

# **PROACT**

## **Standard Terms and Conditions**

Proact IT Group AB – v1.12

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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
<b>Charges</b>	the rates and charges set out in the Contract which are to be paid by the Customer to Proact
<b>Confidential Information</b>	(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
<b>Consultant</b>	consultant(s) provided by Proact to perform the Staffing Services for the Customer
<b>Consultancy Services</b>	ad-hoc information technology services performed by Proact's engineers and consultants for the Customer
<b>Contract</b>	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
<b>Control (and Controls / Controlled)</b>	the power to direct or cause the direction and management of a business, as a result of the ownership or control of 50% or more of voting shares, control of the board of directors, contract or in accordance with powers conferred by the articles of association or otherwise
<b>Customer</b>	the legal entity set out in the Contract who purchases the goods, services and/or Managed Services, from Proact
<b>Customer Data</b>	Information or data provided by or made available by the Customer for processing by Proact under the terms of the Contract excluding Service Metadata
<b>Data Controller</b>	has the meaning given to 'controller' in Article 4(7) of the GDPR
<b>Data Processor</b>	has the meaning given to 'processor' in Article 4(8) of the GDPR
<b>Data Protection Law</b>	any applicable laws relating to the protection of Personal Data from time to time including the GDPR
<b>Engagement Contract</b>	the Consultant's contract of engagement with Proact
<b>Fair Market Value</b>	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) 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

<b>Finance Agreement</b>	An asset finance agreement for the provision to the Customer of goods owned by Proact Finance
<b>GDPR</b>	Regulation (EU) 2016/679; or (as applicable in the context of the parties) such Regulation as adopted into English Law by European Union (Withdrawal) Act 2018, The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, and 2020
<b>Inflation Rate</b>	the greater of the local or Eurozone measure of inflation as measured by the European Central Bank Harmonised Consumer Price Index from time to time
<b>Intellectual Property Rights</b>	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
<b>Managed Services</b>	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
<b>Minimum Commitment</b>	the minimum financial commitment for Managed Services entered into by the Customer as set out in the Contract
<b>Minimum Service Term</b>	the minimum period of delivery of the Managed Services from the last occurring Service Commencement Date as set out in the Contract
<b>Outstanding Payment Obligations</b>	the total liability from time to time of Proact to a Third Party Equipment Provider in respect of relevant equipment
<b>party / parties</b>	a party or the parties to the Contract as applicable
<b>Payment Term</b>	10 days from the date of each invoice or as otherwise set out in the Contract
<b>Personal Data</b>	as defined in Article 4(1) GDPR
<b>Proact</b>	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
<b>Proact Group</b>	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 and any of its subsidiaries from time to time as the context requires
<b>Proact Finance</b>	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
<b>Public Cloud Service</b>	a service forming part of the Managed Services and comprising computing infrastructure services delivered by a Public Cloud Service Provider
<b>Public Cloud Service Provider</b>	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
<b>SCC</b>	The Arbitration Institute of the Stockholm Chamber of Commerce
<b>Security Breach</b>	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
<b>Service Commencement Date</b>	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.
<b>Service Credits</b>	the sums (if any) which are specified in the SLA 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
<b>Service Level Agreement (SLA)</b>	an agreed level of service (if any) stated in the Contract to apply to services to be provided including by reference to the Proact Service Level Agreement set out in full at <a href="http://www.proact.eu/terms">http://www.proact.eu/terms</a>
<b>Service Metadata</b>	data provided by the Customer to Proact in order to deliver the service, or gathered by Proact in the course of the delivery of the service(s).
<b>Staffing Services</b>	Consultancy Services in which Proact provides engineer(s) and/or consultant(s) to work for the Customer on a temporary basis for a specified period of time

<b>Support Services</b>	technical support and/or “break/fix” services
<b>Supported Equipment</b>	any equipment (including its component parts) in respect of which Proact has agreed in the Contract to provide Support Services
<b>Term</b>	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
<b>Third Country Law</b>	any law, regulation or other legal or statutory provision other than those of the European Union; and/or any jurisdiction or territory within the European Economic Area, the United Kingdom, or the United States of America
<b>Third Party Equipment Provider</b>	a third party who owns equipment provided to one of the parties for use in the Managed Services
<b>Third Party Products and Services</b>	hardware or software provided by Proact but which is not manufactured or developed by Proact or services delivered directly to the Customer by a third party other than as Proact’s subcontractor (including, without limitation, ‘direct vendor support’ services delivered directly to the Customer by the applicable original equipment manufacturer)

- 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 provisions of law which are of mandatory application to Proact.
- 1.7 A reference to writing or written includes 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; then
 the 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 and in connection with its receipt of services from Proact, 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 in respect of any property provided by Proact which the Customer does not own and which is located at the Customer's premises:
  - 3.1.5.1 it shall keep the property in safe custody at its own risk until returned to Proact;
  - 3.1.5.2 it shall not relocate, move, dispose of or use such property other than in accordance with Proact's instructions or prior written agreement;
  - 3.1.5.3 it shall not remove or obscure any tag or identifying mark on such property; and
  - 3.1.5.4 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 such property;
- 3.1.6 it shall comply with and where required will formally accept by clicking, or where necessary signing and returning to Proact or the vendor of any Third Party Products and Services, any standard software licence agreement, end user licence agreement, end user licence terms, support or service terms or other terms which may apply to the Customer's use of Third Party Products and Services;
- 3.1.7 it will not without the prior written approval of Proact sell, resell, distribute or lease the goods and/or services;
- 3.1.8 it shall cooperate with Proact in order for Proact to fulfil its obligations under the Contract which cooperation shall include (without limitation):
  - 3.1.8.1 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;
  - 3.1.8.2 providing Proact with such information and materials as Proact may reasonably require and shall ensure that such information is accurate in all material respects;
  - 3.1.8.3 considering any risks and adequately preparing its premises for the receipt and/or installation of the goods and/or supply of services including ensuring that the route from any delivery vehicle to installation site is free from obstructions and any obstacles to safe handling or delivery;
  - 3.1.8.4 obtaining and maintaining all necessary licences, permissions and consents that are not within the express responsibility of Proact under the Contract which may be required for the goods and/or services before any start or delivery date agreed with Proact; and
  - 3.1.8.5 providing support feedback upon request and permitting Proact to submit the same to third parties on the Customer's behalf; and
- 3.1.9 it shall comply with all applicable health and safety regulations and take all reasonable precautions to ensure that any of its premises which Proact personnel may attend are operated in a safe manner and shall maintain adequate public liability insurance with a reputable insurer.

#### 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 make a reasonable charge to the Customer for 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.
- Default
- 4.9 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:
- 4.9.1 suspend further deliveries of goods and/or services being provided to the Customer under any Contract until such payment is made; or
- 4.9.2 treat such non-payment as an irremediable material breach of the Contract.
- 4.10 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 4.9.1.
- Price increases
- 4.11 Proact shall be entitled, not more than once per annum and upon written notice to the Customer, to increase the Charges set out in the Contract for goods and/or services to be provided on or after the date set out in such notice by a percentage up to the then most current Inflation Rate. An Inflation Rate increase may not be applied during the first 12 months of the Term of the Contract.

## 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 process the Customer 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;
- 5.3.2 such processing by Proact shall not infringe any third party's Intellectual Property Rights; and
- 5.3.3 it shall not use the services provided by Proact under the terms of the Contract for any purpose which is illegal, immoral, pornographic, defamatory, misleading or deceptive, which is in breach of any third party's rights, or which Proact deems is reasonably likely to impact the confidentiality, availability or integrity of the services provided by Proact to the Customer or to its other customers or of any data hosted or processed by Proact, and the Customer shall take all necessary steps and comply with all reasonable requests by Proact to correct any such use in breach of the terms of this provision

including to mitigate any such risks as Proact may identify.

- 5.4 The Customer shall not use any services provided by Proact to process any payment card data unless such processing is specifically stated to be permitted under the terms of the Contract.
- 5.5 Proact shall store the Customer Data at the location(s) agreed in the Contract and shall not relocate the Customer Data without obtaining the Customer's prior consent.
- 5.6 Subject always to the provisions of clause 6 and the terms of the Contract, Proact and/or its appointed subprocessors may:
  - 5.6.1 process Service Metadata in any location; and
  - 5.6.2 use Service Metadata for its own purposes including to enhance, modify or otherwise improve Proact's services.

## 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:
  - 6.2.1 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;
  - 6.2.2 where it is relying on Data Protection Law or any other applicable law as the basis for processing Personal Data, (and where not prohibited by law) promptly notify the Customer before performing such processing;
  - 6.2.3 not be required to:
    - 6.2.3.1 investigate the completeness, accuracy or sufficiency of any specific instructions given in accordance with clause 6.2.1; or
    - 6.2.3.2 comply with any instructions given in relation to the processing of Personal Data other than those given in accordance with clause 6.2.1;
  - 6.2.4 ensure that persons authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 6.2.5 implement and maintain appropriate technical and organisational measures to secure the Personal Data 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;
  - 6.2.6 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;
  - 6.2.7 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; and
  - 6.2.8 notify the Customer without undue delay on becoming aware of a Security Breach.
- 6.3 The notification referred to clause 6.2.8 shall include:
  - 6.3.1 the nature of the issue including where possible, the categories and approximate number of (i) data subjects; and (ii) Personal Data records concerned;
  - 6.3.2 the name and contact details of the person from whom more information can be obtained;
  - 6.3.3 the likely consequences of the issue; and
  - 6.3.4 remedial action taken or proposed to be taken.
- 6.4 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.
- 6.5 Each party's obligations under clause 6.4 shall be performed at its' own cost, except and only to the extent that the Security Breach arose out of its: (i) negligence or wilful default; or (ii) breach of warranties in the Contract.
- 6.6 Subject to clause 5.5 the Customer consents to Proact appointing any company Controlled by Proact, under common Control with Proact or which Controls Proact and/or any other third party as necessary to deliver the goods and/or services to the Customer as a third-party processor of Personal Data under the Contract. Proact shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.6.
- 6.7 A list of Proact's current third-party processors (which Proact may update from time to time) is



available from [www.proact.eu/privacy](http://www.proact.eu/privacy). Updates to the list will be detailed in a service system message, email or similar.

- 6.8 In the event that Proact transfers Personal Data from a jurisdiction or territory within the European Economic Area to a jurisdiction or territory that is outside of the European Economic Area or from the United Kingdom to a jurisdiction or territory that is outside of the United Kingdom then it shall:
- 6.8.1 comply with Data Protection Law in respect of such transfer, in particular but not limited to ensuring that any such transfer is on the basis of either:
    - 6.8.1.1 an adequacy decision in accordance with Article 45 GDPR; or
    - 6.8.1.2 (in the absence of an adequacy decision as set out in clause 6.8.1.1) standard data protection clauses in accordance with Article 46 GDPR; and
    - 6.8.1.3 in each case together with any such additional measures as required;
  - 6.8.2 examine all government demands for Personal Data processed by Proact and appropriately narrow and challenge requests which are not necessary and proportionate. Proact will notify Customer (unless such notification is prohibited by law) to give Customer the opportunity to limit or prevent disclosure. Proact will also challenge requests that prohibit notification to Customer; and
  - 6.8.3 only provide the Personal Data to an agency with appropriate authority under applicable law to demand this data from Proact and will only provide the specifically requested Personal Data in certain limited circumstances.
- 6.9 Other than as set out in clause 6.6, the Contract or any written instructions from the Customer the Customer does not consent to Proact appointing any third-party processors of Personal Data under the Contract.
- 6.10 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.
- 6.11 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 6.11.
- 6.12 Proact shall 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.

## 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 Neither party shall for the duration of the Contract and for a period of five years thereafter:
- 8.1.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Contract; or
  - 8.1.2 disclose any 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 (or any employees, officers, representatives or advisers of any member of the group of companies to which the party belongs); 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 any such 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.

## 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 AND SERVICES

- 10.1 Where goods or services provided to the Customer under the Contract include any Third Party Products and Services, Proact shall so far as it is able to do so, ensure that the benefit of any warranty in respect of those Third Party Products and Services received from the vendor is provided for the benefit of the Customer. Subject to other provisions in the Contract no warranty shall be provided by Proact to the Customer directly in respect of any Third Party Products and Services and any such warranty whether express or implied is hereby excluded to the fullest extent permitted by law.
- 10.2 If any element of the services provided by Proact to the Customer under the Contract is dependent on Third Party Products and Services and the Third Party Products and Services provider should cease to provide such Third Party Products and Services or to terminate Proact's right to deliver services built on such Third Party Products and Services then without prejudice to any rights that the parties have previously accrued under the Contract or any of the other remedies, obligations or liabilities in the Contract, Proact may at its expense and option either:
- 10.2.1 amend or replace elements of the service with alternative Third Party Products and Services acceptable to the Customer;
  - 10.2.2 terminate any element of the Contract which is dependent on such Third Party Products and Services; or
  - 10.2.3 terminate the entire Contract 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.

## 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

- 11.2.4 to perform any obligation under the Contract;  
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 clause 12.2 (personal data processing, IP infringement, TUPE, management of consultants, and return of 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 Data arising where Proact is specifically required as part of the Contract to take backups of the same;shall be limited in aggregate to EUR 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); clause 6.1 (Personal Data processing) and/or Data Protection Law; clause 9.5 (Customer supplied software); its obligations under clause 36 (management of consultants); clause 48.3 (authority to permit access by Public Cloud Service Providers); or clause 52.1 (Third Country Laws)
  - 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 breach by Proact of clause 6 (Personal Data Processing) and/or Data Protection Law;
  - 12.2.2 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
  - 12.2.3 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.
  - 12.2.4 any liability under clause 41.6 where the Customer is required to deliver up equipment to a Third Party Equipment Provider.

### 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. INSURANCE**

- 13.1 Proact shall maintain adequate insurance policies for public liability, professional indemnity, employer's liability, and product liability with reputable insurance companies.
- 13.2 On the written request of the Customer, Proact shall provide the Customer with proof of its compliance with this clause 13.

### **14. TERMINATION AND SUSPENSION OF THE CONTRACT**

#### Suspension of services

- 14.1 If the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so by Proact then Proact shall have the right to suspend or restrict further delivery of goods and/or services being provided to the Customer under the Contract.
- 14.2 In the event of any suspension pursuant to clause 14.1 the Customer shall continue to be liable for all Charges and shall be liable for all costs reasonably incurred by Proact as a result of the suspension and any subsequent restart of any services.
- 14.3 For the avoidance of doubt Proact shall not be in breach of the Contract as a consequence of any suspension pursuant to clause 14.1, shall not be liable for any losses suffered by the Customer arising out of or related to any such suspension, and shall not be liable under any indemnity in the Contract for any circumstances arising during any such suspension, or as a consequence of or in relation to any such suspension.

#### Termination for breach or insolvency

- 14.4 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:
  - 14.4.1 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;
  - 14.4.2 the other party is insolvent or takes any step or action in connection with it entering any form of insolvency protection, administration, liquidation or any other composition or arrangement with its creditors; or
  - 14.4.3 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

- 14.5 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.
- 14.6 On termination of the Contract:
  - 14.6.1 Proact shall cease provision of any services still being provided under the Contract;
  - 14.6.2 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;
  - 14.6.3 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
  - 14.6.4 The Customer shall pay any outstanding undisputed invoices within the Payment Term.
- 14.7 Notwithstanding clause 6.11 if 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 any Customer Data, Proact shall return such Customer Data to the Customer as soon as reasonably practicable either in the format in which the Customer Data was 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 Customer Data.

- 14.8 Once the 30 day request period in clause 14.7 has expired or, if Proact has delivered to the Customer the requested Customer Data earlier, Proact shall delete from its system or otherwise destroy or dispose of all of the Customer Data in its possession or control.
- 14.9 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.

## 15. DISPUTE RESOLUTION

- 15.1 Without prejudice to the rights of termination stated in clause 14, except in cases of disputes relating to:
- 15.1.1 non-payment of the Charges;
  - 15.1.2 breach or threatened breach of confidentiality;
  - 15.1.3 infringement or threatened infringement of a party's Intellectual Property Rights; or
  - 15.1.4 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 15.
- 15.2 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.
- 15.3 If a dispute remains unresolved 28 days' after following the informal process set out in clause 15.2 or a party fails to observe such process then any remaining dispute, controversy or claim arising out of or in connection with the Contract or these Standard Terms and Conditions, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the SCC. The Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed EUR 100,000 (or equivalent amount in another currency). Where the amount in dispute exceeds EUR 100,000 (or equivalent amount in another currency) the Arbitration Rules shall apply. The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds EUR 100,000 but not EUR 1,000,000 (or in each case the equivalent amount in another currency). Where the amount in dispute exceeds EUR 1,000,000 (or equivalent amount in another currency), the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration, and:
- 15.3.1 the seat, or legal place, of arbitration shall be the country in which Proact is incorporated; and
  - 15.3.2 the language to be used in the arbitral proceedings shall be English.
- Capitalised terms used in this clause **Error! Reference source not found.** and not defined in clause 1.1 of these Standard Terms and Conditions shall have the meaning as set out in the SCC rules for arbitration published by the SCC from time to time and currently available (as at the publication date of these Standard Terms and Conditions) at <https://sccinstitute.com/our-services/rules/>.

## 16. CHANGES

- 16.1 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.
- 16.2 Other than as set out in clause 16.1, 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.
- 16.3 Except as specifically provided in the Contract no amendment to a Contract shall be effective unless made in writing and signed by both parties.

## 17. NOTICES

- 17.1 Except where otherwise stated in the Contract or these Standard Terms and Conditions, 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).

- 17.2 Any notice given to Proact in accordance with clause 17.1 shall be by way of email to [legal@proact.eu](mailto:legal@proact.eu).
- 17.3 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.

## 18. 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.

## 19. TRANSFER, SUB-CONTRACTING AND CHANGE OF CONTROL

- 19.1 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.
- 19.2 The Customer shall not assign, subcontract, transfer, charge, 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. Proact shall be entitled to terminate the Contract immediately upon written notice to the Customer in the event that the Customer fails to comply with this clause or if there is any change of Control of the Customer.

## 20. 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.

## 21. FORCE MAJEURE

- 21.1 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 which shall include but not be limited to:
- 21.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 21.1.2 epidemic or pandemic;
  - 21.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 21.1.4 nuclear, chemical or biological contamination or sonic boom;
  - 21.1.5 any law or any action taken by a government or public authority, including without limitation imposing any lockdown, export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 21.1.6 collapse of buildings, fire, explosion or accident; and
  - 21.1.7 any labour or trade dispute, strikes, industrial action or lockouts.
- 21.2 In such circumstances as set out in clause 21.1 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.

## 22. GENERAL PROVISIONS

- 22.1 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.
- 22.2 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.

- 22.3 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.
- 22.4 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.

## 23. LAW AND JURISDICTION

The Contract shall be governed by and construed according to the law of the country in which Proact is incorporated. To the extent applicable under the terms of the Contract, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall apply and be incorporated into the Contract. In the event and to the extent only of any conflict or inconsistency between the provisions of the United Nations Convention on Contracts for the International Sale of Goods and the clauses of these Standard Terms and Conditions, the clauses of these Standard Terms and Conditions shall apply. Save as provided in clause 15, the Customer and Proact accept the exclusive jurisdiction of the courts of the country in which Proact is incorporated.

### SALE OF GOODS

If the Contract includes the purchase of goods then the following clauses 24 to 26 inclusive shall apply:

## 24. WARRANTY

- 24.1 Proact warrants that on delivery the goods shall:
- 24.1.1 conform with their description as set out in the Contract;
  - 24.1.2 be free from defects in design, material and workmanship;
  - 24.1.3 be fit for any purpose held out by Proact; and
  - 24.1.4 comply with all applicable legal requirements
- 24.2 Subject to clause 24.3, if:
- 24.2.1 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 24.1;
  - 24.2.2 Proact is given a reasonable opportunity of examining such non-compliant goods; and
  - 24.2.3 the Customer (if asked to do so by Proact) returns such goods to Proact's place of business,
- 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.
- 24.3 Proact shall not be liable for the goods' failure to comply with the warranty in clause 24.1 if:
- 24.3.1 the Customer makes any further use of such goods after giving a notice in accordance with clause 24.2.1;
  - 24.3.2 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;
  - 24.3.3 the defect arises as a result of Proact following any instruction, drawing, design or specification supplied by the Customer;
  - 24.3.4 the Customer or a third party alters or repairs such goods without the written consent of Proact;
  - 24.3.5 the defect arises as a result of fair wear and tear, wilful damage or negligence of the Customer;
  - 24.3.6 the goods differ from their description as a result of changes made to ensure they comply with applicable legal requirements; or

24.3.7 the Customer has failed to comply with its warranty in clause 3.1.6 (Third Party Products and Services licence terms).

24.4 This clause shall apply to any repaired or replacement goods supplied by Proact under clause 24.2.

## 25. DELIVERY

25.1 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.

25.2 Delivery of the goods shall be completed on the goods' arrival at the agreed delivery location.

25.3 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 2020 rules.

25.4 Any dates quoted for delivery of the goods are estimates only, and are not binding conditions of the Contract unless stated to be so.

25.5 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.

25.6 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.

25.7 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.

## 26. OWNERSHIP AND RISK

26.1 Risk in the goods shall transfer to the Customer on collection, or completion of delivery as applicable.

26.2 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 clauses 27 to 28 inclusive shall apply:

## 27. WARRANTY

Proact warrants that:

27.1 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;

27.2 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;

27.3 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

27.4 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.

## 28. SERVICE LEVEL AGREEMENT

28.1 The Customer acknowledges that the services are complex IT solutions and cannot be guaranteed to operate uninterrupted or error-free. No warranty shall be implied that the 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.

28.2 Proact shall in all cases use reasonable endeavours to achieve any SLA stated to apply to services provided in the Contract. If a Service Credit is stated to apply in the Contract then 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 services set out in the Contract.
- 28.3 If Proact fails to meet the applicable SLAs where an associated Service Credit is stated to apply in the Contract in respect of any of the services, then the Customer may be entitled to such Service Credits as stated in the SLA as a credit against subsequent Charges.
- 28.4 The maximum Service Credits payable in respect of any failure(s) to meet the applicable SLAs in any one month shall be capped at 100% of the total monthly Charges.
- 28.5 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.
- 28.6 Proact shall not be responsible for any failure to meet any SLA, nor for the failure to deliver any services, where such failure is caused by:
- 28.6.1 planned maintenance carried out in accordance with clause 43;
  - 28.6.2 the Customer, either through a failure to comply with any obligation set out in the Contract including but not limited to the responsibilities set out in clause 40, or a failure of equipment or utilities supplied or controlled by the Customer;
  - 28.6.3 or extended by a failure by the Customer to fully assist Proact in fault correction (for example by preventing or delaying access to premises or where a designated contact is unreachable using the agreed contact details);
  - 28.6.4 any other circumstances which are beyond Proact's reasonable control, including but not limited to a failure as a result of changes made to Third Party Products and Services or by a Public Cloud Services Provider to underlying services (for example which affect APIs or access protocols used by Proact in providing the services).

**SUPPORT SERVICES**

If the Contract includes the provision of Support Services then the following clauses 29 to 33 inclusive shall apply:

**29. TROUBLESHOOTING AND ONSITE ATTENDANCE**

- 29.1 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.
- 29.2 Where the Contract includes the provision of break-fix services by Proact then if Proact reasonably determines that a malfunction cannot be solved following the steps set out in clause 29.1 it shall either:
- 29.2.1 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
  - 29.2.2 with the Customer's prior agreement, send the Customer replacement parts such that the Customer may restore the Supported Equipment to good working order.

**30. 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.

**31. EXCLUDED MAINTENANCE**

- 31.1 Proact is not obliged to perform any Support Services where the malfunction or failure results from or is caused by:
- 31.1.1 any defect existing prior to the commencement of the Contract;
  - 31.1.2 a latent defect in a manufacturer's design;
  - 31.1.3 use of Supported Equipment in conjunction with equipment not supplied by or approved to be used by Proact;
  - 31.1.4 any maintenance, alteration, modification or adjustment to the Supported Equipment not performed or approved in writing by Proact;
  - 31.1.5 the Customer's negligence or misuse of the Supported Equipment in contravention of any of the provisions of the Contract or manufacturer recommendations; or
  - 31.1.6 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).
- 31.2 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.
- 31.3 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 31.1.1 to 31.1.6 Proact shall be entitled to charge the Customer for such services at its normal daily rate from time to time.
- 31.4 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.

### **32. 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 32 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.

### **33. 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 34 shall apply:

### **34. 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 within 14 days of the time agreed for delivery then unless otherwise agreed a cancellation charge equal to 100% of the agreed Charges for the original booking shall become immediately payable upon such amendment or cancellation. For the avoidance of doubt, such cancellation charges shall be payable in addition to any Charges that shall be payable in respect of a rearranged or amended booking.

#### **STAFFING SERVICES**

If the Contract includes the provision of Staffing Services then the following clauses 35 to 37 inclusive shall apply:

### **35. STAFFING SERVICES**

- 35.1 Proact shall provide the Consultant named in the Contract to perform the Staffing Services in accordance with the terms of the Contract.
- 35.2 For a period of 12 months after the end of the Staffing Services, the Customer shall not induce or seek to induce the Consultant to leave any employment or engagement with Proact, or employ or engage the Consultant without Proact's prior written consent.
- 35.3 The parties shall each appoint a contact person who shall be responsible for maintaining all communication between the parties in relation to the Staffing Services.

### **36. MANAGEMENT OF CONSULTANT**

- 36.1 The Customer shall not require the Consultant to do anything that shall breach the Engagement Contract and shall have no authority to vary the terms of the Engagement Contract or make any representations to the Consultant in relation to the terms of the Engagement Contract.
- 36.2 Proact shall have day-to-day control of the Consultant's activities and shall continue to deal with

any management or performance issues concerning the Consultant during the Staffing Services, where relevant following consultation with the Customer.

- 36.3 The Customer shall ensure that the Consultant is delineated in any internal systems as a Proact consultant and shall not take any steps to deal with any management or performance issues arising in respect of the Consultant.
- 36.4 Proact shall continue to pay the Consultant's salary and any allowances, provide any benefits due to the Consultant or their dependants, make any payments to third parties in relation to the Consultant and make any deductions that it is required to make from the Consultant's salary and other payments.
- 36.5 The Consultant shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with the Engagement Contract and shall remain subject to Proact's approval and notification procedures.
- 36.6 The Consultant shall comply with any of the Customer's reasonable internal policies brought to the attention of both Proact and the Consultant including but not limited to IT and communications systems and data privacy insofar as they do not contradict anything in the Engagement Contract.
- 36.7 The Customer shall:
- 36.7.1 collect and process personal information relating to the Consultant in accordance with Data Protection Law; and
  - 36.7.2 fulfil all duties relating to the Consultant's health, safety and welfare as if it was their employee and shall comply with applicable employment laws including but not limited to equality laws in the treatment of the Consultant.

## 37. CONTINUITY

- 37.1 Proact shall notify the Customer without undue delay of any dates on which the Consultant shall take leave and if the Consultant is or shall be absent from work for any other reason.
- 37.2 Proact reserves the right to replace the Consultant at any time provided that such replacement shall not materially affect the continuity or provision of the Staffing Services.

### MANAGED SERVICES

If the Contract includes the provision of Managed Services then the following clauses 38 to 47 inclusive shall apply:

## 38. TERM OF MANAGED SERVICES CONTRACT

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

## 39. IMPLEMENTATION & ACCEPTANCE

- 39.1 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 to 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.
- 39.2 If the Customer does not cooperate to review the operation of the Managed Services in accordance with clause 39.1 by the Service Commencement Date then the Managed Service shall be deemed to be accepted on the Service Commencement Date.
- 39.3 Proact shall be entitled to begin charging for the Managed Services from the applicable Service Commencement Date.
- 39.4 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.
- 39.5 Notwithstanding the other provisions in this clause 39, to the extent that Proact has provided part of a Managed Service prior to the Service Commencement Date but is unable fully to deliver and submit the Managed Services for acceptance testing in accordance with clause 39.1 because of the Customer's failure to perform its responsibilities as set out in the Contract, Proact shall be entitled to charge for such part(s) of the Managed Services that it does deliver.

## 40. CUSTOMER RESPONSIBILITIES

The Customer shall ensure that it performs all responsibilities set out in the Contract and shall:

- 40.1 Notify Proact of issues or problems in a timely manner including reporting all faults through Proact's support system;
- 40.2 Provide Proact or a third party appointed by it with access to equipment, software and services for the purposes of maintenance, updates and fault prevention;
- 40.3 Ensure that any assumptions made by Proact regarding the Customer's requirements or infrastructure are correct;
- 40.4 Notify Proact of any changes to systems that form part of the Managed Services in a timely manner;
- 40.5 Respond within 5 working days to communications from Proact relating to monitoring alarms for systems that are either managed by the Customer, or that require the Customer to take action in order for the alert to be resolved. If the Customer fails to respond appropriately within 5 working days, Proact will suppress any monitoring relating to the relevant system(s) until such a time as which remediation has been completed and Proact have verified that the remediation has been effective in clearing outstanding alarms;
- 40.6 Use reasonable endeavours to resolve issues with the Customer's systems which Proact advises are likely to cause repeated incidents and/or alarms. The Customer shall confirm and implement a remediation plan to Proact within 10 working days of the initial communication from Proact or agree to a relaxation of monitoring capacity thresholds if such an option is available to Proact. If the Customer fails to either remediate the issue or agree to an available monitoring threshold relaxation, Proact will suppress any monitoring relating to the relevant system(s) until such a time as which remediation has been completed and Proact have verified that the remediation has been effective in clearing outstanding alarms and is likely to prevent further repeat alarms; and
- 40.7 Maintain good communication with Proact at all times.

## 41. EQUIPMENT

### Generally

- 41.1 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.
- 41.2 Except where specifically provided otherwise, there shall be no transfer of ownership to any equipment.
- 41.3 The Provider of equipment warrants that:
  - 41.3.1 it owns the equipment or has permission to provide it for the purposes set out in the Contract; and
  - 41.3.2 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.
- 41.4 Where equipment provided by the Provider is to be located at a site owned or controlled by the Recipient, the Recipient shall:
  - 41.4.1 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;
  - 41.4.2 not relocate, modify, add or impair any portion of the equipment without prior agreement from the Provider,
  - 41.4.3 permit the Provider or a third party appointed by it to inspect the equipment within normal business hours and upon reasonable notice;
  - 41.4.4 ensure the equipment is protected from loss or damage;
  - 41.4.5 notify the Provider without undue delay if the equipment suffers any loss or damage;
  - 41.4.6 subject to the Recipient's reasonable security requirements, provide the Provider with access to the equipment on reasonable notice;
  - 41.4.7 return the equipment to the Provider upon demand; and
  - 41.4.8 not purport to transfer ownership of the equipment or give a purchase option or pledge concerning the equipment to any other person or entity or otherwise dispose of the equipment for its own account.

### Third Party Equipment

- 41.5 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 Third Party Equipment Provider, or that the equipment may be pledged to a Third Party Equipment Provider as a security for the payment of all sums that Proact owes to, or may at any time owe to the Third Party Equipment Provider, arising from rental and/or financial lease agreements or for whatever

reason. The Third Party Equipment Provider will not become a party to the Contract. All rights and obligations under the Contract will remain between Proact and the Customer.

41.6 The Customer will grant the Third Party Equipment Provider access to the equipment for inspection or other reasonable purposes and shall deliver up such equipment to the Third Party Equipment Provider on first demand, without the Customer being able to invoke any right of retention, if and as soon as the Third Party Equipment Provider demands delivery of the equipment by virtue of Proact's failure to comply with its obligations towards the Third Party Equipment Provider. The Customer shall effect delivery of the equipment to the offices of the Third Party Equipment Provider or a location designated by the Third Party Equipment Provider.41.6

41.7 The provisions of these clauses 41.1 to 41.6 may not be revoked by the parties.  
Customer Trade-in Equipment

41.8 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.

## 42. BACKUPS

Tape backups

42.1 If the Managed Services include taking backup copies of the Customer 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 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 Data.

Proact BCP/DR

42.2 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 Data in an encrypted format for its own disaster recovery and business continuity purposes.

Return of backups on termination

42.3 If a Customer request for the return of any Customer Data under clause 14.7 includes any backups stored on tape media, such Customer Data shall be delivered to the Customer by way of return of the tape media only.

## 43. PLANNED MAINTENANCE

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

43.2 In all cases Proact shall use reasonable endeavours to:

43.2.1 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

43.2.2 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.

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

## 44. FLEXIBILITY AND CHARGES

44.1 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.

44.2 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.

44.3 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.

44.4 Notwithstanding clause 4.11 and 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.

#### **45. PAYMENT FOR DEDICATED EQUIPMENT ON EARLY TERMINATION**

- 45.1 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:
- 45.1.1 if such equipment is owned by Proact, the Customer shall purchase the equipment for its Fair Market Value;
  - 45.1.2 if such equipment is owned by a Third Party Equipment Provider, the Customer shall pay the Outstanding Payment Obligations for such equipment as set out in clause 45.2 and subject to such payment Proact shall comply with all obligations it owes to the Third Party Equipment Provider of the equipment including payment of the sums due from time to time 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; or
  - 45.1.3 where permitted by the Third Party Equipment Provider, the Customer may purchase the equipment for its Fair Market Value;
- 45.2 The sum due pursuant to clause 45.1 shall be payable in equal monthly instalments over the remaining unexpired term of the Minimum Service Term or as otherwise agreed in writing. Proact shall provide invoices and the Customer shall pay the same within the Payment Term.
- 45.3 If the Customer purchases equipment pursuant to clause 45.1.1 or 45.1.3 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 45.2 and ownership of such equipment shall transfer to the Customer upon payment of the final monthly instalment.

#### **46. AUDIT**

- 46.1 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:
- 46.1.1 verify the accuracy of the Charges; or
  - 46.1.2 verify that the Contract is being performed in accordance with its terms.
- 46.2 Proact shall be permitted at any time to monitor the Customer's IT environment manually or by way of automated scanning and the Customer shall, where the relevant license or other terms of Third Party Products and Services require, allow Proact and/or the vendor of such Third Party Products and Services access to its systems, premises, personnel and relevant records in each case as may be reasonably required in order to:
- 46.2.1 verify Customer's compliance with the terms of such Third Party Products and Services; and
  - 46.2.2 verify its compliance with clause 5.
- 46.3 If either party wishes to exercise its right to audit pursuant to this clause 46 it shall:
- 46.3.1 comply with the other's reasonable security and confidentiality requirements in connection with the audit;
  - 46.3.2 provide at least 30 days' notice in writing of its intention to conduct the audit where possible to do so; and
  - 46.3.3 take all reasonable steps to ensure the audit is not unreasonably disruptive to the other and shall not delay the performance of the Contract.
- 46.4 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 46, 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.

#### **47. CUSTOMER APPLICATIONS AND THE NIS REGULATION**

The Customer shall notify Proact in writing if the non-availability of any Customer application running on any infrastructure provided by Proact may have a 'substantial impact' as defined in Article 4 of Commission

Implementing Regulation (EU) 2018/151. In particular where any non-availability may have the following effect:

- 47.1 a service provided by a digital service provider is unavailable for more than 5,000,000 user-hours whereby the term user-hour refers to the number of affected users in the European Union for a duration of 60 minutes;
- 47.2 a loss of integrity, authenticity or confidentiality of stored or transmitted or processed data or the related services offered by, or accessible via a network and information system of a digital service provider affecting more than 100 000 users in the European Union;
- 47.3 a risk to public safety, public security or of loss of life; and/or
- 47.4 a material damage to at least one user in the European Union where the damage caused to that user exceeds EUR 1,000,000.

## **PUBLIC CLOUD SERVICES**

If the Contract includes the provision of Public Cloud Services then the following clause 48 shall apply:

### **48. PUBLIC CLOUD SERVICES**

- 48.1 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 the currency set by the Public Cloud Service Provider to the applicable local currency.
- 48.2 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.
- 48.3 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 and/or the United Kingdom) 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.
- 48.4 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.
- 48.5 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 49 to 51 inclusive shall apply:

### **49. INSURANCE AND RISK**

- 49.1 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.
- 49.2 Upon request by Proact, the Customer shall provide Proact with proof of such insurance cover.

- 49.3 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.
- 49.4 The Customer assumes and will bear the entire risk of loss and damage to the goods from any cause whatsoever.

## 50. 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.

## 51. TERMINATION

In the event that the Contract is terminated by Proact in accordance with clause 14 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.

### THIRD COUNTRY LAWS

If the Contract includes goods and/or services being delivered outside of the European Economic Area, United Kingdom, or United States of America then the following clause 52 shall apply:

## 52. THIRD COUNTRY LAWS

- 52.1 Notwithstanding clauses 6.8, 12.2.1, 24.1.4 and 27.1 or any other applicable provision of these Standard Terms and Conditions Proact does not warrant that it shall comply with any Third Country Law in which goods or services are agreed to be delivered and shall not be liable to the Customer whether for damages or under any indemnity for any such failure to comply.
- 52.2 The Customer shall immediately notify Proact in the event it is aware or should reasonably be aware that performance of the Contract is likely to breach any Third Country Law.
- 52.3 For the avoidance of doubt, for the purposes of clauses 14 and 21 of these Standard Terms and Conditions any failure or delay by Proact to provide goods and/or services under the Contract as a result of the application of any Third Country Law shall not constitute a breach of Contract.

### COUNTRY SPECIFIC PROVISIONS

## 53. COUNTRY SPECIFIC PROVISIONS

The following provisions of these Standard Terms and Conditions shall have effect only if Proact is incorporated in the country set out in the provision. To the extent only of any contradiction between the provisions in clauses 1 to 52 and the following clauses, the following clauses shall have priority.

## 54. NETHERLANDS

If Proact is incorporated in the **Netherlands** the following provisions shall apply:

- 54.1 The parties accept the exclusive jurisdiction of the courts of Amsterdam.
- 54.2 The definition of Inflation Rate in clause 1.1 shall be deleted and replaced with the following: the measure of inflation published from time to time in the CBS index '*indexcijfer Cao-lonen per maand inclusief bijzondere beloningen groep 7074 zakelijke dienstverlening*'.
- 54.3 The parties exclude the clauses 7:226 and 7:227 of the Dutch Civil Code.

## 55. CZECH REPUBLIC

If Proact is incorporated in the **Czech Republic** the following provisions shall apply:

- 55.1 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).

## 56. BELGIUM

If Proact is incorporated in **Belgium** the following provisions shall apply:



- 56.1 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.
- 56.2 An additional clause 41.4.9 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"*

## 57. UNITED STATES OF AMERICA

If Proact is incorporated in the **United States of America** the following provisions shall apply:

- 57.1 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.
- 57.2 Subject to clause 15, 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.
- 57.3 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.

## 58. ESTONIA

If Proact is incorporated in **Estonia** the following provision shall apply:

- 58.1 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"*

## 59. GERMANY

If Proact is incorporated in **Germany** the following provisions shall apply:

- 59.1 If the Customer does not pay in full within the Payment Period, Proact reserves the right to suspend delivery of goods and/or services to the Customer without requiring the setting of a time limit in accordance with clause 4.10.
- 59.2 For the term "daily rate" referred to in clauses 4.2, 4.4, 14.7, and 31.3 the next smallest unit such as hours and minutes shall be applied considering the respective definition in the Contract. The smallest unit is 15 minutes.
- 59.3 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.
- 59.4 Clause 4.9 shall be replaced by the following provision:  
*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.*
- 59.5 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 this 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 this clause 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 11.1.1*

- 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.*
- 59.6 Clause 24.1 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.*
- 59.7 Clause 24.2 shall be replaced by the following provision: [Subject to clause 24.3]:
- 24.2.1 *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.*
- 24.2.2 *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.*
- 24.2.3 *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.*
- 24.2.4 *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.*
- 24.2.5 *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.*
- 24.2.6 *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.*

## 60. UNITED KINGDOM

If Proact is incorporated in the **United Kingdom** the following provision shall apply:

- 60.1 The definition of Inflation Rate in clause 1.1 shall be deleted and replaced with the following: the measure of inflation '*RPI All Items: Percentage change over 12 months*' figure published from time to time by the Office for National Statistics.