.2.8 loss of anticipated savings; or
 - 11.2.9 indirect or consequential losses, costs, damages and charges of any sort whatsoever.
- 11.3 Except as expressly stated in these Standard Terms and Conditions or the Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the fullest extent permitted by law.

Limitation period

- 11.4 Subject to clause 11.1, neither party will be liable to the other for a claim under or in connection with the Contract other than a claim for payment of the Charges, unless such claim is notified to the other party within 12 months of the date that the circumstances giving rise to the claim were reasonably discoverable to that party.

Limitation of liability

- 11.5 Subject to the provisions of clauses 11.1 and 11.2, Proact's total aggregate liability:
- 11.5.1 under the indemnities in clauses 6.18 (Personal Data Processing), 12 and 35.7 (return of leased equipment); or
 - 11.5.2 for breach of the provisions in clause 8 (confidentiality); or
 - 11.5.3 for loss of or corruption to the Customer's Data arising where Proact is specifically required as part of the Contract to take backups of the same;
- shall be limited in aggregate to £5,000,000 (or the equivalent sum in the local currency in the place of legal domicile of Proact).
- 11.6 In all other circumstances other than those set out in clause 11.5, Proact's total aggregate liability arising under or in connection with the Contract shall be limited to 150% of the Charges paid by the Customer under the Contract during the 12 months preceding the date on which the liability arose.
- 11.7 This clause 11 shall survive termination of the Contract.

12. INDEMNITIES

Customer indemnities

- 12.1 The Customer shall indemnify and hold Proact harmless from and against all damages, losses, liabilities, demands, and expenses arising from:
- 12.1.1 any breach by the Customer of clause 5.3 (Customer Data) or 9.5 (Customer supplied software); or 43.3 (authority to permit access by Public Cloud Service Providers)
 - 12.1.2 any claim by an employee, the termination by Proact of the employment of any such employee and the employment of such employee prior to termination where such employee is deemed to have transferred to the employment of Proact from the Customer or the Customer's subcontractor by operation of law notwithstanding the provisions of clause 7.

Proact indemnities

- 12.2 Proact shall indemnify and hold harmless the Customer from and against all damages, losses, liabilities, demands, and expenses arising from:
- 12.2.1 any claim that the provision of the goods and/or services and use in accordance with the terms of the Contract infringes any valid third party Intellectual Property Rights; or
 - 12.2.2 any claim by an employee, the termination by the Customer of the employment of any such employee and the employment of such employee prior to termination where such employee is deemed to have transferred to the employment of the Customer from Proact or Proact's subcontractor by operation of law notwithstanding the provisions of clause 7.

General provisions

- 12.3 To benefit from any of the indemnities in this clause 12 the indemnified party must:
- 12.3.1 promptly provide the indemnifying party and its advisors reasonable access to the indemnified party's premises and personnel and to all relevant assets, accounts, documents and records that it possesses or controls (with the right to take copies) for the purposes of investigating the matter;
 - 12.3.2 allow the indemnifying party (at its request) to use its chosen advisers and to have the exclusive conduct of the proceedings;
 - 12.3.3 make no admission of liability or any other statement in respect of or settle the matter without obtaining the indemnifying party's prior written consent (not to be unreasonably withheld or delayed); and
 - 12.3.4 promptly take any action and give any information and assistance as the indemnifying party may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the indemnified party's rights in relation to the matter.

13. TERMINATION OF THE CONTRACT

Termination for breach or insolvency

- 13.1 Without prejudice to any other rights that the parties may have accrued under the Contract or any of their respective remedies, obligations or liabilities, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 13.1.2 the other party is insolvent or takes any step or action in connection with its entering any form of insolvency protection, administration, liquidation or any other composition or arrangement with its creditors; or
 - 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

Consequences of Termination

- 13.2 Any provision of the Contract which expressly or by implication is intended to come into effect or remain in effect on or after termination of the Contract shall remain in full force and effect and termination shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 13.3 On termination of the Contract:
- 13.3.1 Proact shall cease provision of any services still being provided under the Contract;
 - 13.3.2 Each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - 13.3.3 Proact shall submit invoices for any goods and/or services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices, if undisputed, within the Payment Term; and
 - 13.3.4 The Customer shall pay any outstanding undisputed invoices within the Payment Term .
- 13.4 If a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be obliged to return or destroy under the terms of the Contract, it shall be entitled to do so, but shall keep such documents or materials confidential in accordance with clause 8.

14. DISPUTE RESOLUTION

14.1 Without prejudice to the rights of termination stated in clause 13, except in cases of disputes relating to:

14.1.1 non-payment of the Charges;

14.1.2 breach or threatened breach of confidentiality;

14.1.3 infringement or threatened infringement of a party's Intellectual Property Rights; or

14.1.4 infringement or threatened infringement of the Intellectual Property Rights of any third party, where such infringement could expose a party to liability,

any dispute arising under, or in connection with the Contract shall be dealt with in accordance with this clause 14.

14.2 All disputes between the parties arising out of or relating to the Contract shall initially be referred in writing to the senior management of the Customer and of the Proact Group who shall convene a meeting in an attempt to resolve the matter informally.

14.3 If a dispute remains unresolved 28 days' after following the informal process set out in clause 14.2 or a party fails to observe such process then the parties shall, acting reasonably, seek to refer the dispute to an agreed form of mediation prior to settlement through the courts.

15. CHANGES

15.1 Proact reserves the right to make changes to the specification of the goods and/or services that do not materially decrease the functionality and/or deliverables of the goods and/or services or which are necessary to comply with any applicable law, regulatory or safety requirement, and shall notify the Customer in any such event as soon as reasonably practical.

15.2 Other than as set out in clause 15.1 where either party requests a change to a Contract the parties shall conduct discussions relating to the proposed change and any resulting change to the Charges in good faith and neither party shall unreasonably withhold nor delay consent to the other party's proposed change.

15.3 Except as specifically provided in the Contract no amendment to a Contract shall be effective unless made in writing and signed by both parties.

16. NOTICES

16.1 Any notice required to be given to a party under or in connection with the Contract shall be in writing (which shall include by email).

16.2 Any notice given to Proact in accordance with clause 16.1 shall be by way of email to legal@proact.co.uk.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of formal dispute resolution to which the parties have agreed.

17. LEGAL INVALIDITY

The Customer and Proact expressly agree that should any limitation or provision contained in the Contract be held to be invalid under law, it shall to that extent be deemed to be omitted but, if either the Customer or Proact thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18. TRANSFER AND SUB-CONTRACTING

18.1 Proact shall be entitled freely to assign, transfer or subcontract its obligations under the Contract including to any other company in the Proact Group, but this shall not affect Proact's obligations to the Customer and any liabilities under the Contract and Proact shall remain responsible for the obligations performed by its subcontractors to the same extent as if such obligations were performed by Proact itself.

18.2 The Customer shall not assign, subcontract, transfer or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of Proact.

19. RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract has no right to rely upon or enforce any term of the Contract.

20. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days', the party not affected may terminate this Contract by giving 7 days' written notice to the affected party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

21. GENERAL PROVISIONS

- 21.1 Waiver and cumulative remedies: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 21.2 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 21.3 Entire Agreement: Other than where expressly provided to the contrary the Contract constitutes the entire understanding between the Customer and Proact relating to the subject matter of the Contract and supersedes any previous agreement or understanding between the parties in relation to such subject matter.
- 21.4 Authority & Execution Formalities: Each party warrants that it has full capacity and authority and all necessary consents to enter into and to perform the Contract. The Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement. No counterpart shall be effective until each party has executed and delivered at least one counterpart. Transmission of an executed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery. If such method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter. The parties further agree that they may conduct business transactions using electronic documents and electronic signatures and that if the Contract is signed electronically using an electronic signature service then that document shall for all purposes be deemed to be validly executed by the party or parties so signing electronically.

22. LAW AND JURISDICTION

The Contract shall be governed by and construed according to the law of the country in which Proact is legally domiciled save for any conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Save as provided in clause 14, the Customer and Proact accept the exclusive jurisdiction of the courts of the country in which Proact is legally domiciled.

SALE OF GOODS

If the Contract includes the purchase from Proact by the Customer of goods then the following provisions 23 to 25 inclusive shall apply:

23. WARRANTY

- 23.1 Proact warrants that on delivery the goods shall:
- 23.1.1 conform with their description as set out in the Contract;
 - 23.1.2 be free from defects in design, material and workmanship;
 - 23.1.3 be fit for any purpose held out by Proact; and
 - 23.1.4 comply with all applicable legal requirements
- 23.2 Subject to clause 23.3, if:

- 23.2.1 the Customer gives notice in writing within 14 days of delivery that some or all of the goods have not arrived or do not comply with the warranty set out in clause 23.1;
- 23.2.2 Proact is given a reasonable opportunity of examining such non-compliant goods; and
- 23.2.3 the Customer (if asked to do so by Proact) returns such goods to Proact's place of business,
- 23.2.4 then Proact shall, at its option, repair or replace the defective or missing goods, or refund the price of the defective or missing goods in full.
- 23.3 Proact shall not be liable for the goods' failure to comply with the warranty in clause 23.1 if:
 - 23.3.1 the Customer makes any further use of such goods after giving a notice in accordance with clause 23.2.1;
 - 23.3.2 the defect arises because the Customer failed to follow Proact's written instructions or (if there are none) good trade practice as to the storage, installation, commissioning, use or maintenance of the goods including any vendor recommendations;
 - 23.3.3 the defect arises as a result of Proact following any instruction, drawing, design or specification supplied by the Customer;
 - 23.3.4 the Customer or a third party alters or repairs such goods without the written consent of Proact;
 - 23.3.5 the defect arises as a result of fair wear and tear, wilful damage or negligence of the Customer;
 - 23.3.6 the goods differ from their description as a result of changes made to ensure they comply with applicable legal requirements; or
 - 23.3.7 the Customer has failed to comply with its warranty in clause 3.1.7 (Third Party Product licence terms).
- 23.4 This clause shall apply to any repaired or replacement goods supplied by Proact under clause 23.2.4.

24. DELIVERY

- 24.1 Proact shall only be obliged to deliver goods to the location set out in the Contract. If the Customer requests and Proact agrees to change the location after placing an order then Proact shall be entitled to levy a reasonable additional charge.
- 24.2 Delivery of the goods shall be completed on the goods' arrival at the agreed delivery location.
- 24.3 The price for goods shall be as set out in the Contract. Unless otherwise specifically stated in the Contract all charges quoted are Ex Works (EXW) per Incoterms 2010 Rules.
- 24.4 Any dates quoted for delivery of the goods are estimates only, and are not binding conditions of the Contract unless stated to be so.
- 24.5 If the Customer fails to take delivery of the goods when Proact notifies that they are ready for delivery then Proact shall be entitled to store the goods until delivery can take place, and to charge the Customer for the reasonable costs of storage and redelivery.
- 24.6 Proact may deliver the goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 24.7 Where goods are supplied for export from the country in which Proact is located the Customer shall be responsible for complying with any legislation governing the importation of the goods into the country of destination and shall be responsible for the payment of any duties which fall due as a result.

25. OWNERSHIP AND RISK

- 25.1 Risk in the goods shall transfer to the Customer on collection, or completion of delivery as applicable.
- 25.2 Ownership of the goods shall not transfer to the Customer until Proact has received payment in full for all goods set out in the Contract.

SERVICES GENERALLY

If the Contract includes the provision of any services then the following clause 26 shall apply:

26. WARRANTY

Proact warrants that:

- 26.1 the services shall be provided in accordance with the Contract and carried out by appropriately experienced, qualified and trained personnel with appropriate skill, care and diligence and in accordance with good industry practice and in accordance with all applicable laws;
- 26.2 it shall use reasonable endeavours to meet any performance dates for services specified in the Contract, but any such dates shall be estimates only and are not binding conditions of the Contract unless stated to be so;
- 26.3 it shall use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any Customer location at which it attends and that have been communicated to it, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and
- 26.4 it has taken and shall continue to take all reasonable steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan) onto any equipment managed by the Customer or through the supply of data or software owned by or under the control of Proact.

SUPPORT SERVICES

If the Contract includes the provision of Support Services then the following clauses 27 to 31 inclusive shall apply:

27. TROUBLESHOOTING AND ONSITE ATTENDANCE

- 27.1 Upon receipt of a notification from the Customer that any Supported Equipment is malfunctioning or is otherwise not working in accordance with the operating manuals and applicable manufacturer specifications Proact shall initially provide telephone advice and assistance (troubleshooting) to the Customer to solve the issue.
- 27.2 If Proact reasonably determines that the malfunction cannot be solved following the steps set out in clause 27.1 it shall either:
 - 27.2.1 attend at the location of the Supported Equipment (and will use reasonable endeavours to do so within the response time set out in the Contract) and make any adjustments, replacements and/or repairs required in order to restore the Supported Equipment to good working order; or
 - 27.2.2 with the Customer's prior agreement, send the Customer replacement parts such that the Customer may restore the Supported Equipment to good working order.

28. PARTS REPLACEMENT

All spare parts and/or replacements provided by Proact to the Customer shall become part of the Supported Equipment and the property of the Customer. All parts and components removed from Supported Equipment by Proact in the course of performing Support Services shall no longer constitute part of the Supported Equipment and will be the property of Proact.

29. EXCLUDED MAINTENANCE

- 29.1 Proact is not obliged to perform any Support Services where the malfunction or failure results from or is caused by:
 - 29.1.1 any defect existing prior to the commencement of the Contract;
 - 29.1.2 a latent defect in a manufacturer's design;
 - 29.1.3 use of Supported Equipment in conjunction with equipment not supplied by or approved to be used by Proact;
 - 29.1.4 any maintenance, alteration, modification or adjustment to the Supported Equipment not performed or approved in writing by Proact;
 - 29.1.5 the Customer's negligence or misuse of the Supported Equipment in contravention of any of the provisions of the Contract or manufacturer recommendations; or
 - 29.1.6 a failure by the Customer to comply with best practice requirements around environmental conditions for the Supported Equipment (including temperature regulation, humidity, and electricity supply).
- 29.2 Unless expressly provided otherwise in the Contract, consumable items (including but not limited to removable storage media and batteries) and/or any operating system or other software installed on Supported Equipment are excluded from the scope of Proact's obligation to provide Support Services.
- 29.3 Where Proact performs Support Services in circumstances where it is subsequently established that such support was required as a result of any of the causes set out in clauses

29.1.1 to 29.1.6, Proact shall be entitled to charge the Customer for such services at its normal daily rate from time to time.

- 29.4 Proact is not obliged to perform any Support Services where Proact's provision of the Support Services entails the purchase of support from the original equipment manufacturer and the Customer's support entitlement is withdrawn by the original equipment manufacturer for any reason.

30. END OF LIFE EQUIPMENT

If in the reasonable opinion of Proact, it becomes uneconomical to continue to provide the Support Services in respect of equipment which is no longer supported by its original manufacturer due to the equipment's condition (where this is due to causes beyond Proact's control); or the non-availability at a reasonable price of parts then Proact may, upon a minimum of 60 days' notice in writing to the Customer, discontinue the Support Services in whole, or in part provided that if Proact discontinues Support Services in accordance with this clause 30 then the Charges payable by the Customer in respect of those services shall be reduced accordingly from the date on which Proact discontinues the Support Services.

31. REINSTATEMENT FEES

In the event that Proact's provision of the Support Services entails the purchase of support from the original equipment manufacturer, and support reinstatement fees are incurred as a result of the Customer failing to place an order prior to the expiry of the existing support agreement with the manufacturer, then such reinstatement fees shall be charged by Proact to the Customer in full in addition to any other Charges payable.

CONSULTANCY SERVICES

If the Contract includes the provision of Consultancy Services then the following clause 32 shall apply:

32. LATE CANCELLATION OR AMENDMENT

The Customer acknowledges that Proact is required to plan the time of its consultants and engineers carefully. In the event that the Customer, having agreed a time for delivery of Consultancy Services, cancels or materially amends a booking for Consultancy Services (whether temporarily or indefinitely) then the following cancellation charges shall apply:

- 32.1.1 cancellation within up to 24 hours of work commencing, 75% of the agreed Charges;
- 32.1.2 cancellation within 24 up to 96 hours of work commencing, 50% of the agreed Charges;
- 32.1.3 cancellation exceeding 96 hours of work commencing, 25% of the agreed Charges;

in addition to all charges reasonably incurred by Proact in fulfilling the booking up until the date of receipt of the amendment or cancellation.

MANAGED SERVICES

If the Contract includes the provision of Managed Services then the following clauses 33 to 42 inclusive shall apply:

33. TERM OF MANAGED SERVICES CONTRACT

The Contract shall continue in full effect and force until the Customer gives a minimum of 90 days' notice in writing to terminate, such notice expiring on or after the end of the Minimum Service Term.

34. IMPLEMENTATION & ACCEPTANCE

- 34.1 Proact shall notify the Customer of the Service Commencement Date for each Managed Service in advance and the Customer shall review the operation of the Managed Services promptly in accordance with the agreed acceptance criteria to confirm that the service functions in material conformance with the agreed specifications prior to the Service Commencement Date. If the Managed Services fail in any material respect to conform with the agreed specifications, Proact shall use reasonable endeavours to correct such non-conformance promptly and, on completion, shall notify the Customer of a revised Service Commencement Date. The provisions of this clause shall then apply again.

- 34.2 If the Customer does not cooperate to review the operation of the Managed Services in accordance with clause 34.1 by the Service Commencement Date then the Managed Service shall be deemed to be accepted on the Service Commencement Date.
- 34.3 Proact shall be entitled to begin charging for the Managed Services from the applicable Service Commencement Date.
- 34.4 The parties may agree that Proact shall provide part only of a Managed Service prior to the Service Commencement Date and Proact shall then be entitled to charge for such part(s) of the Managed Service that it provides from the date of delivery.

35. EQUIPMENT

Generally

- 35.1 Equipment may be provided by either party (the 'Provider') to be located at a site owned or controlled by the other (the 'Recipient') as set out in the Contract for use in the provision by Proact of the Managed Services.
- 35.2 Except where specifically provided otherwise, there shall be no transfer of ownership to any equipment.
- 35.3 The Provider of equipment warrants that:
- 35.3.1 it owns the equipment or has permission to provide it for the purposes set out in the Contract; and
- 35.3.2 the equipment is and shall remain fit for the purpose set out in the Contract and shall meet or continue to meet the specifications set out in the Contract.
- 35.4 Where equipment provided by the Provider is to be located at a site owned or controlled by the Recipient, the Recipient shall:
- 35.4.1 notify the owner of the site controlled by the Recipient by registered delivery that the legal title and ownership of the equipment belongs to the Provider or a third party as applicable and that the equipment can never be the object of any security or lien of the site owner;
- 35.4.2 subject to the Recipient's reasonable security requirements, provide the Provider with access to the equipment on reasonable notice and return the equipment to the Provider upon demand; and
- 35.4.3 not purport to provide transfer legal title or ownership of the equipment or give a purchase option or pledge concerning the equipment to any other legal person or entity or otherwise dispose of the equipment for its own account.

Leased Equipment

- 35.5 The Customer acknowledges that the legal ownership of equipment provided or used by Proact in the provision of the Managed Services may rest with (or be transferred to) a Lessor, or that the equipment may be pledged to a Lessor as a security for the payment of all sums that Proact owes to, or may at any time owe to the Lessor, arising from rental and/or financial lease agreements or for whatever reason. The Lessor will not become a party to the Contract. All rights and obligations under the Contract will remain between Proact and the Customer.
- 35.6 The Customer will grant the Lessor access to any such leased equipment for inspection or other reasonable purposes and shall deliver up such equipment to the Lessor on first demand, without the Customer being able to invoke any right of retention, if and as soon as the Lessor demands delivery of the equipment by virtue of Proact's failure to comply with its obligations towards the Lessor. The Customer shall effect delivery of the equipment to the offices of the Lessor or a location designated by the Lessor.
- 35.7 In all circumstances, if the Customer is required to deliver up equipment provided by Proact in the circumstances set out in clause 35.6 then Proact shall indemnify and hold harmless the Customer in respect of all costs, claims, demands, damages, expenses and liabilities incurred by the Customer as a result of complying with the said terms. The provisions of clause 12.3 shall apply to this indemnity mutatis mutandis.
- 35.8 The provisions of these clauses 35.1 to 35.7 may not be revoked by the parties.

Customer Trade-in Equipment

- 35.9 Where the Contract provides that equipment is to be purchased by Proact from the Customer, Proact shall inspect such equipment within a reasonable period from collection or delivery to ensure it is fit for purpose and conforms in all material respects with the agreed specifications. Proact shall not be obliged to pay or give credit for any equipment being purchased from the Customer until the equipment is accepted by Proact.

36. BACKUPS

Tape backups

36.1 If the Managed Services include taking backup copies of the Customer's Data to tape then, unless otherwise agreed, the Customer and Proact will arrange for the regular collection by the Customer of the backup tapes. Proact shall not be responsible for backup tapes once they have left Proact's premises. If Proact arranges for the archiving of backup tapes with a third party at the Customer's request then, in the event of loss of the Customer's Data stored on those backup tapes, Proact shall pass on to the Customer any compensation received from the third party but shall otherwise have no liability to the Customer for such loss of the Customer's Data.

Proact BCP/DR

36.2 Where the services do not include taking backups, Proact shall nonetheless be permitted (although not obligated) to take and to store backups of the Customer's Data in an encrypted format for its own disaster recovery and business continuity purposes.

Return of backups on termination

36.3 If the Managed Services being provided to the Customer include the taking of backups and Proact receives, no later than 30 days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of one or more retained backups, Proact shall deliver the backup(s) to the Customer as soon as reasonably practicable after receipt of such written request. Except in the case of backups stored on tape media, which shall be delivered to the Customer by way of return of the tape media only, backups may, at the Customer's request, be returned either in the format in which they were stored or in such other format as may be reasonably and practically requested by the Customer at that time. In every case, the Customer shall pay Proact's reasonable charges (calculated at its usual daily rates in force at the relevant time) for returning the backups. Once the 30 day request period has expired or, if Proact has delivered to the Customer the requested backup(s) earlier, Proact shall delete from its system or otherwise destroy or dispose of all of the Customer Data in its possession or control.

37. SLAS AND TERMINATION FOR PERSISTENT BREACH

37.1 The Customer acknowledges that the Managed Services are complex IT solutions and cannot be guaranteed to operate uninterrupted or error-free. No warranty shall be implied that the Managed Services will operate uninterrupted or error-free or be fit to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are provided under the Contract.

37.2 If Proact fails to meet the applicable SLAs stated to apply in the Contract in respect of any of the Managed Services, then the Customer may be entitled to Service Credits as stated in the Service Level Agreement as a credit against subsequent Charges. Such Service Credits shall be the Customer's full and exclusive right and remedy, and Proact's only obligation and liability, in respect of the performance and availability of the Managed Services set out in the Contract.

37.3 In the event that the Customer becomes entitled for four consecutive months to the maximum possible Service Credits set out in the SLA then the Customer may, within 90 days of the end of the fourth such month, terminate the Contract upon notice in writing to Proact.

38. PLANNED MAINTENANCE

38.1 Proact may carry out planned maintenance (including maintenance which is deemed to risk disruption to the service) at any time.

38.2 In all cases Proact shall use reasonable endeavours to:

38.2.1 give at least 5 working days' notice to the Customer in advance of performing any planned maintenance (the parties agree that in case of emergencies this may not be possible); and

38.2.2 where the Managed Services provided to the Customer are provided using equipment and/or services dedicated to the sole use of the Customer, to consult with the Customer in respect of any such planned maintenance.

38.3 Proact shall be entitled to conduct operational tasks (such as the taking of backups) without giving prior notice and at any time.

39. FLEXIBILITY AND CHARGES

- 39.1 The Charges for the Managed Services shall be calculated in accordance with the charging metrics set out in the Contract and the peak quantity used during the relevant billing period. If the quantity used is equal to or less than any minimum commitment stated in the Contract then the Charges will be based upon the minimum commitment.
- 39.2 Reports generated from Proact's monitoring software shall be conclusive and binding on Proact and the Customer as to the determination of usage except in the case of manifest error.
- 39.3 The Customer may from time to time request to increase or decrease the quantity of the Managed Services in accordance with the process agreed between the parties for this purpose and Proact shall have discretion to accept or decline any such request. If the Contract sets out a minimum commitment for a Managed Service then the Customer shall not be permitted to reduce the quantity of that Managed Service below the stated minimum commitment.
- 39.4 Except where prohibited by law, Proact shall be entitled from time to time to increase the Charges in respect of any element of a Managed Service in respect of which a supplier to Proact has increased its charges to Proact by more than 10%. Such increase in the Charges shall not exceed the same percentage by which Proact's costs have increased and Proact shall give at least 30 days' notice in writing of any such proposed increase and shall provide reasonable evidence to the Customer of the increase in its costs.

40. NON-SOLICITATION OF PERSONNEL

During the term of the Contract and for a period of twelve months after its termination neither party shall, without the prior written consent of the other, solicit the employment of any person who is employed by the other party in connection with the Contract or any part thereof, provided that nothing in this clause shall prohibit either party from recruiting any such person who responds to a public or trade advertisement.

41. PAYMENT FOR DEDICATED EQUIPMENT ON EARLY TERMINATION

- 41.1 If, prior to the end of the Minimum Service Term, the Customer terminates a Managed Service which includes the provision by Proact of equipment stated in the Contract to be used solely for the Customer (regardless of whether or not such termination is due to Proact's breach of contract), then:
- 41.1.1 if such equipment is owned by Proact, the Customer shall purchase the equipment for its Fair Market Value; or
- 41.1.2 if such equipment is leased by Proact, the Customer shall, at its election, pay the Outstanding Lease Costs for such equipment as at the date of termination, or purchase the equipment for its Fair Market Value.
- 41.2 The sum due pursuant to clause 41.1 shall be payable in equal monthly instalments over the remaining unexpired term of the Minimum Service Term from the date of termination. Proact shall provide monthly invoices and the Customer shall pay the same within the Payment Term.
- 41.3 If the Customer purchases equipment pursuant to clause 41.1.1 or 41.1.2 then the Customer shall be entitled to use the equipment as set out in the Contract subject to payment of the monthly instalments of the purchase price as set out in clause 41.2 and ownership of such equipment shall transfer to the Customer upon payment of the final monthly instalment.
- 41.4 If the Customer elects pursuant to clause 41.1.2 not to purchase equipment, then subject to payment of the monthly instalments of the Outstanding Lease Costs as set out in clause 41.2, Proact shall comply with all obligations it owes to the Lessor of the equipment including payment of the sums due from time to time under the lease during the Minimum Service Term and the Customer shall be permitted to make use of the equipment during the Minimum Service Term as set out in the Contract, but thereafter Proact shall be entitled to retake, sell or otherwise deal with and/or dispose of all or any part of the said equipment and to terminate the Contract.

42. AUDIT

- 42.1 Proact shall, not more than once per calendar year (except where this is required to fulfil a legally enforceable request by a regulatory body), allow the Customer or a third party

- appointed by the Customer access to its premises, personnel and relevant records as may be reasonably required in order to:
- 42.1.1 verify the accuracy of the Charges; or
 - 42.1.2 verify that the Contract is being performed in accordance with its terms.
- 42.2 Proact shall be permitted at any time to monitor the Customer's IT environment manually or by way of automated scanning and Customer shall, where the relevant license terms of a Third Party Product require, allow Proact and/or the manufacturer of such Third Party Products access to its systems, premises, personnel and relevant records in each case as may be reasonably required in order to:
- 42.2.1 verify Customer's compliance with the license terms of such Third Party Products; and
 - 42.2.2 verify its compliance with clause 5.
- 42.3 If either party wishes to exercise its right to audit pursuant to this clause 42 it shall:
- 42.3.1 comply with the other's reasonable security and confidentiality requirements in connection with the audit;
 - 42.3.2 provide at least 30 days' notice in writing of its intention to conduct the audit where possible to do so; and
 - 42.3.3 take all reasonable steps to ensure the audit is not unreasonably disruptive to the other and shall not delay the performance of the Contract.
- 42.4 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 42, unless an audit identifies a material breach of the terms of the Contract by one party, in which case that party shall bear all reasonable costs incurred in the course of the relevant audit.

PUBLIC CLOUD SERVICES

If the Contract includes the provision of Public Cloud Services then the following clause 43 shall apply:

43. PUBLIC CLOUD SERVICES

- 43.1 The Charges for the Public Cloud Service shall be determined by the Public Cloud Service Provider based on consumption and its current price list from time to time. The Customer therefore acknowledges that such Charges are variable from month to month and that any Charges quoted by Proact in the Contract shall only be an estimate. The monthly Charges payable by the Customer to Proact will be based upon a conversion at the date of invoice from US dollars to the applicable local currency.
- 43.2 Without prejudice to any rights that the parties have previously accrued under the Contract or any of the remedies, obligations or liabilities in the Contract, Proact may terminate any elements of the Managed Services dependent on a Public Cloud Service, or may terminate the entire Contract upon not less than 28 days' notice in the event that the Public Cloud Service Provider should terminate Proact's right to deliver services built on such Public Cloud Service.
- 43.3 Notwithstanding the provisions of clause 6 of these Standard Terms and Conditions, the Customer acknowledges and agrees that if any element of the Managed Services utilise a Public Cloud Service then the applicable Public Cloud Service Provider shall be entitled to access and process (including processing outside the European Economic Area) the Customer Data and to capture, retain and use network or usage information relating to the Customer's use of the Managed Services. The Customer warrants and represents that it has the appropriate authority to permit such access by Public Service Provider on which the Managed Services are built and shall indemnify Proact in the event of any claim or liability arising as a result of the Customer's failure to comply with this provision.
- 43.4 Subject to clause 11.1 of these Standard Terms and Conditions and notwithstanding the other provisions of clause 11 of these Standard Terms and Conditions, Proact's maximum aggregate liability (under any theory of liability) arising out of or in connection with the delivery of any element of the Managed Services which utilise a Public Cloud Service shall be limited to the Charges paid by the Customer to Proact in respect of such Managed Services in the 6 months prior to the liability arising. Proact will not be liable to the Customer under any theory of liability for unavailability of any or all of the Public Cloud Service.
- 43.5 The Customer may have access as part of a Public Cloud Service to a self-service portal or similar tool. The Customer shall be solely responsible for its use of such tools and for any

additional charges incurred as a consequence of provisioning Public Cloud Service Provider resources or services through such tools. Proact shall be entitled to charge the Customer for any additional Public Cloud Service Provider resources or services provisioned by the Customer (including where such services do not form part of the Public Cloud Services intended to be provided by Proact) but shall have no liability to the Customer in respect of such services where the provisioning thereof is not part of the services provided by Proact.

EQUIPMENT PROVIDED UNDER A FINANCE AGREEMENT

If the Contract includes goods provided under the terms of a Finance Agreement then the following clauses 44 to 46 inclusive shall apply:

44. INSURANCE AND RISK

- 44.1 If the goods are to be kept at the Customer's premises, the Customer shall at its own expense insure the goods and Proact's personnel against loss or damage to property and persons within its premises with a well reputed insurance company.
- 44.2 Upon request by Proact, the Customer shall provide Proact with proof of such insurance cover.
- 44.3 Upon request by Proact, the Customer shall immediately transfer all rights to compensation for damage to the goods or any Proact personnel, to Proact, or, at Proact's sole discretion and instructions, pursue such claim against the insurance company on Proact's behalf at the Customer's risk and expense.
- 44.4 The Customer assumes and will bear the entire risk of loss and damage to the goods from any cause whatsoever.

45. LIABILITY

Subject to clause 11.1 of these Standard Terms and Conditions and notwithstanding clauses 11.5 and 11.6, Proact's liability under any theory of liability for the provision of goods under a Finance Agreement shall, under all circumstances, be limited to the total amount actually paid by the Customer under the Finance Agreement.

46. TERMINATION

In the event that the Contract is terminated by Proact in accordance with clause 13, in addition to any fees due under the Finance Agreement and any other amounts which are due and payable, Proact will be entitled to damages equal to the Fair Market Value of the equipment supplied under the Finance Agreement.

COUNTRY SPECIFIC PROVISIONS

47. COUNTRY SPECIFIC PROVISIONS

The following provisions of these Standard Terms and Conditions shall have effect only if Proact or the Customer (as applicable) is legally domiciled in the country set out in the provision. To the extent only of any contradiction between the provisions in clauses 1 to 42 and the following clauses, the following clauses shall have priority.

- 47.1 If Proact is legally domiciled in the **United Kingdom** and the Customer is incorporated in the European Union (other than in the United Kingdom) the following provisions shall apply:
 - 47.1.1 If during the Term the United Kingdom ceases to be a member of the European Union and the transfer of Personal Data for processing in the United Kingdom is not otherwise legally permitted then the parties agree to enter into a data processing agreement including the Standard Contractual Clauses (as defined in the GDPR) to be effective from that date.
 - 47.1.2 The parties agree that if clause 47.1.1 applies then:
 - 47.1.2.1 they shall complete all relevant details in the Standard Contractual Clauses; and
 - 47.1.2.2 they will cooperate to register with or procure approval from (as the case may be) any supervisory authority in any member state of the European Union of the Standard Contractual Clauses where the same is required and, without limitation, that they will provide additional information about

the transfer referred to in the Standard Contractual Clauses where required or requested to do so by any such supervisory authority.

- 47.2 If Proact is legally domiciled in the **Netherlands** the following provisions shall apply:
- 47.2.1 The parties accept the exclusive jurisdiction of the courts of Amsterdam.
 - 47.2.2 Proact shall have the right, once per calendar year, to adjust the Charges in accordance with the published CBS index 'indexcijfer Cao-Ionen per maand inclusief bijzondere beloningen groep 7074 zakelijke dienstverlening'.
 - 47.2.3 The parties exclude the clauses 7:226 and 7:227 of the Dutch Civil Code.
- 47.3 If the Customer is legally domiciled in **Spain** the following provisions shall apply:
- 47.3.1 Proact shall:
 - 47.3.1.1 apply to the Customer Data the data security measures contained within article 79 to 114 of Spanish Royal Decree 1720/2007;
 - 47.3.1.2 not share the Customer Data except in case of sub-contracting services strictly under the terms established by article 21 of Spanish Royal Decree 1720/2007; and
 - 47.3.1.3 upon completion of the Contract, return all Customer Data to the Customer except where the retention of such data is permitted by applicable law.
- 47.4 Proact is legally domiciled in **Germany** the following provisions shall apply:
- 47.4.1 For all goods and/or services which are the subject matter of an acceptance the following shall apply:
 - 47.4.1.1 any warranty claims shall be limited to a period of 1 year upon delivery; and
 - 47.4.1.2 the right to demand damages for material defects shall be excluded.
 - 47.4.2 The Customer accepts that maintenance of the goods and/or services will be required from time to time and that Proact is not responsible for non-availability of the goods and/or services caused by such maintenance, or causes beyond their immediate control and out of the specific scope set out in the Contract. Proact shall not be liable for such non-availability.
 - 47.4.3 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of German Data Protection Law.
 - 47.4.4 Clauses 11.1 and 11.3 shall be deleted in their entirety and shall be replaced with the following new clauses:
 - 11.1. Proact is subject to unlimited liability for any damages caused by grossly negligent or willful misconduct of Proact, its legal representatives or agents, as well as for damages resulting from any wrongful harm to life, limb or health.*
 - 11.2. Proact also assumes liability for any damages caused by ordinary negligence if, and solely to the extent, Proact breaches any material obligation under the Contract. Material obligations under the Contract are obligations which are essential for the achievement of the purpose of the Contract and on which the Customer may reasonably rely. In such cases, Proact's liability shall be limited to damages reasonably foreseeable at the time the parties entered into the Contract.*
 - 11.3. The foregoing limitations of liability shall also inure to the benefit of Proact's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or tort.*
 - 11.4. Any liability for damages under the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected hereby.*
 - 11.5. Any liability of Proact for lost data shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Customer to back-up data on a regular basis according to the state of the art shall remain unaffected thereby.*

11.6. Unless provided otherwise in the Contract, any and all claims of Customer against Proact shall be subject to a limitation period of one year from the date of accrual and the date on which Customer discovered or, absent recklessness on the part of Customer, would have discovered the circumstances giving rise to the claim, except for claims defined in subsections 11.1, 11.2 or 11.4 above.

- 47.5 If Proact is legally domiciled in **Sweden** the following provisions shall apply:
- 47.5.1 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of the Swedish Personal Data Act (Sw. Personuppgiftslag (1998:204)).
- 47.6 If Proact is legally domiciled in the **Czech Republic** the following provisions shall apply:
- 47.6.1 The parties agree to exclude the applicability of the following sections of the Act. Np. 89/2012 Coll., the Civil Code: section 1751 para. 2 (knock-out rule for battle of forms rather than no contract), sections 1765 and 1766 (so that both parties shall bear the risk of change in circumstances and none of them is entitled to invoke potential change of circumstances, 1799 and 1800 (rules applicable for boilerplate contracts), 1919 -1925 (liability for defects) and 2002 (withdrawal from a contract in case of a material breach).
- 47.7 If Proact is legally domiciled in **Norway** the following provisions shall apply:
- 47.7.1 In respect of data processed by Proact in accordance with the terms of the Contract, Proact shall act as Data Processor and the Customer shall act as Data Controller within the meaning of the Personal Data Act.
- 47.7.2 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of Norwegian Data Protection Law.
- 47.7.3 Proact shall comply fully with the security requirements of section 13 of the Personal Data Act.
- 47.8 If Proact is legally domiciled in **Belgium** the following provisions shall apply:
- 47.8.1 One original copy of the Contract shall be executed for each party to the Contract in accordance with Belgium law governing the execution of contracts.
- 47.8.2 An additional clause 36.4.4 shall be included: *"notify the pledgee of a registered pledge on business assets of the Recipient by registered delivery that the legal title and ownership of the equipment belonging to the Provider and can never be the object of any security of the pledgee"*.
- 47.9 If Proact is legally domiciled in **Scotland** the following provisions shall apply:
- 47.9.1 The Contract shall be governed by and construed according to the laws of England and Wales and, subject to clause 14, the Customer and Proact accept the exclusive jurisdiction of the courts of England and Wales.
- 47.10 If Proact is legally domiciled in **Germany** the following provisions shall apply:
- 47.10.1 The payment period defined in clause 1.1 shall be 30 days upon receipt of the invoice, unless otherwise agreed in individual cases. If the customer does not pay the owed remuneration or does not pay in full within the payment period, Proact may suspend its deliveries and/or services to the customer without requiring the setting of a time limit in accordance with clause 4.10. Proact reserves the right to suspend deliveries and/or services to the customer.
- 47.10.2 For the term "daily rate" referred to in clauses 4.2, 4.4, 29.3 and 36.3 the next smallest unit such as hours and minutes shall be applied considering the respective definition in each Contract. The smallest unit is 15 minutes.
- 47.10.3 For all delivered goods and/or services for which a warranty is provided for by law and which have been accepted, all warranty claims are limited to a period of one year after delivery.
- 47.10.4 Clause 4.9 shall be replaced by the following provision:

- 47.10.5 The customer shall only be entitled to assert a right of retention or right of set-off if the rights or claims asserted by the customer for this purpose have been legally established or are undisputed.
- 47.10.6 With regard to clause 6 it is clarified that the parties will conclude further agreements (e. g. agreements on order data processing) to the extent that this is necessary for the legally compliant processing of personal data in accordance with the applicable data protection provisions.
- 47.10.7 Clauses 11.1 and 11.3 shall be replaced by the following new clause 11.1. References in the Contract to clauses 11.1 and 11.3 are to be understood as references to the following provisions:
- 11.1.1 Irrespective of other provisions of the Contract, Proact shall be subject to an unlimited liability for all damages caused by it and its legal representatives, employees and/or other vicarious agents through gross negligence or wilful misconduct, for damages caused by culpable injury to life, limb or health.
 - 11.1.2 Without prejudice to the liability under clause 11.1.1, Proact shall be liable for all culpably caused damages if and only to the extent that Proact violates essential contractual obligations. Essential contractual obligations are those which are essential for achieving the purpose of an agreement and on which the customer may regularly rely. In such cases, Proact's liability is limited to damages that are typically foreseeable at the time of conclusion of the Contract. Proact's entire liability for typically foreseeable damages is limited to a total amount of EUR 10,000,000 (ten million euros).
 - 11.1.3 Without prejudice to the liability under clauses 11.1.1 and 11.1.2, Proact's liability for the loss of data is limited to an amount no greater than the expense incurred for restoration of the data if the Customer has regularly and appropriately applied state of the art data backups and has ensured that lost data can be restored with reasonable effort.
 - 11.1.4 Any further liability of Proact shall be excluded. In particular, Proact shall not be liable for initial defects of leased goods, unless the requirements of clauses and 11.1.2 are met.
 - 11.1.5 The exclusions and limitations of liability in this clause 11 shall not affect any liability for damages in cases of mandatory statutory liability, in particular pursuant to the German Product Liability Act (Produkthaftungsgesetz) or in the event of the assumption of a guarantee.
 - 11.1.6 Unless otherwise stipulated in the Contract, all claims of the Customer against Proact shall be subject to a limitation period of one year, calculated from the start of the statutory limitation period. This shall not apply to liability claims according to clauses 11.1.1, 11.1.2 and 11.5.
 - 11.1.7 The limitations of liability shall also apply in favour of the legal representatives, employees and other vicarious agents of Proact, as well as, in the case of liability for culpa in contrahendo and tort.
- 47.10.8 Clause 23.1.3 shall be replaced by the following clause:
- “ Proact warrants that on delivery the goods shall be suitable for the purposes expressly agreed in the Contract. Except as expressly provided otherwise in the Contract, Proact makes no express or implied warranties as to the fitness of the goods for a particular purpose. The contractually agreed quality of the goods does not include representations of the goods in public statements (especially advertising) or statements made by Proact's employees, unless expressly confirmed in writing by the Proact management; the same applies to possible guarantee declarations prior to conclusion of the Contract by Proact's employees.”
- 47.10.9 Clause 23.2.4 shall be replaced by the following provision:
[Subject to clause 23.3]:

- 23.2.4.1 If the delivered goods are defective, Proact may initially choose whether subsequent performance is effected by remedying the defect (remedy) or by delivery of a defect-free item (replacement delivery). The right to refuse subsequent performance under statutory law shall thereby remain unaffected.
 - 23.2.4.2 Proact shall be entitled to make the subsequent performance dependent on the Customer paying the due remuneration. However, the Customer is entitled to retain a proportion of the Charges which adequately corresponds with the defect.
 - 23.2.4.3 The Customer shall give Proact the time and opportunity required for subsequent performance owed and shall in particular hand over the rejected goods for inspection purposes to Proact. In the event of a replacement delivery, the Customer shall return the defective goods to Proact in accordance with the provisions of statutory law. Subsequent performance does not include either the removal of the defective goods or the re-installation if Proact was not originally obliged to install them.
 - 23.2.4.4 The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (excluding dismantling and installation costs), shall be borne by Proact if there is actually a defect. Otherwise, Proact shall be entitled to claim a reimbursement of the costs incurred as a result of the unjustified request for rectification of defects (in particular inspection and transport costs) from the Customer, unless the lack of defects was not recognisable for the Customer.
 - 23.2.4.5 If the subsequent performance has failed or if a reasonable grace period to be set by the Customer for subsequent performance has expired unsuccessfully or is unnecessary in accordance with statutory provisions, the Customer may withdraw from the Contract or reduce the Charges. In the case of an insignificant defect, however, there is no right of withdrawal.
 - 23.2.4.6 The Customer's claims for damages or reimbursement of futile expenses shall only exist in the event of defects in accordance with clause 11 and shall be excluded in all other respects.
- 47.11 If Proact is legally domiciled in the **United States of America** the following provisions shall apply:
- 47.11.1 The Contract shall in all respects be interpreted under, and governed by, the laws of the State of Illinois including as to validity, interpretation and effect, without giving effect to the State of Illinois' conflicts of laws principles.
 - 47.11.2 Subject to clause 14, the Customer and Proact accept the exclusive jurisdiction of the state and federal courts located in the State of Illinois, and each party irrevocably accepts and submits to the sole and exclusive personal jurisdiction of such courts, generally and unconditionally with respect to any action, suit or proceeding brought by or against it by the other party, and waives any objection to the venue or jurisdiction of those courts. The terms of this clause shall apply regardless of the country of origin of any dispute. Nothing herein shall be deemed to limit a party's right to remove a dispute from a state court to a federal court with appropriate jurisdiction.
 - 47.11.3 The parties agree that, to the extent not expressly prohibited by law, the United Nations Convention on Contracts for the International Sale of Goods 1980, and all international and domestic legislation implementing such Convention, shall not apply to the Contract.
- 47.12 If Proact is legally domiciled in **Estonia** the following provisions shall apply:
- 47.12.1 In clause 4.7, the text "Euro Interbank Offered Rate (Euribor) 12 month lending rate" shall be replaced with "*last interest rate applicable to the main refinancing operations of the European Central Bank before 1 January or 1 July of each year*".

- 47.12.2 Clause 16.3 shall be amended with *“In such cases, the parties follow the document delivery rules set out in the Estonian Code of Civil Procedure or in case of arbitration, the applicable rules of the court of arbitration”*.
- 47.13 If both Proact and the Customer are legally domiciled in **Estonia** then for the purposes of clause 21.4, the parties agree to accept digital signatures as being equivalent to handwritten signatures.