

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES BY PROACTIVE LIMITED

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day:

A day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date:

Has the meaning given in clause 2.2.

Conditions:

These terms and conditions as may be amended in accordance with clause 11.5.

Contract:

The contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control:

Has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer:

The legal or natural person with sufficient authority who purchases Services from the Supplier.

Customer Default:

Has the meaning set out in clause 4.2.

Deliverables:

The deliverables set out in the Order produced by the Supplier for the Customer.

Intellectual Property Rights:

Patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether

registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order:

The Customer's order for Services as set out in the Customer's order confirmation form, the Customer's written acceptance of a quotation by the Supplier, or a statement of work as the case may be.

Services:

Professional consultancy services and technical support provided by the Supplier to the Customer as set out in the Order.

Supplier:

Productive Limited registered in England and Wales with company number 10524210.

Third Party Software:

Means any software (including any derivatives of such software) owned by a third party that the Supplier agrees to resell or licence to the Customer as specified in the Order;

Third Party Vendor Terms:

Means the specific terms and conditions that will apply to the provision and use of the software as specified in the Order form, the current version of which is made available by the Supplier in the Order.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 Unless an alternative form of acceptance is set out in the Order, the Order shall only be deemed to be contractually binding once the Customer has signed the Order confirming their acceptance at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (f) comply with any additional obligations as set out in the Order
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Intellectual property rights

- 5.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 5.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 5.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 5.2.
- 5.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

6. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 1.

7. Limitation of liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in this clause 7 shall limit the Customer's payment obligations under the Contract.
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.4 Subject to clause 7.3 and clause 7.5, the Supplier's total liability to the Customer for all quantifiable loss or damage caused by the Supplier's own negligent actions or omissions under the Contract shall not exceed the total fees payable by the Customer under the Contract for the value of the Services as defined in the Order.
- 7.5 Subject to clause 7.2 (No limitation of customer's payment obligations), clause 7.3 (Liabilities which cannot legally be limited) and clause 8.4, this clause 7.5 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.

- (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information as a result of technological malfunctions with third-party software.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 7.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.8 This clause 7 shall survive termination of the Contract.

8. Third Party Software

- 8.1 If the Order form specifies that the Supplier is to supply or licence Third-Party Software to the Customer, the Supplier shall grant the Customer with the right to use the Third-Party Software subject to the Third-Party Vendor Terms.
- 8.2 The Customer shall comply with the Third-Party Vendor Terms. Should the Customer fail to comply with the Third-Party Vendor Terms, the Supplier shall be entitled to terminate the Contract immediately without notice.
- 8.3 The Customer hereby acknowledges unequivocally that the Supplier does not warrant or guarantee the performance of any Third-Party Software and shall not be liable for any loss or damage to the Customer or any other party caused directly or indirectly as a result of the Third-Party Software (or any acts or omissions of the relevant third party vendors supplying the same), including for times of performance or delivery. For the avoidance of doubt, the Supplier's only obligation is to procure such Third-Party Software for the Customer on a resale or licensed basis, and the Customer's rights in respect of such Third-Party Software are contained in the Third-Party Vendor Terms, to which the Supplier is not a party.

- 8.4 For the avoidance of doubt, to the extent that there is any conflict between the terms of the Third-Party Vendor Terms and the terms of the Contract, the Third-Party Vendor Terms shall prevail.
- 8.5 The Customer shall, at all times during and after the termination or expiry of the Contract, indemnify, keep indemnified and hold harmless the Supplier and its respective officers, employees, agents, contractors, and sub-contractors in full and on demand from and against any and all claims, fines, losses, damages, demands, costs, expenses, fees (including but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by the Supplier directly or indirectly as a result of any breach by the Customer of the Third-Party Vendor Terms.

9. Termination

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party at least 1 months' written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) 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; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 9.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier or suspend the Customer's right to use the Third-Party Software (as applicable) if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
 - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

10. Consequences of termination

- 10.1 On termination or expiry of the Contract, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

11.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 **Entire agreement.**

- (a) This Contract and the Order constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

- 11.5 **Variation.** Except as set out in these Conditions, no variation of the terms in this contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order.
 - (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 Data Protection

Definitions

Applicable Laws: means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- (b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation (*EU 2016/679*)

Purpose: the purposes for which the Customer Personal Data is processed, given its ordinary meaning.

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

1. DATA PROTECTION

1.1 For the purposes of this clause 1, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

1.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws. The parties acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the parties anticipate that the Customer shall be the controller and the Supplier shall act as a processor.

1.3 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.productive.co.uk/privacy-policy>. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.

1.4 Without prejudice to the generality of clause 1.2 of this Schedule, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this agreement.

1.5 Without prejudice to the generality of clause 1.2 of this Schedule the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) implement appropriate technical and organisational measures protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For these purposes, Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 1 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

1.9 The Customer hereby provides its prior, general authorisation for the Supplier to:

(a) appoint processors to process the Customer Personal Data, provided that the Supplier:

(i) shall ensure that the terms on which it appoints such processors comply with Applicable Data

Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 1;

(ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and

(iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.

(b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

1.11 Subject to clauses 7.3 and 7.5 of the agreement, and notwithstanding any other terms of this agreement, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract insofar as it relates to the obligations set out in this clause 1 of Schedule 1, or Applicable Data Protection Laws shall be limited to the cap set out in clause 7.4.