

# General Terms (Version 2)

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The following are the Proactis general Terms (“General Terms”) (version 2: 16 June 2020) referred to in and applying to all Customer Contracts from [date] until superseded by a later version:-

## 1 Definitions

The following terms shall have the following meanings, others will be set out in the Customer Contract or other incorporated terms:

**“Capacity”** means the maximum number of named Users authorised to Use the Licensed Software. The Capacity is set out in the Customer Contract.

**“Confidential Information”** means any document, material, idea, data or other information which relates to either party’s products, services, research and development, trade secrets or business affairs or which is marked as confidential or which should be reasonably apparent that it should be treated as confidential.

**“Customer Contract”** means the executed document agreed between Proactis and the Customer in the standard form Proactis Customer Contract, together with these General Terms and all other documents incorporated into the Customer Contract by reference.

**“Data Fees”** means, with respect to Hosted Systems, the separate fee(s) payable by the Licensee to Proactis for data storage.

**“Data Protection Legislation”**: (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) is no longer directly applicable in the UK, GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, and then (ii) any successor legislation to GDPR or the Data Protection Act 2018.

**“Documentation”** means any Licensed Software assistance manuals, help files, release notes, or other related materials, in printed or electronic form, that may be updated, and/or provided by, Proactis from time to time.

**“Enhancement”** means an upgrade of Licensed Software released by Proactis generally to its customers but excluding any individual or specific Modification, hot fix or bug fix;

**“Fee”** means, individually or collectively, any Hosting Fee, License Fee, Maintenance Fee and/or Professional Fee or similar charge under any other name.

**“Hosting Fee”** means the fee(s) payable by Licensee for a Hosted System. The Hosting Fee for the initial Capacity is set out in the Customer Contract.

**“Invoice Capture Managed Service”** means the service of receiving and extracting information from documents sent by suppliers or the Customer by electronic means validating the information for accuracy and releasing the same for import into a Purchase to Pay, Invoice Matching, Line of Business or Enterprise Resource Planning (ERP) solution.

**“Invoice Capture Managed Service Terms”** means the relevant set of Proactis standard terms for the provision of Invoice Capture Managed Service as incorporated into the relevant Customer Contract.

**“License”** means the non-exclusive, non-transferable right to use the Licensed Product, subject to the provisions of the Customer Contract.

**“License Fee”** means the fee(s) payable by Licensee for the License of the Licensed Product. The License Fee for the initial Capacity is set out in the Customer Contract.

**“Licensed Module”** means a Proactis-specified function set of the Licensed Software.

**“Licensed Product”** means the Licensed Software and the Documentation to be provided to the Customer under the Licensed Product Terms

**“Licensed Product Terms”** means the relevant set of Proactis standard terms for the provision of Licensed Product as incorporated into the relevant Customer Contract

**“Licensed Software”** means the version of Proactis’ computer software product identified in the Customer Contract, including any Updates thereof that may be supplied by Proactis and any Third Party Software which is sub licensed from Proactis to the Licensee under the Customer Contract, but excluding any software product licensed direct to the Licensee.

**“Licensed System Location”** means a location at which Licensee is entitled to locate an On-Premises system. The Licensed System Location(s) is (are) specified in the Customer Contract.

**“Maintenance Fee”** means any separate fee(s) payable by Licensee to Proactis for Maintenance and Support Services for a particular Maintenance Period. The Maintenance Fee for the initial licensed Capacity is set out in the Customer Contract.

**“Maintenance and Support Services”** mean the services to be provided by Proactis to Licensee under Maintenance and Support Services Terms which services are identified in The Customer Contract.

**“Maintenance and Support Services Terms”** means the relevant set of Proactis standard terms for the provision of Maintenance and Support Services as incorporated into the Customer Contract.

**“Parties”** means Proactis and the Customer, each a Party to this Customer Contract.

**“Policies”** means those Proactis policies which the Customer is required to comply with as notified to the Customer by Proactis from time to time.

**“Proactis Holidays”** means English bank and public holidays.

**“Proactis Service Desk”** means the support desk provided by Proactis for use by its customers using methods and during hours as notified to its customers from time to time.

**“Professional Fee(s)”** means the fee(s) payable by Licensee for Professional Services.

**“Professional Services”** mean the services to be provided by Proactis to Licensee under Professional Services Terms which services are identified in the Customer Contract.

**“Professional Services Terms”** means the relevant set of Proactis standard terms for the provision of Professional Services as incorporated into the Customer Contract

**“Service Credits”** means financial credits that are applied when amounts are deducted from amounts to be paid by the Licensee under the Customer Contract as set out in Maintenance and Support Services Terms.

**“Service Levels”** means the levels of service defined in Maintenance and Support Services Terms.

**“System”** means one or more computer(s) capable of executing the Licensed Software or providing the Invoice Capture Managed Service (as appropriate). The System will be hosted by Proactis or its third party processor (in either case, a **“Hosted System”**). A System that is not a Hosted System shall be referred to as an **“On-Premises System”**.

**“Third Party Software”** means software which is being licensed by Proactis to the Licensee either by way of a sub-license from Proactis or a direct license from that third party to the Licensee

**“Update”** means, a hot fix, extension, correction, patch, workaround, enhancement, new release or version or other update to the Licensed Product as provided by Proactis to Licensee only and which are non-standard.

**“Use”** means executing or otherwise using or causing to be active any portion of the Licensed Product on a System.

**“User”** means a person, automated process, or program logged into the Licensed Software and making Use of the Licensed Software.

**“Working Days”** mean Monday to Friday in the UK, excluding Proactis Holidays.

**“Working Hours”** mean 9:00 am to 5:30 pm during the Working Days.

## **2 General Provisions**

### **2.1 Limitation of Liability**

The following clauses set out the maximum liability of Proactis under the Customer Contract:

2.1.1 Neither party will have any liability for special, indirect, punitive, consequential, exemplary or incidental losses, loss of profit, loss of business or loss of data.

2.1.2 In relation to any Licensed Product, EXCEPT FOR Proactis’ OBLIGATIONS UNDER SECTION 6 of Licensed Product terms (as limited in that section), AND SUBJECT TO ANY OTHER EXPRESS LIMITATIONS IN THE CUSTOMER CONTRACT THE TOTAL LIABILITY OF Proactis WHETHER ARISING IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHER CLAIM OR ACTION, SHALL BE LIMITED TO THE DIRECT LOSSES AND DAMAGES SUFFERED BY LICENSEE THAT ARE OTHERWISE NOT RECOVERABLE UNDER THIS CUSTOMER CONTRACT, IN AN AMOUNT NOT TO EXCEED, IN AGGREGATE, THE LICENSE FEES PAID BY LICENSEE TO Proactis FOR THE LICENSED

PERIOD DURING THE PREVIOUS 12 MONTHS AND THE LICENSEE SHALL HAVE A DUTY TO MITIGATE THE SAME. Further, Proactis shall have no liability in relation to the use of any software licensed DIRECTLY from a third party whether arranged by Proactis or not.

2.1.3 In relation to any **Maintenance and Support Services**, if Proactis breaches any of its obligations under Maintenance and Support Terms then Licensee may notify Proactis in writing of such breach. If Proactis fails to cure such notified breach within a reasonable period of such written notice, then:-

a) If the License is a perpetual license, the Licensee may terminate Maintenance and Support Services at any time during the continuation of such breach and Proactis shall then refund to Licensee a pro rata portion of any prepaid Fees relating to the period after the termination; or

b) If the License is a subscription license, the Licensee's remedy shall be limited to service credits pursuant to Maintenance and Support Terms

The foregoing shall be Proactis' entire liability and Licensee's exclusive remedies in the event of a breach of its obligations under Maintenance and Support Terms.

2.1.4 In relation to any **Invoice Capture Managed Service**, Proactis' liability is limited to the Service Credits set out in Invoice Capture Managed Service Terms.

2.1.5 In relation to any **Professional Services**, if Proactis breaches any of its obligations under the Customer Contract, then Licensee may notify Proactis in writing of such breach. If Proactis fails to cure such breach within a reasonable period of such written notice, then Licensee may thereafter terminate the Professional Services then remaining to be performed under the Customer Contract by giving Proactis written notice thereof at any time during the continuation of such breach. In the event of any such termination by Licensee Proactis shall refund to Licensee any Professional Fees prepaid by Licensee for such remaining Professional Services that would have been performed under the Customer Contract. The remedies set out in this clause represent the total liability of Proactis in relation to any breach of its obligation in connection with the provision of Professional Services where Fees have been prepaid.

Where Fees have not been prepaid for Professional Services, Proactis undertakes to rectify any errors in work that are notified in writing to Proactis by the Customer within 14 days of the date of acceptance by Proactis of the error, at the fee rates and on terms of payment to be agreed.

2.1.6 In relation to any **services OF ANY KIND** to be provided by Proactis, Proactis PROVIDES NO WARRANTY OR REPRESENTATION OTHER THAN THAT THE SERVICES WILL BE PROVIDED WITH REASONABLE SKILL AND CARE. Proactis DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. Proactis NEITHER ASSUMES NOR AUTHORISES ANY OTHER PERSON TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH ANY OF SERVICES.

2.1.7 Nothing in these conditions excludes the liability of Proactis: for death or personal injury caused by Proactis' negligence; or for fraud or fraudulent misrepresentation.

## **2.2 Term and Termination**

2.2.1 The period of the contract between the parties shall be that period set out in the Customer Contract.

2.2.2 If Licensee fails to make any payment to Proactis when due under the Customer Contract or cure any other breach within thirty (30) days (or such lesser period where reasonable) of written notice of such other breach, then Proactis may immediately terminate the License and the Customer Contract in whole or in part. Proactis may also suspend the performance of any or all of its obligations under the Customer Contract during the continuation of any such breach.

2.2.3 Proactis shall have the right to terminate the License and/or the Customer Contract if Licensee is declared bankrupt, becomes insolvent or commences liquidation or receivership proceedings or Proactis becomes aware of circumstances which in its opinion may lead to the same.

2.2.4 Upon any termination of the License or the Customer Contract, Licensee shall immediately: -

(a) destroy all tangible copies and purge and/or permanently delete all electronic, magnetic, and other copies of the Licensed Product in its possession; and

(b) certify in writing to Proactis that: -

(i) Licensee has done so and is no longer using or in possession of any copy of the Licensed Product; and

(ii) Licensee has provided no other party with any copy of the Licensed Product.

2.2.5 Upon any termination of the Customer Contract, any amounts payable to Proactis under the Customer Contract shall become immediately due for payment.

## **2.3 Payment Terms and Expenses**

2.3.1 Except as may otherwise be expressly set out in the Customer Contract, each invoice issued by Proactis to Licensee shall be payable in full within thirty (30) days of invoice date.

2.3.2 Licensee shall pay interest on overdue amounts from the date due until paid in full at the rate determined by the Late Payment of Commercial Debts (Interest) Act 1988 or any superseding legislation and any regulations made pursuant to that legislation.

2.3.3 Licensee's obligation to pay any amounts accrued prior to the termination date will survive the termination of the Customer Contract for any reason.

2.3.4 All amounts are quoted and payable in Pounds Sterling to Proactis at the address specified in any invoice.

2.3.5 Licensee will reimburse Proactis for any reasonable out-of-pocket expenses, including reasonable travel costs and expenses, directly incurred by Proactis in providing any services under the Customer Contract. Reimbursable expenses will be invoiced by Proactis to Licensee.



## **2.4 Confidentiality**

2.4.1 Each party shall keep in strict confidence the other's Confidential information. The recipient shall restrict disclosure of the same to such of its employees, agents or sub-contractors as need to know it only for the purpose of discharging its obligations to the other party and shall ensure that they are subject to obligations of confidentiality corresponding to those which bind the recipient hereunder.

2.4.2 Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, as can be shown by written evidence.

2.4.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

2.4.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.4 , it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

The above provisions of this clause 2.4 shall survive termination of the Contract, however arising.

## **2.5 Non-solicitation**

2.5.1 The Customer shall not, and shall procure that its associates (as that term is defined in Section 435 of the Insolvency Act 1986) shall not, for the duration of the Customer Contract and twelve months thereafter:

- (a) solicit or endeavor to entice away from Proactis or any of its group businesses any employees, workers, independent contractors or agents; or
- (b) employ or engage or attempt to employ or engage or negotiate or arrange the employment or engagement by any other person, firm or company of any of such employees, workers, independent contractors or agents unless agreed in writing by Proactis, except that the Customer shall not be in breach of this clause 2.5.1 if it hires an employee or sub-contractor of Proactis as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of Proactis.

2.5.2 Any consent given by Proactis in accordance with clause 2.5.1 (b) shall be subject to the Customer paying to Proactis on demand a sum equivalent to 20% of the then current annual

remuneration of Proactis' employees, workers, independent contractors or agents or, if higher, 20% of the annual remuneration to be paid by the Customer to such employees, workers, independent contractors or agents

## 2.6 Data Protection

2.6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2.6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

2.6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Proactis is the data processor (where “**Data Controller**” and “**Data Processor**” have the meanings as defined in the Data Protection Legislation). The Customer Contract sets out the scope, nature and purpose of processing by Proactis, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

2.6.3 Without prejudice to the generality of clause 2.6.1, the Licensee will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Proactis for the duration and purposes of the Customer Contract.

2.6.4 Without prejudice to the generality of clause 2.6.1, Proactis shall, in relation to any Personal Data processed in connection with the performance by Proactis of its obligations under the Customer Contract:

a) process that Personal Data only on the written instructions of the Licensee unless Proactis is required by the laws of any member of the European Union or by the laws of the European Union applicable to Proactis to process Personal Data (“**Applicable Laws**”);

b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Licensee has been obtained and the following conditions are fulfilled:

(i) the Licensee or Proactis has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) Proactis complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) Proactis complies with reasonable instructions notified to it in advance by the Licensee with respect to the processing of the Personal Data

(v) assist the Licensee, at the Licensee's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(vi) notify the Licensee without undue delay on becoming aware of a Personal Data breach;

(vii) at the written direction of the Licensee, delete or return Personal Data and copies thereof to the Licensee on termination of the Customer Contract unless required by Applicable Law to store the Personal Data; and

(viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 2.6 and allow for reasonable audits by the Licensee or the Licensee's designated auditor.

2.6.5 The Licensee consents to Proactis appointing Redcentric plc as a third-party processor of Personal Data under the Customer Contract. Proactis confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement. As between the Licensee and Proactis, Proactis shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 2.6.

## **2.7 Miscellaneous**

2.7.1 Governing Law; Jurisdiction. The Customer Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit exclusively to the jurisdiction of the English Courts.

2.7.2 Notices. Except as otherwise specifically set forth in the Customer Contract, all notices shall be in writing and shall be deemed to have been sufficiently given if sent by registered or certified mail, return receipt requested, or by a nationally recognised express courier, to a party at its address as set forth at the beginning of the Customer Contract. The effective date shall be the date of the notice.

2.7.3 Policies. In performing its obligations under this agreement, the Customer shall comply with the Policies.

2.7.4 Assignment and sub-contracting. The benefit or burden of Customer Contract may not be assigned or subcontracted, in whole or in part, by Licensee. Proactis may assign or subcontract the burden and/or the benefit of the Customer Contract to any subsidiary, affiliated or associated company.

2.7.5 Waiver. The failure of any party to enforce any term or condition of the Customer Contract shall not constitute a waiver of such party's right to enforce such term or condition or any other term or condition of the Customer Contract, unless so waived in writing.

2.7.6 Force Majeure. Neither party will be liable for any failure to perform any of such party's obligations under the Customer Contract (excluding, however, a party's payment obligations) due to any causes beyond such party's reasonable control, including, but not limited to, acts



of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, accident, and strikes.

2.7.7 Interpretation. References to Sections and Schedules are to Sections of, and Schedules to, the Customer Contract, unless otherwise indicated. Section headings are inserted for convenience of reference only and shall not affect the construction of the Customer Contract. The singular number shall include the plural, and vice versa. Any use of the word “including” will be interpreted to mean “including, but not limited to,” unless otherwise indicated. References to any individual or entity (including the parties and any other entities referred to) shall be construed to mean such individual or entity and its successors in interest and permitted assigns, as applicable.

2.7.8 Entire agreement. The parties agree that the Customer Contract states the entire agreement between them with respect to its subject matter and supersedes all prior agreements, representations, conditions or warranties whether verbal or in writing. No terms or representation sought by the Customer to apply to the Customer Contract shall apply or be incorporated unless reduced to writing, signed by both parties and expressly incorporated into the Customer Contract.

2.7.9 Third party rights. The parties do not intend that any third party gains any rights in connection with the Customer Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 unless expressly agreed in writing and incorporated into the Customer Contract.

2.7.10 Use of address. The Licensee will only make reference to or use of any Proactis address on any of its documentation for limited purposes as directed by and agreed with Proactis in writing from time to time. The Licensee will indemnify and hold harmless Proactis against all losses, costs, expenses and damages howsoever incurred which are connected to any failure by the Licensee to comply with this obligation.

2.7.11 Use of name. The Licensee consents to Proactis making reference in marketing material to the fact that they are a customer of Proactis and the solution which they have chosen provided that all other terms of the Customer Contract between them shall remain confidential.