

Terms and Conditions for Proactis Services

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Introduction

You must read the following before continuing:

The use of the software provided by Proactis Group Limited is subject to the following User Licence. You must carefully read through the User Licence. By accepting the License, you confirm that you have read the User License and that you agree to be bound by the terms and conditions of the User Licence at all times. If you are accepting the User Licence on behalf of a firm or corporate entity you warrant that you have the authority to do so.

If you do not agree to be bound by the User Licence you will not be able to activate and use the Software.

1 Definitions and interpretation

In the User Licence unless the context requires otherwise:

Charges means the charges payable by the Client under the Client Agreement for the Services;

Client means the party who has entered into an agreement with Proactis for the provision of the Services or a Supplier to the Client who has been invited to use the Services for the Client's benefit;

Client Agreement means the agreement entered into between Proactis and the Client for the provision of the Services;

Client Support Service means the email support facility made available to You by Proactis for the duration of the Service Period;

Community means all Users;

Confidential Information means information of a confidential nature belonging to either You or Proactis which may come to the notice of the other during the Service Period, and in respect of Proactis includes (without limitation) any information relating to the Software or other technologies and products of Proactis used to provide the Services;

Information means the information entered into any registration form(s) relating to the Services including but not limited to name, postal or e-mail address, username, password and computer system settings;

IPR means intellectual property rights, including but not limited to copyright, patents, trademarks, service marks, design right, format rights, look and feel, know how, confidential information, moral rights, rights of privacy or publicity, domain names and any other intellectual or industrial property rights (whether registered, registerable or not and including any applications to register the same) wherever in the world enforceable, including any renewals of registrations of the same;



Licence means a personal, non-exclusive, non-transferable, royalty-free licence to use the Software in accordance with the User Licence and any special licence terms as may be applicable to particular parts of the Software which will be notified to you from time to time;

Minimum Requirements means the minimum system requirements required to run the Software (as may be varied or updated from time to time), which are set out on the Web Site;

Proactis means Proactis Group Limited, company number 3182974, whose registered office is at Riverview Court, Castle Gate, Wetherby, LS22 6LE, England and any subsidiary or affiliated companies from time to time;

Services means the services for which the Client has paid the Charges, including but not limited to the supply of the Software, the Licences and the Client Support Services;

Service Period means the period, as determined by the Client, for which You are granted the Licence and during which You will have access to the Software and Services;

Software means the "Proactis" software package together with the software programs You are authorised to use as agreed between Proactis and the Client as part of the Client Agreement;

User means a person licensed to use the Software;

User Content means any data, documents, formulations and materials which are downloaded, transmitted, published, shared, stored or distributed by a User using the Services;

Web Site means the web sites at www.proactisplaza.com or any other web site now or in future operated by Proactis for the provision of the Services;

You means you the end User, who may be designated as such by or on behalf of the Client (where applicable) (and "Your" will be construed accordingly).

In the User Licence, Clause headings are used for convenience only and will not affect the construction or interpretation of the User Licence, any reference to a Clause is to the relevant clause of the User Licence, and references to persons shall include an individual, company, corporation, firm of partnership.



2 Entitlement to use Software

2.1 You acknowledge and agree that (where applicable):

2.1.1 Proactis has entered into the Client Agreement under which the Client designates the persons who it wishes to have access to and use of the Software, and that You are only entitled to use the Software because You have been so designated by the Client; and

2.1.2 the Client has the right, at its discretion and at any time, to change its list of parties who are designated and authorised to use the Software.

2.2 The User Licence will terminate immediately and You will no longer be entitled to use the Software if:

2.2.1 the Client exercises the right referred to in Clause 2.1.2, the Client has the right, at its discretion and at any time, to change its list of parties who are designated and authorised to use the Software. and You are no longer a designated user; or

2.2.2 the Client Agreement is terminated, for whatever reason.

2.3 If the User Licence is terminated under Clause 2.2, the User Licence will terminate immediately and You will no longer be entitled to use the Software if: You acknowledge and agree that Proactis will not be liable to compensate You for the loss of use of the Software.

2.4 Proactis is not under any obligation to provide You with any new version of the Software but if Proactis does make a new version available to You, You may be required to accept new terms and conditions in order to use it.

2.5 In consideration of payment by the Client to Proactis of the Charges, and of You agreeing to comply with the obligations set out in the User Licence, Proactis hereby grants You a Licence for the Service Period.

3 Conditions of grant of licence

3.1 In order to use the Software, You must satisfy the Minimum Requirements. If You fail to have and maintain in place the Minimum Requirements, You may not be able to access and use the Software or the functionality of the Software may be affected.

3.2 At Proactis' request, You undertake to promptly provide Proactis with such information as it may reasonably require to provide You with the Services and to promptly select any user name and/or password as may be required by Proactis in connection with the activation and Your use of the Software.

3.3 In the interest of maintaining the functionality of the Software or to prevent the fraudulent use of the Software, Your user name and/or password may be changed at any time. In the event that Proactis changes your user name and/or password for any reason, You will be notified of said amendment at that time.

3.4 You warrant, represent and undertake:

3.4.1 to notify Proactis immediately if You become aware of any unauthorised access to or use of the Services (and in particular any unauthorised access to, use of or copying of all or any part of the Software) by any unauthorised third party;

3.4.2 not, without the prior written consent of Proactis, to provide or otherwise make available the Software to any third party other than for the purposes specified in the User Licence;

3.4.3 to accept sole responsibility for all User Content provided by You using Your user name and password;

3.4.4 not to decompile, disassemble, reverse engineer, modify, translate, enhance or otherwise deal with the Software or any part of the Software, except to the extent permitted by law, in which event You shall first notify Proactis and allow Proactis at its option to provide the necessary information;

3.4.5 not to distribute, sub-licence, transfer, sell, lease, rent, charge or otherwise deal in or encumber all or any part of the Software; and

3.4.6 not to use the Software other than for lawful purposes and for purposes relating to Your legitimate business activities.

3.5 It is Your responsibility to ensure that the facilities and functions of the Software meet Your requirements.

4 Restrictions on use of Software

4.1 In using the Software You shall not conduct any business or activity, or solicit the performance of any activity, which is prohibited by the laws of the United Kingdom or of any other jurisdiction where the Software may be used.

4.2 You will not use the Software, or permit use of the Software by others, to create, transmit or publish any virus, trojan horse or other contaminant or corrupting program including (without limitation) any code which will or may be used to access, modify, delete or damage any data, files or other computer programs of Proactis or another User.

4.3 You must not:

4.3.1 breach or attempt to breach the security of Proactis' computers or systems, including, without limitation, accessing or attempting to access any data not intended for You, or attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorisation;

4.3.2 attempt to gain unauthorised access to the computer system of any other User or User Content not intended to be accessed by You;

4.3.3 interfere with the proper operation of the Web Site or take any action which is likely to cause any services provided via the Web Site to be interrupted or degraded; or

4.3.4 interfere or attempt to interfere with the services provided by Proactis to any other customer or user, including, without limitation, carrying out any denial of service attack.

4.4 You must not use or permit the use of the Software to send, process, transmit, upload, make available, broadcast or publish (whether directly or indirectly) any User Content or messages which:

4.4.1 is in any manner illegal in any territory in which it is or may be accessed or made available;

4.4.2 is pornographic, racist, abusive, libellous, defamatory, obscene, offensive, harassing, insulting, threatening or likely to cause emotional distress or cause annoyance;

4.4.3 incites hatred, or advocates, promotes or otherwise encourages violence against any body or individual or which provides instruction, information or assistance in causing or carrying out such violence;

4.4.4 is fraudulent, deliberately misleading or incorrect, or is intended to promote or assist illegal activity;

4.4.5 impersonates any person or entity, or otherwise misrepresents Your affiliation with any person or entity;

4.4.6 infringes the IPR of Proactis or any third party, or infringes other proprietary rights or rights in respect of personal data and individual's privacy;

4.4.7 consists of or includes software viruses, political announcements, commercial solicitation or advertising, chain letters, mass mailings or "spam"; or



4.4.8 is likely to place Proactis at the risk of criminal prosecution and/or civil action, or cause Proactis embarrassment or cause damage to the goodwill and reputation of Proactis.

4.5 Notwithstanding any other rights or remedies set out in the User Licence, if Proactis reasonably believes that any User Content provided by You is in breach of the provisions set out in this Clause 5, Proactis shall be entitled to immediately remove and/or delete such content from the Web Site.

5 Your Responsibilities

5.1 To the extent permitted by applicable law, Proactis makes no warranties, representations or undertakings that any User Content or communications made or materials sent or accessed using the Software will be free from viruses or other defects. It is Your responsibility to take precautions to ensure that Your computer and system are protected from computer viruses, or from denial of service or other such attacks, and that any preventative products employed by You are kept up to date and correctly maintained.

5.2 It is Your responsibility to correctly configure Your local area network, personal computer, firewall systems, virus scanners and e-mail set up.

5.3 You are responsible for keeping Your user name and password secure. You must not disclose or share Your user name and/or password for any purpose unconnected with the proper use of the Web Site and the Services. You must notify Proactis immediately upon becoming aware that a password has become known to an unauthorised third party.

5.4 Proactis is providing You with the Services to enable You to access and communicate with the Software via the internet. You are responsible for and must provide all computer and other equipment and services (including, but not limited to internet access) necessary to make such use of the Services.

5.5 You are responsible for any charges incurred by You in respect of the Services including, without limitation, any charges for internet access or bandwidth and the sending of communications using the Services.

6 Support

6.1 Proactis' obligation to provide any associated maintenance or support service is restricted to the Client Support Service, and Proactis is not obliged to provide any form of maintenance or support service by virtue of the User Licence.

7 Intellectual property

7.1 Both You and Proactis agree as follows:

7.1.1 all IPR arising from the provision of the Services shall be owned by Proactis; and

7.1.2 all IPR in the User Content and Information provided by You in connection with the Services will remain vested in the owner of such IPR and You hereby grant Proactis a non-exclusive, royalty free licence to use the same in order to provide the Services to You and to monitor use of the Services across the Community.

7.2 Proactis is the legal and beneficial owner of the copyright and all other IPR in the Software, in all materials produced by Proactis, in the Web Site, and in any database, logos, trademarks and trade names of Proactis and in all software utilised in providing the Services. You undertake that You will not, either alone or with any other party or parties, seek to challenge the ownership of Proactis of any or all such IPR during the Service Period.

7.3 Except as expressly set out in the User Licence, You will not acquire any IPR in the Software by virtue of the User Licence. The Software will at all times remain the property of Proactis.



8 Warranties

8.1 Proactis warrants to You that:

8.1.1 the Software will comply substantially with the relevant specification detailed on the Web Site; and

8.1.2 its title to and property in the Software is free and unencumbered and it has the right, power and authority to licence the same upon the provisions of the User Licence.

8.2 Subject to Clause 9.3, if Proactis is notified by You in writing of any material non-conformance with the specification within 30 days of the date Your first use of the Software, Proactis will correct such non-conformance within a reasonable time and at its own expense. This shall be Your sole remedy for breach of the warranty in Clause 9.1.1. Proactis shall have no liability to remedy a breach of the warranty given in Clause 9.1.1 where such breach arises as a result of any defect caused by the use of the Software other than in accordance with the User Licence or caused by any act or omission by You.

8.3 If, in Proactis' reasonable opinion, it is unable to rectify any such non-conformance as referred to in Clause 9.2 within a reasonable timescale or at an economic cost, Proactis may (at its sole discretion) elect to terminate the User Licence immediately on giving notice to You.

8.4 If any third party makes a claim against You alleging that Your use of the Software in accordance with the User Licence infringes the IPR of a third party, Proactis will defend that claim provided that You promptly notify Proactis in writing of any alleged infringement and allow Proactis to take over the defence of such claim, and You agree to provide such reasonable assistance as Proactis may require. Proactis shall have the right, at its option and expense, to undertake one of the following, which shall be Your sole remedy for infringement of IPR:

8.4.1 to replace or modify any part of the Software so as to avoid infringing any third party IPR, and Proactis may require You to accept such replaced or modified version of the Software; or

8.4.2 if the replacement or modification of the Software referred to in Clause 9.4.1 is not commercially reasonable, Proactis may terminate the User Licence immediately on giving notice to You.

8.5 Proactis does not warrant or represent that the operation of the Software will be uninterrupted or virus free, nor does Proactis make any warranties or representations about the accuracy, quality or content of any User Content published or accessed via the Services and the Web Site.

8.6 Except for those warranties expressly set out in the User Licence, Proactis disclaims all representations, warranties and conditions, whether implied, arising by law or by usage of trade or otherwise including but not limited to any implied warranty of satisfactory quality, reasonable skill and care or fitness for a particular purpose, to the extent permitted by applicable law.

8.7 You warrant and undertake at all times that the User Content submitted by You is accurate and up to date and is compliant with the terms and conditions set out in this User Licence.

8.8 The parties warrant to each other that they shall comply with the legal requirements of the General Data Protection Regulation as enacted or reflected in English Law and the parties further agree that to the extent that such legislation requires certain terms be incorporated into relevant contracts and that requirement applies to this Agreement that such clauses are deemed to be incorporated herein.

9 Limitation of liability

9.1 Proactis accepts no responsibility for any mistakes or errors that may occur during the course of collection, publication or transmission of the User Content provided by You and will not be liable for any loss or corruption of the same unless caused by Proactis' negligence or fraud.

9.2 Proactis cannot guarantee that any User Content or messages sent using the Services will not be altered, intercepted or tampered with by any third party and Proactis accepts no liability for loss or damage arising directly or indirectly as a result of such incident taking place.

9.3 You use the Software at Your own risk and in no event will Proactis be liable to You for any loss or damage of any kind arising from the use of or inability to use the Software.

9.4 You agree that Proactis shall have no liability to You (whether in contract, tort (including negligence)) or otherwise for any loss, damage, cost, expense or other claim for compensation arising out of or in connection with:

9.4.1 the late arrival (or non-arrival), of any User Content provided by You or intended for Your use; or

9.4.2 any representations, agreements, statements or undertakings made by Proactis prior to the date of acceptance of the User Licence other than those confirmed by a duly authorised representative of Proactis in writing which are expressly incorporated or referred to in the User Licence; or

9.4.3 any failure by You to install or take reasonable steps to ensure Your computer equipment is protected against viruses or other security risks.

9.5 Nothing in the User Licence shall be construed as excluding or limiting Your or Proactis' liability to the other for death or personal injury resulting from negligence, or for fraud (including fraudulent misrepresentation), or for any other liability the exclusion of which is expressly prohibited by statute.

9.6 Except as expressly stated in this Clause or elsewhere in the User Licence, the aggregate liability of Proactis to You (whether for breach of contract, in negligence or any other tort, under statute or otherwise) shall be limited to £500.

9.7 Proactis shall not be liable to You for any loss of profits, loss of contracts, loss of sales, loss of revenue, loss of operation time, loss of goodwill, loss of anticipated profits or anticipated savings, loss of use of computer equipment, loss of production, loss of or corruption of data, or for any indirect, incidental or consequential loss suffered or incurred by You as a result of any breach of any warranty in the User Licence or any of the provisions of the User Licence.

10 Confidentiality

10.1 Each of You and Proactis recognise that under the User Licence it may have access to or otherwise receive Confidential Information of the other party. Each of You and Proactis agrees to use all reasonable endeavours not to divulge the other party's Confidential Information to any third parties who do not need to know it, and to use all reasonable endeavours to prevent its disclosure to or access by any third party (other than the party's legal or other professional advisers) without the prior written consent of the disclosing party.

10.2 The provisions of Clause 10.1 shall not apply to the whole or any part of the Confidential Information to the extent that it is already in the possession of the recipient party or in the public domain other than as a result of:

10.2.1 a breach of this Clause 10;

10.2.2 enforced disclosure by reason of a statutory or regulatory requirement having the force of law or of any order of a court of competent jurisdiction.

10.3 The rights and obligations of both You and Proactis under this Clause 10 shall subsist for five years following the expiry or termination of the User Licence.

11 Indemnity

11.1 You will indemnify and keep Proactis fully indemnified against:

11.1.1 any and all liability (including all losses, costs, claims, expenses, demands, actions, damages, legal and other professional fees and expenses on a full indemnity basis) which Proactis may suffer or incur as a result of or by reason of:

(a) any breach of any of Your obligations in the User Licence including, without limitation, any breach of the terms set out at Clause 5; and/or

(b) Your misuse of the Software; and / or

(c) any act or omission by any person obtaining access to the Software by using Your designated user name and password, whether or not You authorised such access; and

11.1.2 any and all damage to Proactis' servers (or its service providers' servers) caused by any computer worms or viruses or other security risks introduced to Proactis' servers directly or indirectly by You or by anyone who You have permitted to use the Software.

12 Cancellation

12.1 You have 14 days from entering into this User Licence in which you can cancel subject to You not having activated or used the services within that 14-day period. Should You cancel within the 14-day period, there will be an administrative charge amounting to 50% of the Charges.

13 Termination and suspension

13.1 The User Licence is effective from the date of acceptance of its terms and, subject to earlier termination, will remain in force until the end of the Service Period.

13.2 Proactis is entitled to terminate the User Licence immediately on giving notice if You:

13.2.1 are in material breach of any of Your obligations in the User Licence;

13.2.2 refuse or threaten to refuse to comply with any of the provisions of the User Licence; or

13.2.3 enter into a procedure or course of action which in the normal course of business may reasonably be expected to lead to insolvency or bankruptcy or comparable arrangement.

13.3 You are entitled to terminate the User Licence at any time on giving Proactis 14 days' notice. You acknowledge that on termination You will no longer be entitled to use the Software.

13.4 Proactis will be entitled to suspend the access to and use of the Services (including suspending use of the Software) at any time if the supply of the Services is suspended under the Client Agreement.

13.5 Proactis may immediately suspend the access to and use of the Software, or immediately terminate the User Licence, where You fail to use or enforce use of the Software in accordance with the User Licence or undertake any activity which compromises the privacy of other Users and their personal data or information.

13.6 Any suspension of the use of the Software or access to the Services will continue for such time as Proactis considers fit, and may be restored at Proactis' discretion following an internal review and, if determined by Proactis, upon receipt of a written undertaking from You in respect of the continued use of the Software.

14 Consequences of termination

14.1 Termination or expiry of the User Licence will be without prejudice to any other rights or remedies of either You or Proactis under the User Licence or at law, and will not affect any accrued rights or liabilities of You or Proactis, nor will it affect any rights or obligations of You or Proactis which are to be observed or performed after termination or expiry, including without limitation obligations of confidentiality.

14.2 On the expiry or termination of the User Licence, You will no longer be entitled or able to use the Software.

14.3 Upon termination, Proactis may (at its sole discretion) offer reasonable assistance to transfer Your User Content and any associated data to You. Proactis will be entitled to charge You for its costs in providing such assistance at that time.

15 General provisions

15.1 Entire agreement

The User Licence together with the documents referred to in it constitute the entire agreement between Proactis and You. Each of You and Proactis confirms that it has not relied upon any representation not recorded in the User Licence as an inducement to enter into the User Licence.

15.2 Variations

Proactis reserves the right to vary the terms and conditions of the User Licence, or include additional special terms in respect of any new or modified Software, at any time during the Service Period. Proactis will notify You of any such addition or variation and you will need to confirm Your acceptance of said change as directed at that time, if you don't, your continued use of the Services will be deemed to be acceptance.

15.3 Changes to the Services

Proactis may at any time without notifying You in advance make any changes to the Services, provided that they are either necessary in order to comply with any statutory requirements or that they do not materially affect the nature or quality of the Services.

15.4 Severability

If any of the provisions of the User Licence are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

15.5 Waiver

No forbearance or delay by either You or Proactis in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or any breach of any terms of the User Licence will be deemed to be a waiver of any right or of any later breach.

15.6 Relationship of the Parties

Nothing in the User Licence is intended or shall operate to create or evidence any agency relationship between Proactis and You, and neither You nor Proactis has any authority to enter into any contract, whether expressly or by implication, in the name of the other or to act in the name of, or on behalf of, the other party without the other's prior written consent.

15.7 Notices

Any notices to be given under the User Licence may be given personally or by e-mail or by post to the e-mail or postal address as set out in the User Licence or provided as part of the Software registration process, or as specified by the other from time to time. Any notice will be deemed to have been received: if delivered personally, at the time of delivery; if sent by post, on the expiry of 48 hours after posting; and if by e-mail, at the time of sending, provided that no error message is received.

15.8 Rights of Third Parties

Nothing in the User Licence is intended for the benefit of any third parties, and the parties agree that terms of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.



15.9 Force Majeure

Neither You nor Proactis will be liable to the other for any delay in or failure to perform their respective obligations (other than for payment of money) as a result of any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, lightening, war, revolution, act of terrorism, strikes, lock-outs or other industrial action (in the case of Proactis, whether of the party's own employees or others) or any industrial dispute provided that if any such delay or failure subsists for a period exceeding 60 days then either You or Proactis may terminate the User Licence immediately by giving notice to the other. Any termination under this Clause 15.9 shall not cause either Proactis or You to be liable to the other in respect of such termination.

15.10 Assignment

Proactis reserves the right to assign its rights and obligations under the User Licence to any third party. You are not permitted to assign Your rights and obligations under the User Licence without Proactis' prior written consent.

15.11 Governing Law and Jurisdiction

The User Licence shall be governed by and construed in all respects in accordance with the laws of England and both You and Proactis agree to be subject to the exclusive jurisdiction of the English courts.

