

End User Licence Agreement (Version 1)

This document is the Proactis standard form 'End User License Agreement' ('EULA') (Version 1: 1st February 2021) referred to in and to be used by all Value Added Resellers ('Reseller/s') from 1st February 2021 until superseded by a later version:

Introduction

1. This agreement ("Agreement") is between Proactis Limited (registered in England and Wales under company number 3182974, whose registered office is at 1st Floor, Riverview Court, Castle Gate, Wetherby, West Yorkshire, LS22 6LE) ("Proactis") and the user who has installed the software for use ("the Customer").
2. This Agreement applies whether you enter into it directly with Proactis or by dealing with a third party authorised by Proactis to arrange this Agreement ("Reseller"). If a Reseller is involved, the consideration, Licenced Product specification and other commercial details will be as stated in any contract with the Reseller and only the Reseller shall be liable to the Customer for the accuracy of such details. Resellers are not authorised to make any promises or commitments on Proactis behalf, and Proactis is not bound by any obligations to the Customer other than as specified in this Agreement.
3. BY INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS DO NOT INSTALL/USE THE SOFTWARE.

General Terms

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 this Agreement and/or (where relevant in the context and as evidenced by the related agreement between a Reseller and Proactis) any elements of the related agreement between a Reseller and the Customer which bind or are for the benefit of Proactis.

"Data Protection Legislation" means 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.

"Hosted Service Terms" means the standard Proactis terms for hosting services which are available at: <https://www.proactis.com/uk/proactis-contractual-terms-and-conditions/Reseller-EULA-and-hosting/>

"**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 Customer 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 terms of this Agreement.

"**Licensed Software**" means the 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 Customer under this Agreement, but excluding any software product licensed direct to the Customer.

"**Parties**" means Proactis and the Customer, each a Party to this Agreement.

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

"**System**" means one or more computer(s) capable of executing the Licensed Software. 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 Customer either by way of a sub-license from Proactis or a direct license from that third party to the Customer.

"**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 Customer and which are either bespoke to the Customer or made generally available to several or all customers of Proactis.

"**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.

2. License Grant

- 2.1. Customer is hereby granted a non-transferable, non-exclusive right to Use the Licensed Software, together with the Documentation limited to the licensed Capacity. Customer may Use the Licensed Software only for Customer's internal business purposes and, if relevant, only at any authorised location(s).
- 2.2. The Use of the Licensed Product requires a License key, which shall be either supplied by Reseller to Customer to apply the same (with an On-Premises system) or (with a Hosted System) provided and applied directly by Proactis. Such License key will be programmed to tailor the Customer's Use of the Licensed Product in conformity with the restrictions and allowed functionality in the License.
- 2.3. Customer will be solely responsible for data conversion, backing up, virus checking the Licensed Software and any data on an On-Premises system and the cost of any of the same.
- 2.4. Customer will be responsible for the provisioning of the infrastructure and licensing of such infrastructure which is required for the Licensed Product to fully function where the Proactis software is implemented in an On-Premises system.

- 2.5. If the Customer is receiving a service from Proactis where they communicate with third party suppliers via Proactis' System, the Customer shall use its best endeavours to ensure that such supplier enters into the relevant terms for accessing and using the System and will provide all reasonable co-operation to Proactis to ensure such terms are complied with by that supplier.
- 2.6. The Customer acknowledges that it will not hold Proactis liable nor make any claim that Proactis is liable in relation to the provision of goods and/or services by any third party supplier to the Customer and will indemnify Proactis against any and all losses, damages, cost claims or expenses incurred by either the Customer and/or any supplier in connection therewith.

3. Term

- 3.1. This Agreement shall remain in effect for the period stated in the Customer Contract. This Agreement will terminate immediately, without prior notice from Proactis, in the event that the Customer fails to comply with any provision of this Agreement. Upon termination of this Agreement, the Customer shall cease to use all of the Licensed Product and delete all copies of the Licensed Software from their System.

4. Use Restrictions and Audit

- 4.1. Except as expressly permitted by the Customer Contract, Customer shall not, and shall not permit others to, (a) Use, copy, duplicate, modify, enhance, distribute, publish, disclose, sublicense, transfer, sell, lease, rent, charge or encumber all or any part of the Licensed Product, (b) reverse compile, disassemble, reverse engineer or otherwise reduce to human readable form any part of the Licensed Software, or (c) translate or make derivative works of any part of the Licensed Product, (d) use any part of the Licensed Product or the Maintenance and Support Services to provide services to third parties, or (e) assist others in obtaining access to any part of the Licensed Product.
- 4.2. Proactis may audit Customer's Use of the Licensed Product during normal business hours on reasonable notice and at Proactis' expense. Customer will give Proactis such access as it may reasonably require to perform such audits. To the extent that the result of any such audit indicates that Customer underpaid any sums which would otherwise have been due to Proactis whether through the Reseller or otherwise, Customer shall immediately pay to Proactis (or the Reseller as directed by Proactis) the amount of any such underpayment together with interest due.
- 4.3. If the Customer does not pay any sums to the relevant Reseller when due, or breaches any other term of this Agreement, Proactis may suspend the license granted and/or any other services to the Customer until such breach has been fully remedied.

5. Proprietary Rights and Confidentiality

- 5.1. Customer agrees and acknowledges that all intellectual property in the Licensed Product is either the exclusive property of:
 - a) Proactis;
 - b) or a third party or parties from whom Proactis has the right to sublicense the same to the Customer.

All rights in and to the Licensed Product are reserved to Proactis (or any relevant third party) and the Customer will not contest Proactis' or such third party's right or title in or to the same.

- 5.2. Customer shall not alter or remove any copyright, trade secret, patent, trademark, proprietary and/or other legal notices contained on or in copies of the Licensed Product.

- 5.3. If Customer is permitted by Proactis to make any copies of the Licensed Product, then Customer shall reproduce all relevant notices on or in all copies.
- 5.4. Customer shall hold and use the Licensed Product under a duty of confidence and shall not disclose any information relating to it, its use or Proactis' business without the prior written approval of Proactis, except:
- a) to Customer's employees, agents, and contractors to whom such use is necessary and licensed hereunder for Use, provided that each such employee, agent, or contractor is in turn bound by a duty to the Customer to maintain the Licensed Product in confidence; or
 - b) (provided that Customer shall have used reasonable efforts to secure confidential treatment of any such information to be disclosed) as required by applicable law, rule, or regulation, or by an order of a court or governmental or law enforcement agency or other authority, each of competent jurisdiction.

Customer's obligations under this clause 5.4 shall not apply to the Licensed Product, or any part thereof, which

- i) was known by Customer prior to disclosure by Proactis; or
 - ii) becomes publicly available without any party's breach of a duty of confidence to Proactis; or
 - iii) is received by Customer from a third party without breach of any obligation of confidentiality to Proactis; or
 - iv) is independently developed by Customer without use or influence of the use of the Licensed Product or any other confidential or proprietary information of Proactis and such exclusively independent development is evidenced in writing.
- 5.5. Customer shall safeguard all copies of the Licensed Product in its possession.
- 5.6. Customer shall ensure that no-one employed by, contracted to or otherwise influenced by them, whether or not authorised to have access to the Licensed Product, shall take any action in violation of the Customer Contract.
- 5.7. Proactis shall hold any and all non-public information of Customer, including, but not limited to, all customer information, all financial information, all information regarding Customer's systems and other technology, and all business, personnel, customer, and other records of Customer ("**Customer Confidential Information**"), in confidence and shall not disclose any Customer Confidential Information or part thereof, without the prior written approval of Customer, except:
- a) to Proactis' employees, agents, and contractors to whom disclosure is necessary for the performance of Proactis' obligations under the Customer Contract; or
 - b) as required by applicable law, rule, or regulation, or by an order of a court or governmental or law enforcement agency or other authority, each of competent jurisdiction.

Proactis' obligations under this clause 5.7 shall not apply to any Customer Confidential Information, or part thereof, which

- i) was known by Proactis prior to disclosure; or
- ii) becomes publicly available without fault of Proactis or its employees, agents, or contractors; or
- iii) is received by Proactis from a third party without breach of any obligation of confidentiality to Customer; or
- iv) is independently developed by Proactis without use of Customer Confidential Information and such development is evidenced in writing.

- 5.8. Customer agrees that all Updates of the Licensed Product shall belong to and be owned by Proactis, or by the relevant third party licensor, and shall be licensed to Customer subject to, and in accordance with, the provisions of the Customer Contract in the same manner as the unaltered Licensed Product where it is sub-licensed to the Customer from Proactis (or in accordance with any relevant direct license where it is not).

6. No Warranty

- 6.1. PROACTIS MAKES NO WARRANTY THAT ERRORS HAVE BEEN COMPLETELY ELIMINATED FROM THE LICENSED PRODUCT NOR THAT THE LICENSED PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT FOR ANY LIMITED WARRANTY WHERE HOSTED SERVICES TERMS APPLY, PROACTIS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCT. THE PARTIES ACCEPT THAT ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR REASONABLE SKILL AND CARE ARE EXCLUDED. THE LIMITED WARRANTY IS IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTY ARISING OUT OF, OR IN CONNECTION WITH, THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED PRODUCT.
- 6.2. Customer accepts responsibility for the selection of the Licensed Software to achieve its intended results.

7. Intellectual Property Indemnity

- 7.1. Proactis agrees to
- a) defend any third party claim brought against Customer alleging that the Licensed Product or Customer's Use thereof pursuant to the Customer Contract infringes any patent or copyright or misappropriates any trade secret (an "**Infringement Claim**"), and
 - b) indemnify and hold harmless Customer from and against any damages finally awarded against Customer in any litigation for such Infringement Claim or settlement of such Infringement Claim made by Proactis; provided, that Proactis' obligations hereunder are subject to
 - i) Proactis' receipt of timely notice from Customer of such Infringement Claim; and
 - ii) Proactis' right to control and direct the defence of such Infringement Claim; and
 - iii) Customer not being in breach of the Customer Contract; and
 - iv) Customer cooperating with Proactis in such defence (Proactis will reimburse Customer for reasonable out-of-pocket expenses incurred by Customer in providing such cooperation).
- 7.2. In the event of an Infringement Claim, or in the event that Proactis determines that there is a risk that the Licensed Product or Customer's Use thereof may become the subject of an Infringement Claim, Proactis shall have the right, at its own option and expense, to (a) obtain the right for Customer to continue to Use the Licensed Product, or (b) replace the Licensed Product with a product having functionality and performing in a manner substantially similar to the Licensed Product, or (c) modify the Licensed Product so that it becomes non-infringing, or (d) terminate the License and this Customer Contract and refund a pro rata portion, if any, of the License Fee, Hosting Fee, if any, and Maintenance Fee, if any, paid in advance by Customer.
- 7.3. Proactis' obligations under this Section 7 shall not apply to any Infringement Claim to the extent that the infringement or misappropriation is caused by any of the following:
- a) Use of the Licensed Software not in accordance with the Documentation; or
 - b) Use of the Licensed Software in combination with equipment or software not licensed or specified herein or in the Documentation; or

- c) modification of the Licensed Software by anyone other than any person authorised by Proactis; or
 - d) with respect to an On-Premises system, use of a version which is not the then-current version of the Licensed Software by Proactis, or the version immediately prior to that (unless, in the latter case, Proactis had advised Customer to Use the then-current release); or
 - e) Use of the Licensed Software in violation of the Customer Contract.
- 7.4. The foregoing states the entire liability of Proactis, and Customer's exclusive rights and remedies, with respect to any Infringement Claim or any other actual or alleged infringement or misappropriation of any patents, copyrights, trade secrets, or other intellectual property rights related in any way to the Licensed Product.

8. Limitation of Liability

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

- 8.1. 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.
- 8.2. IN RELATION TO THE USE OF ANY LICENSED PRODUCT AND ANY RELATED SERVICES (INCLUDING HOSTING SERVICES IF APPLICABLE), 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 THE CUSTOMER THAT ARE OTHERWISE NOT RECOVERABLE UNDER THIS CUSTOMER CONTRACT, IN AN AMOUNT NOT TO EXCEED, IN AGGREGATE, THAT PORTION OF THE LICENSE FEES PAID BY CUSTOMER TO THE RESELLER FOR ON-PAYMENT TO PROACTIS FOR THE LICENSED PERIOD DURING THE PREVIOUS 12 MONTHS AND THE CUSTOMER 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.
- 8.3. 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.
- 8.4. Nothing in these terms excludes the liability of Proactis: for death or personal injury caused by Proactis' negligence; or for fraud or fraudulent misrepresentation.

9. Data Protection

- 9.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. If Proactis is deemed to be a data processor for the purposes of the Data Protection Legislation, Proactis' then standard terms for data processing which are available from Compliance@Proactis.com will apply.

10. Miscellaneous

- 10.1. 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.

- 10.2. 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 in the Customer Contract. The effective date shall be the date of the notice.
- 10.3. Policies. In performing its obligations under this agreement, the Customer shall comply with the Policies.
- 10.4. Assignment and sub-contracting. The benefit or burden of Customer Contract may not be assigned or subcontracted, in whole or in part, by Customer. Proactis may assign or subcontract the burden and/or the benefit of the Customer Contract to any subsidiary, affiliated or associated company.
- 10.5. 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.
- 10.6. 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, pandemic, war, riot, embargoes, acts of civil or military authorities, fire, flood, accident, and strikes.
- 10.7. 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.
- 10.8. 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 be binding on Proactis unless agreed in writing.
- 10.9. 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.
- 10.10. Use of name. The Customer 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.