



PROACT

Managed Cloud Services Terms and Conditions

Proact IT Group AB – v 2.6

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THESE TERMS AND CONDITIONS (the 'Managed Cloud Services Terms and Conditions') together with the terms set out in the Service Schedule into which they are incorporated shall set out the basis on which the Service Provider shall provide Managed Cloud Services to the Customer.

GENERAL TERMS

1. INTERPRETATIONS

In these Managed Cloud Services Terms and Conditions:

- 1.1 'Charges' means the rates and charges set out herein and in the Service Schedule which are to be paid by the Customer to the Service Provider;
- 1.2 'Charging Metric' means the basis for calculation of an element of the Charges as set out in the Service Schedule;
- 1.3 'Confidential Information' means (i) the existence and terms of the Service Schedule; (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 any Managed Cloud Services; 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 these Managed Cloud Services Terms and Conditions); (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.
- 1.4 'Customer' means the legal entity set out in the Service Schedule and to whom the Managed Cloud Services set out therein are to be provided.
- 1.5 'Customer('s) Data' means the data and information provided by the Customer in connection with the Managed Cloud Services, excluding operating systems and application configuration files;
- 1.6 'Customer's Representative' means an employee of or worker for the Customer appointed from time to time to represent the Customer (and details of whom are set out in the Service Operations Manual) who has authority to make decisions as to the operation of the Managed Cloud Services.
- 1.7 'Data Protection Legislation' means the EU Data Protection Directive 95/46/EC (as amended, extended or re-enacted from time to time) together with all other applicable law, regulations and codes of conduct in the relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by any relevant regulator;
- 1.8 'Equipment' means any equipment used in the provision of the Managed Cloud Services;
- 1.9 'Fair Market Value' means the Service Provider's reasonable valuation of Equipment, calculated as follows: if calculated during the Minimum Service Term, by taking the price at which the Service Provider certifies it would have sold the Equipment, plus associated maintenance and support services, to the Customer on the date it was initially deployed, if the Customer had purchased the same from the Service Provider on a capital expenditure basis, and as thereafter depreciated 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 if calculated at or after the end of the Minimum Service Term, the sum that could be expected to be received for the sale of Equipment in a sale between willing market participants at arms-length, 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; together in each case with all costs and expenses which the Service Provider would reasonably incur in order to effect a transfer of title of the Equipment to the Customer;
- 1.10 'Intellectual Property Rights' means 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 or any country in the European Economic Area;
- 1.11 'Lessor' means a third party who provides Equipment to one of the Parties for use in the Managed Cloud Services by that Party;
- 1.12 'Longstop Date' means a date (if any is agreed between the parties) set out in the Service Schedule by which the Parties agree the implementation of the Managed Cloud Services must be completed;

- 1.13 'Managed Cloud Service(s)' means the services to be provided by the Service Provider to the Customer as set out in the Service Schedule;
- 1.14 'Material Breach' means a breach (including an anticipatory breach) of the Service Schedule or these Managed Cloud Services Terms and Conditions that has a serious effect;
- 1.15 'Minimum Commitment' means the minimum purchase commitment for Managed Cloud Services entered into by the Customer as set out in the Service Schedule;
- 1.16 'Minimum Service Term' means the minimum period of delivery of the Managed Cloud Services from the Service Commencement Date as set out in the Service Schedule;
- 1.17 'Outstanding Lease Costs' means the aggregate sum due from time to time from the Service Provider to a Lessor in respect of the lease by the Service Provider of any Equipment to the end of the then current term of the lease;
- 1.18 'Party' means, respectively, either the Customer or the Service Provider;
- 1.19 'Parties' means collectively the Customer and the Service Provider;
- 1.20 'Proact Group' means 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
- 1.21 'Project Plan' means a document prepared by the Parties during the implementation of the Managed Cloud Services set out in the Service Schedule and which contains the detailed tasks required to be performed by each Party in order to complete implementation;
- 1.22 'SCC Mediation Rules' means the mediation rules set out from time to time by the Arbitration Institute of the Stockholm Chamber of Commerce.
- 1.23 'Service Commencement Date' means the date on which all Managed Cloud Services set out in the Service Schedule have been, or are deemed to have been, accepted and the Minimum Service Term commences in accordance with clause 4.
- 1.24 'Service Credits' means the sums (if any) which are specified in the Service Schedule and which shall be credited to the account of the Customer by the Service Provider in the event that the Service Provider fails to meet the SLAs in respect of the services provided thereunder;
- 1.25 'Service Operations Manual' means a document agreed between the parties during the implementation of the Managed Cloud Services and setting out the standard operating procedures to be used in the day to day operation of the Managed Cloud Services
- 1.26 'Service Provider' means the subsidiary legal entity of the Proact Group which is set out in the Service Schedule and which is to provide the Managed Cloud Services set out therein to the Customer;
- 1.27 'Service Provider's Representative' means an employee of or worker for the Service Provider appointed from time to time to represent the Service Provider (and details of whom are set out in the Service Operations Manual) who has authority to make decisions as to the operation of the Managed Cloud Services.
- 1.28 'Service Schedule' means a duly executed agreement setting out Managed Cloud Services which are to be provided by the Service Provider to the Customer, and the Charges for those services;
- 1.29 'Service Level Agreement' or 'SLA' means an agreed level of service (if any) set out in the Service Schedule against which the Service Provider's performance will be measured;
- 1.30 'Term' means the term of the Service Schedule, which shall begin on the date the Service Schedule is countersigned and shall continue until terminated upon a minimum of 90 days' notice in writing expiring on or after the end of the Minimum Service Term.
- 1.31 'Third Party Product' means hardware or software provided or used in connection with the Managed Cloud Services which is not manufactured or developed by the Service Provider.
- 1.32 the singular includes the plural and vice versa;
- 1.33 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".
- 1.34 the masculine includes the feminine and the neuter;
- 1.35 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.36 headings are included for ease of reference only and shall not affect the interpretation or construction of these Managed Cloud Services Terms and Conditions;
- 1.37 references to "clauses" are, unless otherwise provided, references to the clauses of these Managed Cloud Services Terms and Conditions;
- 1.38 terms or expressions which are capitalised but which do not have an interpretation herein or in the Service Schedule shall be interpreted in accordance with the common interpretation within the information technology services industry where appropriate. Otherwise they shall be interpreted in accordance with the English dictionary meaning.

2. PRECEDENCE

In the event and to the extent only of any conflict or inconsistency in the provisions of the clauses of these Managed Cloud Services Terms and Conditions and the provisions of the Service Schedule the terms of the Service Schedule shall prevail.

3. SERVICE SCOPE

The Service Provider shall provide the Managed Cloud Services set out in the Service Schedule for the Term. Subject to clause 2 these Managed Cloud Services Terms and Conditions shall apply to and govern the provision of the Managed Cloud Services to the exclusion of all other terms including any standard terms and conditions of purchase utilised by the Customer. The Customer shall be solely responsible for ensuring the scope of the Managed Cloud Services set out in the Service Schedule adequately reflects the services which the Customer wishes to procure and that any assumptions stated therein are true and any estimates are appropriate. The Customer shall be solely responsible for carrying out any prerequisites set out in the Service Schedule.

4. IMPLEMENTATION & ACCEPTANCE

- 4.1 Following the agreement of the Service Schedule the Parties may agree a Project Plan for the implementation of the Managed Cloud Services set out therein. Each Party shall use its reasonable endeavours (including providing adequate resources) in order to complete the actions required in respect of each stage of an agreed Project Plan by the dates specified in that Project Plan, but, for the avoidance of doubt, time for performance shall not be of the essence of these Managed Cloud Services Terms and Conditions.
- 4.2 In the event that either Party fails to fulfil an obligation by a date specified in a Project Plan for such fulfilment, then the Parties shall negotiate (in good faith) a reasonable extension of time and the Party responsible for the delay shall make reasonable arrangements to obtain such additional resources as are necessary to fulfil the said obligation as early as practicable and shall reimburse those reasonable and direct costs of the other Party which are both reasonably and necessarily incurred as a direct result of such delay.
- 4.3 In the event that a Service Commencement Date is delayed beyond the Longstop Date (if any) specified in the Service Schedule:
- 4.3.1 as the sole result of the failure of the Service Provider to comply with the terms of the Service Schedule, then the Customer shall be entitled to treat the failure to meet the Longstop Date as Material Breach.
- 4.3.2 as the sole result of the failure of the Customer to comply with the terms of the Service Schedule (including, without limitation, the failure to comply with any prerequisites set out therein) the Service Provider shall be entitled to commence charging in full for the Managed Cloud Services provided pursuant to that Service Schedule from the Longstop Date.
- 4.4 When the Service Provider considers that some or all of the Managed Cloud Services set out in the Service Schedule are ready for use it shall so notify the Customer. Within fourteen days of such notification the Customer shall review the operation of the Managed Cloud Services in accordance with the agreed acceptance criteria to confirm that they function in material conformance with the agreed specifications. If the Managed Cloud Services fail in any material respect to conform with the agreed specifications, the Customer shall give the Service Provider a detailed description of any such non-conformance in writing, within the fourteen day review period and the Service Provider shall use reasonable commercial endeavours to correct such non-conformance within a reasonable time and, on completion, shall re-submit the Managed Cloud Services to the Customer. The provisions of this clause shall then apply again.
- 4.5 If the Customer does not provide any written comments in the fourteen day period described above, or if the Managed Cloud Services are agreed to conform to the relevant specification, then the Managed Cloud Services shall be deemed accepted and the Service Provider shall be entitled to begin charging for them.
- 4.6 When all of the Managed Cloud Services to be provided under the Service Schedule are or are deemed to have been accepted the Minimum Service Term for the Managed Cloud Services shall commence.

5. EQUIPMENT

Generally

- 5.1 Either or both Parties may each provide Equipment, as set out in the Service Schedule for use in the provision by the Service Provider of the Managed Cloud Services.
- 5.2 Except where specifically provided otherwise, there shall be no transfer of ownership to any Equipment, whether or not it is provided by one Party (the 'Provider') to be located at a site owned or controlled by the other (the 'Recipient'), ownership shall always remain with the Provider.
- 5.3 The Provider of the Equipment warrants that:
- 5.3.1 it owns the Equipment or has permission to provide it for the purposes set out in the Service Schedule; and

- 5.3.2 the Equipment is and shall during the Term remain fit for the purpose set out in the Service Schedule and shall meet or continue to meet the specifications (if any) set out in the Service Schedule.
- 5.4 Where Equipment provided by the Provider is to be located at a site owned or controlled by the Recipient, the Recipient shall:
- 5.4.1 not relocate such Equipment without the written permission of the Provider (and if relevant, any Lessor);
- 5.4.2 keep or procure that the Equipment is kept in good repair and condition (fair wear and tear excepted) and is insured against all usual risks;
- 5.4.3 ensure that such Equipment is duly tagged or marked as being provided by and belonging to the Provider (and that such identifying marks are not obscured or defaced), and kept separate from equipment belonging to the Recipient so that such Equipment remains readily identifiable as the property of the Provider;
- 5.4.4 notify the owner of the site controlled by the Recipient by registered delivery that the legal title and ownership of the Equipment belong to the Provider and can never be the object of any security of the lessor;
- 5.4.5 refrain from making alterations or additions or attempting repairs to the Equipment without the prior consent of the Provider;
- 5.4.6 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
- 5.4.7 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.

Lessor Owned Equipment

- 5.5 The Parties recognise and, in so far as necessary, agree that the legal ownership of Equipment provided by the other Party 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 the Provider 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 will remain in place between the Provider and the Recipient.
- 5.6 Despite the existence of the Service Schedule, Recipient will grant the Lessor access to the Equipment for inspection or other reasonable purposes and shall deliver up such Equipment to the Lessor on first demand, without Recipient being able to invoke any right of retention, if and as soon as the Lessor demands delivery of the Equipment by virtue of Provider's failure to comply with its obligations towards the Lessor. The Recipient shall effect delivery of the Equipment to the offices of the Lessor or a location designated by this Lessor.
- 5.7 If, the Customer is required to deliver up Equipment provided by the Service Provider in the circumstances set out in clause 5.6 then the Customer shall be entitled, upon written notice to the Service Provider and to the Lessor within 14 days to purchase the Equipment for a reasonable price (as determined by the Lessor at its sole discretion). If no such notice is given within 14 days after offer, then the offer is revoked.
- 5.8 In all circumstances, if a Recipient is required to deliver up Equipment provided by the Provider in the circumstances set out in clause 5.6 (and whether or not the circumstances in clause 5.7 also apply) then the Provider shall indemnify and hold harmless the Recipient in respect of all costs, claims, demands, damages, expenses and liabilities incurred by the Recipient as a result of complying with the said terms.
- 5.9 The provisions of these clauses 5.5.to 5.9 may not be revoked by the Parties.

Customer Trade-in Equipment

- 5.10 Where Equipment is to be traded in to the Service Provider, as set out in the Service Schedule, the Service Provider shall inspect the same within a reasonable period of collection or delivery to ensure it is fit for purpose and conforms in all material respects with the agreed specifications. The Service Provider shall give the Customer a detailed description of any non-conformance in writing, and the Customer shall have a reasonable period thereafter to correct such non-conformance. The Service Provider shall not be obliged to pay or give credit for any Equipment being traded in until the Equipment passes the Service Provider's inspection and is accepted by the Service Provider.

6. CUSTOMER'S DATA

- 6.1 The Service Provider and the Customer shall each take reasonable precautions (having regard to the nature of their respective obligations) to preserve the integrity of the Customer's Data and to prevent any corruption or loss of the Customer's Data but, except where back-up services are specifically provided as part of the Managed Cloud Services provided to the Customer, the Service Provider shall not be required to maintain back-up copies of the Customer's Data.
- 6.2 If the Managed Cloud Services include taking back-up copies of the Customer's Data to tape then, unless otherwise agreed, the Customer and the Service Provider will arrange for the

regular collection by the Customer of the back-up tapes. The Service Provider shall not be responsible for back-up tapes once they have left the Service Provider's premises. If the Service Provider arranges for the archiving of back-up tapes with a third party at the Customer's request then, in the event of loss of the Customer's Data stored on those back-up tapes, the Service Provider 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.

- 6.3 Where the Managed Cloud Services do not include taking backups to tape, the Service Provider shall nonetheless be permitted (although not obligated) to take tape backups of the Customer's data for its own disaster recovery and business continuity purposes and to store these, in encrypted format, either on or off site.
- 6.4 The Service Provider warrants to the Customer that in processing the Customer's data and discharging its obligations under these Managed Cloud Services Terms and Conditions it shall comply with all applicable Data Protection Legislation. Without prejudice to the generality of the foregoing:
- 6.4.1 it shall process the Customer's Data only in accordance with the written instructions of the Customer and to the extent, and in such a manner, as is reasonably necessary to supply the Managed Cloud Services in accordance with the Service Schedule or as is required by any applicable law and shall not otherwise process the Customer's Data (including any personal data contained therein) for its own purposes;
 - 6.4.2 it shall implement reasonable technical and organisational measures to protect the Customer's Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure, and upon the request of the Customer, shall provide such data and information as the Customer may reasonably require to satisfy the Customer that these technical and organisational measures are implemented;
 - 6.4.3 it shall not (and shall ensure that its personnel do not) publish, disclose or divulge any Customer's Data to any third Party, nor allow any third Party to process Customer's Data on the Service Provider's behalf without the prior written consent of the Customer;
 - 6.4.4 it shall not transfer Customer's Data outside the European Economic Area without the prior written consent of the Customer and any such transfer shall comply with all applicable Data Protection Legislation; and
 - 6.4.5 it shall use reasonable commercial endeavours to assist the Customer with any request that the Customer receives from any subject of the Customer Data for access to that Customer Data processed by the Service Provider under the Service Schedule.
- 6.5 The Customer grants the Service Provider a non-exclusive right to access Customer's Data for the sole purpose of complying with the Supplier's obligations under these Managed Cloud Services Terms and Conditions and the terms set out in the Service Schedule.

7. SERVICE PROVIDER OBLIGATIONS

- 7.1 The Service Provider warrants and represents that:
- 7.1.1 the Managed Cloud Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with appropriate skill, care and diligence and in accordance with good industry practice; and
 - 7.1.2 it shall perform the Managed Cloud Services materially in accordance with the specifications and terms set out in the Service Schedule.
- 7.2 Except as expressly stated in these Managed Cloud Services Terms and Conditions, 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. Without limitation to the foregoing, the Service Provider specifically denies any implied or express representation that:
- 7.2.1 the Managed Cloud Services will be fit to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Service Schedule as being compatible with the Managed Cloud Services; or
 - 7.2.2 the Managed Cloud Services will operate uninterrupted or error-free.
- 7.3 Where Managed Cloud Services are provided to the Customer using any Third Party Products the Service Provider 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 thereof is provided for the benefit of the Customer. No warranty shall be provided by the Service Provider 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.
- 7.4 The Service Provider shall use reasonable commercial endeavours to minimise the risk of disruption to the Managed Cloud Services, but the Customer acknowledges that, where

Managed Cloud Services are delivered using shared infrastructure, the Service Provider shall be entitled to conduct operational tasks (such as the taking of backups) at any time and any planned maintenance (including maintenance which is deemed to risk disruption to the service) will be carried out during the published maintenance windows (which may be varied from time to time) except in case of emergency (as determined by the Service Provider for justified operational and/or security reasons), in which case it may be carried out at any time.

Remedies for breach

- 7.5 If the Service Provider fails to meet the SLAs (if any) set out in the Service Schedule in respect of any of the Managed Cloud Services, such failure is not as a result of any act or omission of the Customer or any circumstances beyond the reasonable control of the Service Provider and the Customer notifies the Service Provider within thirty days of the end of the relevant period (as set out in the Service Schedule) in which the Service Provider failed to meet the SLAs, then the Service Provider shall apply the Service Credits set out in the Service Schedule in respect of that SLA against their subsequent Charges.
- 7.6 In the event that the Customer validly claims the maximum possible Service Credits set out in the Service Schedule for four consecutive months then the Customer will be entitled, upon one month's notice in writing, to terminate the Service Schedule, provided that if the Customer wishes to terminate a Managed Cloud Service using Equipment owned by the Service Provider but used solely for provision of Managed Cloud Services to the Customer, the Customer shall pay the Outstanding Lease Costs (if any) for such Equipment as at the date of termination, such payment to be made in equal monthly instalments over the remaining unexpired term of the Service Schedule from the date of cancellation. Alternatively, the Customer may elect to purchase the said Equipment, for its Fair Market Value, in which case the Service Provider shall provide an invoice within 30 days of termination and the Customer shall pay the same within 30 days of receipt. Ownership of such Equipment shall transfer upon receipt by the Service Provider of the final instalment. For the avoidance of doubt, if the Customer elects not to purchase the said Equipment, or in the event of non-payment or late payment by the Customer of all or part of any of the instalments of the Fair Market Value of the said Equipment, the Service Provider shall be entitled to retake, sell or otherwise deal with and/or dispose of all or any part of the said Equipment. Until the day of full payment of the final instalment or collection by the Service Provider of the Equipment, the Customer is obliged to ensure that the Equipment is treated in accordance with the requirements of clause 5.4 above.
- 7.7 If the Managed Cloud Services do not conform to the warranty in clause 7.1, the Service Provider will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the specified level of performance.

8. CUSTOMER OBLIGATIONS

- 8.1 The Customer warrants and represents that:
- 8.1.1 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 the Equipment managed by the Service Provider or through the supply of data or software owned by or under the control of the Customer;
- 8.1.2 it has the appropriate authority or relevant consents in connection with all data including but not limited to personal data to permit the Service Provider to process the same for all purposes in connection with these Managed Cloud Services Terms and Conditions;
- 8.1.3 it shall use such monitoring software as the Service Provider may direct from time to time, and shall keep such monitoring software fully operational at all times, in order that the Service Provider may provide the Managed Cloud Services and accurately calculate the amount of the Charges;
- 8.1.4 it shall not, without the Service Provider's prior approval, allow any person other than a representative of the Service Provider to modify, repair or maintain any Equipment situated at the Customer's premises or premises under the Customer's control;
- 8.1.5 it will accept by clicking, or where necessary signing and returning to the Supplier 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 use of a Third Party Product provided as part of a Managed Cloud Service and shall comply with the same;
- 8.1.6 it will (where set out in the Service Schedule) follow the Service Provider's reasonable instructions in respect of installing Software patches and it is acknowledged that the Service Provider shall be entitled to carry out necessary work at the Customer's expense in the event the Customer fails to carry out such patches;

- 8.1.7 it will be solely responsible for the accuracy, quality, integrity and legality of the Customer Data;
 - 8.1.8 it will use reasonable commercial efforts to prevent unauthorised access to the Equipment and the Managed Cloud Services;
 - 8.1.9 it will not sell, resell, distribute or lease the Managed Cloud Services; and
 - 8.1.10 it will comply with the prerequisites and any operational tasks set out in the Service Schedule to be performed by the Customer.
- 8.2 The Customer undertakes to cooperate with the Service Provider to the fullest extent necessary in order for the Service Provider to fulfil its obligations under these Managed Cloud Services Terms and Conditions and the Service Schedule. The Service Provider shall in no event be liable for any delays in the performance of the Service Provider's obligations under the Managed Cloud Services Terms and Conditions and the Service Schedule, if the delay is caused by circumstances attributable to the Customer.
- 8.3 If the Customer uses any software owned by or under the control of the Customer within the Managed Cloud Services, the Customer is solely responsible for ensuring that the Customer has the necessary rights to use any such software within the Managed Cloud Services. The Customer undertakes to defend, at its own expense, the Service Provider against any claims or actions regarding infringement of a third party's right due to the Customer's use of software owned by or under the control of the Customer within the Managed Cloud Services and to indemnify and hold harmless the Service Provider from any damages, losses, liabilities, demands, and expenses resulting from any judgment or award that the receipt, possession and/or use of such software infringes any third party rights.
- 8.4 The Customer is liable for and shall indemnify and hold the Service Provider harmless from and against any infringement or alleged infringement of the Customer's Data, of any third party rights or any other non-compliance with applicable law.
- 8.5 The Customer shall notify the Service Provider in writing of all rules, regulations and practices with which the Service Provider should comply whilst its employees are on the Customer's premises and the Service Provider shall use reasonable endeavours to comply with such applicable rules and regulations.
- 8.6 The Customer shall comply with all applicable health and safety regulations and take all reasonable precautions to ensure that any of its premises which the Service Provider may attend pursuant to these Managed Cloud Services Terms and Conditions are operated in a safe manner and shall indemnify and hold harmless the Service Provider in respect of any loss, claim or damages the Service Provider may incur as a result of the Customer's failure to do so.
- 9. CHARGES**
- 9.1 In consideration of the work carried out by the Service Provider, and in accordance with these Managed Cloud Services Terms and Conditions and the terms of the Service Schedule, the Customer shall pay to the Service Provider the Charges that are set out in the Service Schedule.
- 9.2 The Service Provider shall charge the Customer for any additional work conducted on the Customer's behalf which is outside the scope of the Service Schedule at the Service Provider's standard professional services rates from time to time, provided that such additional work shall be agreed in advance by the Customer.
- 9.3 If, as a consequence of the Customer's failure to comply with the Change Control Procedure or any prerequisites or operational tasks set out in the Service Schedule, any work which is required to be conducted within the scope of the Service Schedule takes more time or requires additional resources than would otherwise be expected by the Service Provider, then the Service Provider shall be entitled to charge for such additional effort at the Service Provider's standard professional services rates from time to time.
- 9.4 The Service Provider shall invoice the Customer for the Charges in accordance with the billing profile set out in the Service Schedule or, in respect of additional work pursuant to clause 9.2 or 9.3 upon or after completion of the same. All undisputed invoices shall be payable by the Customer within thirty days of the date of the invoice.
- 9.5 The Charges for the Managed Cloud Services shall be calculated in accordance with the Charging Metrics set out in the Service Schedule and the peak quantity used during the relevant billing period. If the quantity used is equal to or less than the Minimum Commitment then the Charges will be based upon the Minimum Commitment.
- 9.6 Reports generated from the Service Provider's monitoring software shall be conclusive and binding on the Service Provider and the Customer as to the determination of usage except in the case of manifest error.
- 9.7 The Customer may from time to time request to increase or decrease the quantity of the Managed Cloud Services in accordance with the process agreed between the Parties for this purpose (the 'Change Control Procedure'). The Service Provider shall have discretion to accept or decline any increase in quantity of the Managed Cloud Services. The Customer

shall not be permitted to reduce the quantity of a Managed Cloud Service below the Minimum Commitment plus 50% of any previous expansion.

Payment

- 9.8 The Charges and all other payments set out in these Managed Cloud Services Terms and Conditions 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 these Managed Cloud Services Terms and Conditions 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 the Service Provider such additional amount as will ensure that the Service Provider receives the same total amount that it would have received if no such withholding or deduction had been required
- 9.9 Interest shall be payable on any late payments of the Charges or any other sums due from the Customer to the Service Provider under these Managed Cloud Services Terms and Conditions 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.
- 9.10 The Customer shall pay all invoices submitted by the Service Provider by electronic transfer or by such other payment mechanism as may be reasonably required by the Service Provider from time to time.
- 9.11 The Customer shall not be entitled by reason of any set off, counter-claim, abatement, or other similar deduction to withhold payment of any undisputed amount which is due to the Service Provider.

Default

- 9.12 If payment of all or part of the Charges or any other payment due under the terms of these Managed Cloud Services Terms and Conditions is overdue then, unless the Customer has notified the Service Provider in writing that such payment is in dispute within 30 days of receipt of the corresponding invoice, the Service Provider shall have the right upon giving at least 30 days prior notice in writing of its intention to do so, to:
- 9.12.1 suspend all or part of the Managed Cloud Services being provided under any Service Schedule until such payment is made. Any reasonable expenses incurred by the Service Provider resulting from the suspension and any subsequent restart of the Managed Cloud Services shall be added to the overdue amount; or
- 9.12.2 treat such non-payment as a Material Breach of these Managed Cloud Services Terms and Conditions.

Cost Increases

- 9.13 Except where prohibited by law, the Service Provider shall be entitled from time to time to increase the Charges in respect of any element of the Managed Cloud Service in respect of which a supplier to the Service Provider has increased its charges to the Service Provider by more than 10%. Such increase in the Charges shall not exceed the same percentage by which the Service Provider's costs have increased and the Service Provider 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 charges.

10. CONTRACT CHANGES**Principles**

- 10.1 If either Party wishes to change the scope of the Managed Cloud Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing and the Service Provider shall, within a reasonable time, provide a written estimate to the Customer of:
- 10.1.1 the likely time required to implement the change;
- 10.1.2 any variations to the Charges arising from the change;
- 10.1.3 the likely effect of the change on any Project Plan; and
- 10.1.4 any other impact of the change on the terms of these Managed Cloud Services Terms and Conditions or any Service Schedule.
- 10.2 The Customer and the Service Provider shall conduct discussions relating to proposed changes to these Managed Cloud Services Terms and Conditions in good faith. Neither Party shall unreasonably withhold nor delay consent to the other Party's proposed changes.
- 10.3 If the Parties agree to proceed with a change they shall record in writing (a 'CCN'), the effective date of the change, any agreed variations to the specifications of the Managed Cloud Services, the Charges, and the terms of the Service Schedule or these Managed Cloud Services Terms and Conditions.
- 10.4 No amendments other than a variation of the Charges pursuant to clause 9.13, or a cancellation of Managed Cloud Services pursuant to clause 7.6, shall be effective unless made in accordance with process set out in this clause.

Service Changes

10.5 For the avoidance of doubt, the quantities and configuration of the Managed Cloud Services may be changed from time to time by agreement between the Parties in accordance with the Change Control Procedure and such changes shall neither constitute nor require a change to the provisions of these Managed Cloud Services Terms and Conditions or the terms of any given Service Schedule.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Save as granted under these Managed Cloud Services Terms and Conditions, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other Party's pre-existing Intellectual Property Rights.

11.2 Any Intellectual Property Rights arising from and any other material provided by the Service Provider in the provision of, or in connection with, the Managed Cloud Services shall become and remain vested in the Service Provider. Subject to payment of the Charges, the Customer will be granted a non-exclusive, non-transferable, revocable, personal licence to use any such generated Intellectual Property Rights or materials during the term of the Service Schedule so far as is necessary for it to receive the benefit of the Managed Cloud Services and for its own internal business purposes only.

11.3 Subject to the provisions of this clause and to clause 14.6.2 the Service Provider shall indemnify and hold harmless the Customer against all damages, losses, liabilities, demands, and expenses resulting from any judgment or award that the receipt, possession and/or use (in accordance with the specification set out in the Service Schedule) of the Managed Cloud Services infringes any valid third party Intellectual Property Rights in the European Economic Area.

11.4 To benefit from the indemnity in clause 11.3 the Customer must:

11.4.1 promptly provide the Service Provider and its advisors reasonable access to 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;

11.4.2 allow the Service Provider (at its request) to use its chosen advisers and to have the exclusive conduct of the proceedings;

11.4.3 make no admission of liability or any other statement in respect of or settle the matter without obtaining the Service Provider's prior written consent (not to be unreasonably withheld or delayed); and

11.4.4 promptly take any action and give any information and assistance as the Service Provider may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the Customer's rights in relation to the matter.

11.5 If any element of the Managed Cloud Services does, or in the Service Provider's reasonable opinion is likely to, infringe the Intellectual Property Rights of a third Party, the Service Provider shall at its expense and option either: (a) procure the right for the Customer to continue using it; (b) replace it with non-infringing equivalents; (c) modify it to make it non-infringing; or (d) terminate that element of the Managed Cloud Services without further liability to the Customer.

12. PERSONNEL

12.1 The Parties agree that none of the provisions of these Managed Cloud Services Terms and Conditions, nor the implementation, operation or termination of the Managed Cloud Services under any Service Schedule 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 in relation to, or as a result of, the implementation, operation or termination of these Managed Cloud Services Terms and Conditions or any of its provisions.

12.2 Notwithstanding the provisions of clause 12.1, and subject to clause 14.6.2, in the event that law operates to transfer any contracts of employment of any employees from one Party (or that Party's subcontractor) to the other Party or causes any such contracts of employment to take effect between such employees and the other Party or any claim is made that any such contracts of employment have so transferred, at any time as a result of the commencement, implementation, operation or termination of any Managed Cloud Services then the Party from whom the contracts of employment have transferred or from whom it is claimed they have transferred shall indemnify and hold harmless the other Party from and against all costs, claims, demands, damages, tribunal or court awards, expenses and liabilities (including any sums paid in settlement of any claim) which the Party to whom the contracts have transferred or to whom it is claimed they have transferred may incur in connection with the termination of the employment of such employees, the employment of such employees prior to termination or any claim arising from the act or omission of the Party from whom the employees have transferred or from whom it is claimed they have transferred.

12.3 During the term of these Managed Cloud Services Terms and Conditions 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 Managed Cloud Services 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.

13. CONFIDENTIALITY

- 13.1 Each party shall keep the other party's Confidential Information confidential and shall not for the term of the Service Schedule and for a period of five years after it is terminated:
- 13.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Service Schedule; or
 - 13.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 13.
- 13.2 Each party may disclose the other party's Confidential Information:
- 13.2.1 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 this agreement. 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 13; and
 - 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including the rules of any regulated stock exchange of which either party is a member.
- 13.3 The Customer agrees to participate in a press release regarding the award of business to the Service Provider and the publication of a case study document that will be available for distribution in hard copy and/or electronic format to the Service Provider's customers and potential customers. The content of such documents will be agreed by the Parties (acting reasonably) prior to release.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of: any breach of the terms of the Service Schedule or these Managed Cloud Services Terms and Conditions; any use made by the Customer of the Managed Cloud Services; and any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with these Managed Cloud Services Terms and Conditions or the Managed Cloud Services. The parties agree that this clause 14.1 shall also apply for the benefit of subcontractors of the Service Provider and any other entities directly or indirectly assisting the Service Provider in the execution of the Service Schedule.
- 14.2 Except as expressly and specifically provided in these Managed Cloud Services Terms and Conditions the Customer assumes sole responsibility for results obtained from the use of the Managed Cloud Services. The Service Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Service Provider by the Customer in connection with the Managed Cloud Services, or any actions taken by the Service Provider at the Customer's direction; and all warranties, conditions and other terms implied by law are, to the fullest extent permitted by law, excluded from application to these Managed Cloud Services Terms and Conditions and the terms of the Service Schedule.
- 14.3 Nothing in these Managed Cloud Services Terms and Conditions excludes or limits the liability of the Service Provider for:
- 14.3.1 death or personal injury caused by the Service Provider's negligence;
 - 14.3.2 fraud or fraudulent misrepresentation; or
 - 14.3.3 any other liability which cannot lawfully be excluded or limited.
- 14.4 Payment of Service Credits as set out in the Service Schedule are the Customer's full and exclusive right and remedy, and the Service Provider's only obligation and liability, in respect of the performance and availability of the Managed Cloud Services set out therein, or their non-performance and non-availability.
- 14.5 The correction or substitution of the Managed Cloud Services in accordance with clause 7.7 constitutes the Customer's sole and exclusive remedy for any other breach of the warranties set out in or under these Managed Cloud Services Terms and Conditions.
- 14.6 Subject to clauses 14.3, 14.4 and 14.5:
- 14.6.1 the Service Provider shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any direct or indirect loss of profits, loss of business, depletion of goodwill or similar losses, , loss of anticipated savings, loss due to interruption of business, or for any indirect or consequential loss, costs, damages, charges or expenses however arising;

- 14.6.2 the Service Provider's total aggregate liability under the indemnities in clauses 11 and 12, for breach of the provisions in clause 13 and/or for loss of or corruption to the Customer's Data arising where the Service Provider is specifically required as part of the Service Schedule to take backups of the same shall be limited in aggregate to £5,000,000; and
- 14.6.3 in all other circumstances the Service Provider's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of these Managed Cloud Services Terms and Conditions shall be limited to the Charges paid for the Managed Cloud Services during the 12 months preceding the date on which the claim arose.

15. TERM AND TERMINATION

- 15.1 The Service Schedule shall commence on the date it is countersigned, and shall continue for the Term unless terminated early as set out in the Service Schedule or these Managed Cloud Services Terms and Conditions.

Termination for Breach

- 15.2 Without prejudice to any rights that the Parties have accrued under the Service Schedule and these Managed Cloud Services Terms and Conditions or any of their respective remedies, obligations or liabilities, either Party may terminate the Service Schedule with immediate effect by giving written notice to the other Party if:
 - 15.2.1 the other Party commits a Material Breach of these Managed Cloud Services Terms and Conditions 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;
 - 15.2.2 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
 - 15.2.3 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.
 - 15.2.4

Consequences of Termination

- 15.3 Any provision of the Service Schedule or these Managed Cloud Services Terms which expressly or by implication is intended to come into or continue in force on or after termination of the Service Schedule 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.
- 15.4 On termination of the Service Schedule:
 - 15.4.1 The Service Provider shall cease provision of any Managed Cloud Services still being provided thereunder;
 - 15.4.2 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; and
 - 15.4.3 If the Managed Cloud Services provided to the Customer include the taking of backups and the Service Provider receives, no later than thirty days after the effective date of the termination or expiry hereof, a written request for the delivery to the Customer of one or more retained backups of the Customer Data, the Service Provider shall use reasonable commercial endeavours to 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 reasonably and practically requested by the Customer at that time. In every case, the Customer shall pay the Service Provider's reasonable charges (calculated at its usual daily rates in force at the relevant time) for returning backups of the Customer Data. Once the thirty day request period has expired or, if the Service Provider has delivered to the Customer the requested backup(s) earlier, the Service Provider shall delete from its system or otherwise destroy or dispose of all of the Customer Data in its possession or control.
 - 15.4.4 The Customer shall pay any outstanding undisputed invoices within 30 days; and
 - 15.4.5 The Service Provider shall submit invoices for any services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices, if undisputed, within 30 days of receipt.
- 15.5 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 this clause, it shall be entitled to do so, but shall use reasonable endeavours to notify the other Party in writing of such retention, giving details of the documents or materials that it must retain.

Purchase of Dedicated Equipment

- 15.6 If the Service Schedule is terminated by either Party pursuant to clause 15.2.1 then, in addition to any other sums due as a result of such termination, the Customer shall pay to the Service Provider the Outstanding Lease Costs as at the date of termination for any Equipment which is owned by the Service Provider and which is used at the time of termination solely for the provision of Managed Cloud Services to the Customer. Alternatively, the Customer may elect to purchase the said Equipment from the Service Provider. The purchase price for such Equipment shall be the Fair Market Value. The Service Provider shall provide an invoice within 30 days of termination and the Customer shall pay the same within 30 days of receipt. Ownership of such Equipment shall transfer upon receipt by the Service Provider of payment in full.

16. NOTICES

- 16.1 Any notice required to be given in writing to a Party under or in connection with these Managed Cloud Services Terms and Conditions shall include notification by way of email to the Service Provider to: legal@proact.co.uk.
- 16.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17. DISPUTE RESOLUTION

- 17.1 Subject to the provisions of clause 17.2, any dispute arising under, or in connection with these Managed Cloud Services Terms and Conditions other than a dispute relating solely to the non-payment of Charges by the Customer shall be dealt with in accordance with this clause.
- 17.2 Clause 17.1 shall be without prejudice to the rights of termination stated in clause 15 and in addition shall not prevent the Customer or the Service Provider from applying for interlocutory injunctive relief in any court of competent jurisdiction in the case of:
- 17.2.1 breach or threatened breach of confidentiality;
 - 17.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
 - 17.2.3 infringement or threatened infringement of the Intellectual Property Rights of any third Party, where such infringement could expose the Customer or the Service Provider to liability.
- 17.3 All disputes between the Parties arising out of or relating to the Service Schedule or these Managed Cloud Services Terms and Conditions shall initially be referred to the Customer's Representative and the Service Provider's Representative for informal resolution. If a dispute remains unresolved, within 14 days then the Parties will convene a without prejudice meeting of the management of each Party within a further 14 days to further attempt to resolve the matter informally. If the dispute still remains unresolved, then within 14 days of the first without prejudice meeting the Parties will convene a second without prejudice meeting of the senior management of the Customer and the Proact Group within a further 14 days to finally attempt to resolve the matter informally.
- 17.4 If a dispute remains unresolved after following the informal processes set out in clause 17.3 or a party fails to observe the processes set out therein upon the request of the other party then the parties shall first refer the dispute to proceedings under the SCC Mediation Rules. If the dispute has not been settled pursuant to the said Rules within 60 days following the filing of a request for mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled through the courts.

18. LEGAL INVALIDITY

The Customer and the Service Provider expressly agree that should any limitation or provision contained in these Managed Cloud Services Terms and Conditions be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if either the Customer or the Service Provider 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.

19. TRANSFER AND SUB-CONTRACTING

- 19.1 The Service Provider shall be entitled to subcontract its obligations under these Managed Cloud Services Terms and Conditions, but this shall not affect the Service Provider's obligations to the Customer and any liabilities under these Managed Cloud Services Terms and Conditions and the Service Provider shall remain responsible for the obligations performed by its subcontractors to the same extent as if such obligations were performed by the Service Provider.
- 19.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under these Managed Cloud Services Terms and Conditions without the prior written consent of the Service Provider.

20. RIGHTS OF THIRD PARTIES

A person who is not a Party to the Service Schedule has no right to rely upon or enforce any term of the Service Schedule or these Managed Cloud Services Terms and Conditions.

21. FORCE MAJEURE

- 21.1 A Party shall not be in breach of the Service Schedule or these Managed Cloud Services Terms and Conditions nor liable for any failure or delay in performance of any obligations under them (and, the time allowed for performance of such obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ('Force Majeure Event'), including but not limited to any of the following:
- 21.1.1 acts of God, flood, earthquake, windstorm or other natural disaster;
 - 21.1.2 epidemic or pandemic;
 - 21.1.3 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 21.1.4 terrorist attack, civil war, civil commotion or riots;
 - 21.1.5 nuclear, chemical or biological contamination, sonic boom or electromagnetic pulse;
 - 21.1.6 any law or government order, rule, regulation or direction, or any action taken by a government or public authority;
 - 21.1.7 fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the Party seeking to rely on this clause or companies in the same group as such Party) or accidental damage;
 - 21.1.8 communications network failure, systems fault or unauthorised use of or access to the IT systems of the Service Provider or the Customer;
 - 21.1.9 extreme adverse weather conditions;
 - 21.1.10 interruption or failure of utility services, including but not limited to electric power, gas or water;
 - 21.1.11 interruption or failure of cooling systems;
 - 21.1.12 any labour dispute, including but not limited to strikes, industrial action or lockouts; or
 - 21.1.13 collapse of building structures or failure of plant or machinery.
- PROVIDED THAT:
- 21.1.14 it promptly notifies the other Parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - 21.1.15 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Service Schedule and these Managed Cloud Services Terms and Conditions in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 21.2 If a Force Majeure Event prevails then the corresponding obligations of the other Party will be suspended to the same extent as those of the Party first affected by the Force Majeure Event.
- 21.3 If the Force Majeure Event prevails for a continuous period of more than 90 days, the Party not affected by the Force Majeure Event may terminate the Service Schedule by giving 30 days' written notice to the other Party. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of the Service Schedule or these Managed Cloud Services occurring prior to such termination.

22. WAIVER

The failure of the Service Provider or the Customer to insist upon strict performance of any provision of the Service Schedule or these Managed Cloud Services Terms and Conditions or to exercise any right or remedy to which it is entitled, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Service Schedule and these Managed Cloud Services Terms and Conditions.

23. ENTIRE AGREEMENT

Other than where expressly provided to the contrary, the Service Schedule, incorporating these Managed Cloud Services Terms and Conditions constitutes the entire understanding between the Customer and the Service Provider relating to the subject matter thereof and supersedes any previous agreement or understanding between the Parties in relation to such subject matter.

24. AUTHORITY & EXECUTION FORMALITIES

Each Party hereto warrants that it has full capacity and authority and all necessary consents to enter into and to perform the Service Schedule incorporating these Managed Cloud Services Terms and Conditions. The Service Schedule 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 Service Schedule is signed electronically using the Adobe EchoSign Service then that document shall for all purposes be deemed to be validly executed by the Party or Parties so signing electronically.

25. LAW AND JURISDICTION

The Service Schedule and these Managed Cloud Services Terms and Conditions shall be governed by and construed according to the law of the country of legal domicile of the Service Provider. Save as provided in clause 17, the Customer and the Service Provider accept the exclusive jurisdiction of the courts of the country in which the Service Provider is legally domiciled.

COUNTRY SPECIFIC PROVISIONS

26. COUNTRY SPECIFIC PROVISIONS

The following provisions of these Managed Cloud Services Terms and Conditions shall have effect only if the Service Provider 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 25 and the following clauses, the following clauses shall have priority.

- 26.1 If the Service Provider is legally domiciled in the **Netherlands** the following provisions shall apply:
- 26.1.1 The Parties accept the exclusive jurisdiction of the courts of Amsterdam.
 - 26.1.2 The Service Provider shall have the right, once per calendar year, to adjust the agreed prices in accordance with the published CBS index '*indexcijfer Cao-lonen per maand inclusief bijzondere beloningen groep 7074 zakelijke dienstverlening*'.
 - 26.1.3 The Parties exclude the clauses 7:226 and 7:227 of the Dutch Civil Code.
- 26.2 If the Customer is legally domiciled in **Spain** the following provisions shall apply:
- 26.2.1 The Service Supplier shall (i) apply to the Customer Data the data security measures contained within article 79 to 114 of Spanish Royal Decree 1720/2007; (ii) 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 (iii) upon completion of the Managed Cloud Services, return all Customer Data to the Customer except where the retention of such data is permitted by applicable law.
- 26.3 If the Service Provider is legally domiciled in **Germany** the following provisions shall apply:
- 26.3.1 For all Managed Cloud Services which are the subject matter of an acceptance the following shall apply:
 - (i) any warranty claims shall be limited to a period of one (1) year upon delivery; and
 - (ii) the right to demand damages for material defects shall be excluded.
 - 26.3.2 The Customer accepts that maintenance of the Managed Cloud Services will be required from time to time and that the Service Provider is not responsible for non-availability of the Managed Cloud Services caused by such maintenance, or causes beyond their immediate control and out of the specific scope set out in the Service Schedule. The Service Provider shall not be liable for such non-availability.
 - 26.3.3 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 legislation.
 - 26.3.4 Clause 14.2 - 14.5 shall be deleted in their entirety and shall be replaced with the following new clauses:
 - 14.2. The Service Provider is subject to unlimited liability for any damages caused by grossly negligent or willful misconduct of Service Provider, or its legal representatives or agents, as well as for damages resulting from any wrongful harm to life, limb or health.
 - 14.3. The Service Provider also assumes liability for any damages caused by ordinary negligence if, and solely to the extent, the Service Provider breaches any

material obligation under these Managed Cloud Service Terms and Conditions. Material obligations under these Managed Cloud Service Terms and Conditions are obligations which are essential for the achievement of the purpose of the terms and on which the Customer may reasonably rely. In such cases, the Service Provider's liability shall be limited to damages reasonably foreseeable at the time the Parties entered into the agreement.

14.4. The foregoing limitations of liability shall also inure to the benefit of the Service Provider's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or tort.

14.5. Any liability for damages under the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected hereby.

14.6. Any liability of the Service Provider 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.

14.7. Unless provided otherwise in these Managed Cloud Service Terms and Conditions, any and all claims of Customer against the Service Provider 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 14.1, 14.2 or 14.4 above.

- 26.4 If the Service Provider is legally domiciled in **Sweden** the following provisions shall apply:
26.5
- 26.5.1 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)).
- 26.6 If the Service Provider is legally domiciled in the **Czech Republic** the following provisions shall apply:
- 26.6.1 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).
- 26.7 If the Service Provider is legally domiciled in **Norway** the following provisions shall apply:
- 26.7.1 In respect of data processed by the Service Provider in accordance with the terms of this Managed Cloud Services Terms and Conditions, the Service Provider shall act as Data Processor and the Customer shall act as Data Controller within the meaning of the Personal Data Act.
- 26.7.2 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 legislation.
- 26.7.3 The Service provider shall comply fully with the security requirements of section 13 of the Personal Data Act.
- 26.8 If the Service Provider is legally domiciled in **Belgium** the following provisions shall apply:
- 26.8.1 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.
- 26.8.2 An additional clause 5.4.8 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 belong to the Provider and can never be the object of any security of the pledge".

- 26.9 If the Service Provider is legally domiciled in **Scotland** the following provisions shall apply:
- 26.9.1 The Service Schedule and these Managed Cloud Services Terms and Conditions shall be governed by and construed according to the laws of England and Wales and, subject to clause 17, the Customer and the Service Provider accept the exclusive jurisdiction of the courts of England and Wales.
- 26.10 If the Service Provider is legally domiciled in the **United States of America** the following provisions shall apply:
- 26.10.1 The Service Schedule and these Managed Cloud Services Terms and Conditions 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.
- 26.10.2 Subject to clause 17, the Customer and the Service Provider 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.
- 26.10.3 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 Service Schedule and these Managed Cloud Services Terms and Conditions.