

## Standard Terms and Conditions

### DEFINITIONS

**"Affiliate"** (as to any person) means any other person that, directly or indirectly, Controls, is Controlled by or is under common Control with such person.

**"Application"** means each online software application provided by ProNett as part of the Services.

**"Application Documentation"** means the manuals and other documentation provided by ProNett that are associated with or relate to any Application, as specified in the Order Form.

**"Authority"** means any governmental (local, regional, national, or supra-national), judicial, arbitral, regulatory or other authority of competent jurisdiction.

**"Change Request"** means the change(s), which may be requested by the customer at any time in writing.

**"Charges"** means all sums charged or chargeable by ProNett to the Customer, whether as the price for the provision of any Service or Application set out in the Order Form.

**"Commencement Date"** means the date from which the customer commences usage of the Services as agreed between Customer and ProNett.

**"Conditions"** means these terms and Conditions.

**"Confidential Information"** means any information of a confidential or proprietary nature (irrespective of the form of presentation or communication, and whether or not expressly designated confidential, and whether or not in tangible format) relating to the business, finances, operations, applications, services, personnel, suppliers or customers of either Party ("the Discloser") and/or any of its Affiliates, that is disclosed to or learnt by the other Party ("the Recipient") during the course of, or in the contemplation of, the performance of the Contract except to the extent that:

- it is in the public domain at the time that it is disclosed to or learned by the Recipient;
- it subsequently becomes part of the public domain through no wrongful act of the Recipient;
- it was in the Recipient's written records prior to the date when the Parties commenced discussions with a view to entering into the Contract and was not subject to any existing confidentiality obligations; and/or
- it is received by the Recipient from a third party who is lawfully authorised to disclose it without breach of the Contract and/or without breach of any obligation to the Discloser.

**"Contract"** means the Order Form and the Standard Terms and Conditions.

**"Contract Term"** means the period from the Commencement Date to the Termination Date (inclusive in both cases).

**"Control"** means the ability to direct the affairs of another person, whether by virtue of the ownership of shares, the ownership of securities, contract or otherwise.

**"CSV"** means common separated file.

**"Customer"** as defined in the Order Form.

**"Customer Equipment"** means equipment provided by Customer and used directly or indirectly for the provision or receipt of any Application.

**"Default"** means any breach of any obligation or warranty under the Contract, and any misrepresentation, breach of statutory duty or tortious act or omission (including negligence) arising under or in connection with the Contract.

**"Document"** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**"Due Date"** means for any sum included in a ProNett invoice, which shall fall due upon invoice presentation.

**"End User"** means each member of Customer's Head Office Staff as a concurrent user of any Application, or active unit as set out in the Order Form.

**"Equipment"** means hardware, equipment, tools, systems and cabling.

**"Force Majeure"** means any act, event, omission or accident that is beyond the reasonable control of a Party, including acts of nature, war, terrorism, hostilities, fire, flood, malicious damage, civil commotion, compliance with Laws, failure by the Host to provide any Hosting Service, failure by any third party referred to in the Support Services Specification to provide any service on which any Service depends, failure of any utility service or transport or telecommunications network, accident or breakdown of plant or machinery, or strikes, lock-out or other industrial disputes.

**"Host"** means UKFast.Net Limited, a private limited company organised under English Law whose registered number is 03845616 and the address of whose

registered office is City Tower, Piccadilly Plaza, Manchester M1 4BT, United Kingdom, or any substitute therefor notified to Customer by ProNett from time to time.

**"Hosting Services"** means the services provided by the Host to ProNett in order to enable ProNett to deliver the Applications to Customer as software-as-a-service.

**"Hosting Technical Specification"** means a specification giving details of the hosting services provided to ProNett by UK Fast allowing the 'ProNett Application' to be available for use by the Customer as at Commencement Date.

**"Implied Terms"** means all Conditions, warranties, representations and other terms which might have effect between the Parties or be implied (whether by statute or common law or otherwise) or incorporated into the Contract or any collateral contract, including any implied Conditions, warranties or other terms as to satisfactory quality or fitness for purpose or that any Output Material will be accurate or complete or that the use of any Output Material will be uninterrupted or error-free.

**"Infringement Claim"** means any Claim brought against the Customer that the use by or on behalf of Customer during its Licence Period of any ProNett Software in accordance with the terms of the Contract infringed any IPRs in the Territory of any third party.

**"Input Material"** means Documents, IPRs, materials, data and other information supplied by Customer to ProNett in relation to the provision or receipt of any Service.

**"Insolvency Event"** means any of the following in relation to either Party: the appointment of or the application to a court for the appointment of a liquidator, administrator, manager, administrative receiver or receiver; any proposal by the party for or the entering into of a scheme of arrangement or composition with or for the benefit of creditors; any reorganisation, moratorium or other administration involving its creditors; a resolution or proposed resolution to wind it up; any act of bankruptcy, or the presentation against it of any petition or receiving order in bankruptcy; becoming unable to pay its debts as and when they fall due; where execution or other process issued on a judgment, decree or order of any court in favour of any creditor of the party in respect of a liability of the same is returned unsatisfied in whole or in part; ceasing to carry on business; or undergoing any procedure comparable or analogous to any of the foregoing under the laws of any competent jurisdiction.

**"IPRs"** means all intellectual property rights throughout the world whether currently in existence or otherwise and whether vested or contingent, including copyright, rights in the nature of copyright, database right, trade marks, designs, design rights, patents, utility models, logos, trade secrets, know-how, confidential processes and information, inventions, discoveries and improvements, trading and business names, moral rights, get-up, rights in internet domain names and any rights in the nature of intellectual property rights (in each case whether registered or not and including applications for registration thereof) and all rights or forms of protection of a similar or analogous nature or having equivalent or similar effect or any other matters which may subsist in any part of the world and including all renewals, extensions, revivals and all accrued causes of action whenever arising.

**"Law"** means all applicable Legislation, laws, judgments, orders, codes of practice, rules, regulations, permissions and interpretations of any Authority, and the words "legal", "illegal", "lawful" and "unlawful" shall be construed accordingly.

**"Legislation"** means statutes, statutory provisions, subordinate legislation, regulations and codes.

**"Losses"** means all losses, costs, expenses, damages, indemnities, penalties, fines, judgments, demands, fees, injuries/depletions and liabilities (including damages or compensation paid on legal advice to compromise or settle any Claim, and reasonable legal costs or expenses).

**"Notices"** means demands, requests, invoices, consents and other communications.

**"Order Form"** the written order form signed on behalf of each Party specifying Applications to be provided by ProNett to Customer.

**"Output Material"** means the Applications, and all Services, Application Documentation, other Documents, IPRs, data or information provided by ProNett, for the purpose of and/or in connection with the Customer's use of the ProNett Application.

**"ProNett"** trading as P.P.M. and Associates Limited, a private limited company organised under English Law whose registered number is 03110510 and the address of whose registered office is Instone House, Instone Road, Dartford, Kent DA1 2AG, United Kingdom.

**"ProNett Application"** means each standard Application proprietary to ProNett and it's Documentation, IPR's and data.

**"Release"** means any release of an Application that corrects faults, adds functionality and/or otherwise amends or upgrades it, and that is usually

denoted by the number immediately following the point in the Software identifying number.

**"Rights"** means the rights and licences granted by ProNett to Customer under the Contract.

**"Services"** means the services to be supplied by ProNett to Customer as specified in the Order Form (including the provision of all Applications and Application Documentation), and all other services (if any) performed by ProNett for Customer under the Contract.

**"Specification"** means the specification scheduled to the Order Form of any Application or other Service.

**"Standard Support Hours"** means 08:00 – 18:00 on Business Days.

**"Standard Terms and Conditions"** means ProNett's pro-forma contractual provisions entitled Standard Terms and Conditions.

**"Support Services Specification"** means the written specification (the version of which as at the Commencement Date, giving details of Services to be provided to Customer by ProNett in order to support any Application.

**"System"** means ProNett's (or its licensors' or suppliers') proprietary recruiting, development, testing and assessment tools, and all other software, information, URLs and links, questions, tests, tools, data, databases, designs, algorithms, user interface designs, architecture, class libraries, objects and documentation, network design, know-how and other information or materials associated with it.

**"System Information"** means all content contained in the System (other than Input Material), and all data generated from use of the System.

**"Territory"** means the United Kingdom of Great Britain and Northern Ireland.

**"Virus"** means any device or other thing (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 1. THE CONTRACT: GENERAL PROVISIONS

**Governing Terms:** Each contract between ProNett and Customer ("Contract") shall be governed by the following:-

- the Order Form; and
- the Standard Terms and Conditions.
- Duration: The Contract shall come into existence on the Commencement Date, and shall continue for the term as set out in the Order Form unless otherwise terminated under the 'Termination of Contract' Conditions.

## 2. PRONETT'S OBLIGATIONS: GENERAL

- **Provision of Services:** ProNett shall use best endeavours to provide the Services to Customer in accordance with the terms of the Contract, except that:-
- if any Service is no longer available to ProNett at the intended time of its provision to Customer, ProNett may substitute for it another host or service (as the case may be) that is materially similar to it in terms of performance and/or functionality and in compliance with the specification, at no extra cost to Customer subject to the Customer's written consent which should not be reasonably withheld; and
- (for the avoidance of doubt and notwithstanding anything herein to the contrary) nothing shall oblige ProNett to sell, rent, grant or supply any software, licences or services (as the case may be) to Customer (including any assistance with data-migration, transition and/or exit procedures prior to or subsequent to the Termination Date) other than as expressly specified in the Contract.
- **Dependency on Customer's obligations:** The provision of any Service by ProNett to Customer is conditional upon
  - the fulfillment of any precondition which is agreed in writing between the parties, and
  - the timely compliance by Customer with those of its obligations under the Contract and those of its obligations specified and referred to in the Support Services Specification, upon which that provision is expressly or impliedly dependent in any way.
- **Non-exclusivity:** Nothing in the Contract shall prevent ProNett from providing to any other person during or after the Contract Term any Application or Service that is identical or similar to any Service.
- **Warranties:** ProNett warrants to Customer:
  - that its supply of the Services will (subject to the Provision of Services and Dependency on Customer's obligations as detailed

above and Force Majeure) be in material compliance with the Support Services Specification;

- that it has all (if any) regulatory and legal approvals that are required as at the Commencement Date for it to perform its obligations under the Contract and to provide the Services;
- that its ownership of rights in the Output Material is as specified under the Intellectual Property - Existing IPRs' Condition.;
- that Customer's use of the Services, the Output Material and the System in strict accordance with the Contract will not, to the best of ProNett's knowledge, infringe any third party IPR during the Term;
- that to the best of its knowledge the Specifications are accurate and (together with the Output Material) complete in respect to all material aspects necessary for the provision of the Services;
- that it will use all reasonable skill and care in its provision of the Services; and
- that it will at all times comply with Law in carrying out its obligations under the Contract.

## 3. CO-OPERATION BY CUSTOMER

- **General co-operation:** Customer shall co-operate with ProNett and its Personnel before and during the provision of any Service in a timely manner in order to assist ProNett to fulfill its obligations and exercise its rights under the Contract, including:-
  - procuring that all (if any) relevant Input Material is accurate in all material respects and is delivered to ProNett within sufficient time to enable ProNett to provide the applicable Service;
  - ensuring that all Customer Equipment is in reasonable Condition and suitable for the purposes for which it is used in relation to the Services (including having adequate browser facilities and the ability to connect to the internet either directly or via its network in such a way as to be able to receive the Applications as software-as-a-service) and complies with Law;
  - obtaining and maintaining all necessary licences and consents (including licences and consents from third party licensors of any IPRs in any Input Material or Customer Equipment) and complying with all Law in relation to its receipt of the provision of any Service, and the exercise by ProNett of its right to use Input Material.
- **ProNett's property:** Each Application, and all Documents and data provided by ProNett to Customer shall, at all times, be and remain (as between the Parties) the exclusive property of ProNett, but shall be held by Customer in safe custody at its own risk, and shall not be disposed of or used other than in accordance with The Contract.
- **Variation:** If Customer wishes to vary the detail of any Service before it has been provided, it shall notify details of such change to ProNett as soon as possible. ProNett may (but shall not be obliged to) vary its provision of the Service accordingly, in accordance with the 'Change Control' Condition..
- **Prohibitions:** Customer shall not:-
  - use any ProNett Application other than in accordance with Law; or
  - (save as authorised in writing by ProNett) use any ProNett Application other than in accordance with the Contract.

## 4. PRICES AND CHARGES

- **Specification and calculation of prices:** The prices for the provision of Services by ProNett to Customer shall be specified in the Order Form.
- **Items included in and excluded from ProNett's prices:** the prices for the provision of Services by ProNett to Customer include the cost and expense of the time and material involved in that provision, but do not include any of the following items, which ProNett may as appropriate add to any Charge:-
  - any applicable Value Added Tax and/or other sales tax;
  - any additional sum which, is reasonably required and as agreed by both parties, as a result of the inaccuracy of any Customer Input Material or any other cause attributable to any Default of the Customer and uploaded to the Application that subsequently requires correction of Customer Input Material by ProNett on behalf of the Customer.
- **Mode of Charging:** the mode of Charging shall be as specified in the Order Form.

## 5. PAYMENT

- **Time for payment:** Each sum payable by Customer to ProNett under the Contract shall be paid in full and cleared funds by its Due Date save to the extent that any bona fide dispute is notified to ProNett by Customer prior

to the Due Date, in which case the Law and Jurisdiction Condition shall apply.

- **How to pay:** Unless otherwise specified in the Order Form, payment of all Charges shall be made by electronic transfer to a bank account whose details have been notified to Customer by ProNett in the Order Form.
- **Currency:** Each sum payable by Customer to ProNett under the Contract shall be paid by Customer in pounds sterling.

## 6. DELIVERY AND PROVISION OF SERVICE

- **Mode of Delivery:** ProNett shall make the Application(s) available to Customer via the Hosting Services.
- **Provision of Service:** if ProNett cannot provide the service within 2 (two) weeks from the commencement date the customer may serve notice of contract termination with immediate effect.

## 7. CHANGE CONTROL

- **Change Requests:** Without prejudice to both the 'Provision of Services' Condition' and the 'Amendments' Condition, if Customer wishes to change the scope or execution of any Service ("Change") it may notify details thereof to ProNett ("Change Request").
- **Customer Change Requests:** ProNett shall, within a reasonable time after having been served with a Change Request by Customer, notify Customer whether it is willing to accept the Change and (if so) notify Customer of the likely time required to implement the Change, any necessary variation to the Charges arising from the Change, and any other impact of the Change on the Contract, and shall endeavour to keep that impact within the parameters of the Support Services Specification.
- **Reservation:** Notwithstanding anything herein to the contrary, ProNett may at any time make any Change that is necessary to comply with any Law (including safety or other requirements) or Hosting Service (and will notify the Customer prior to the Change taking effect), or that does not materially affect the nature or quality of the Service generally in accordance with the Support Services Specification.

## 8. LICENCE OF APPLICATION(S) AND APPLICATION DOCUMENTATION

- **Grant:** ProNett grants to Customer a single non-exclusive transferable (subject to the 'Transfer and Sub-Contracting' Condition) revocable licence in the Territory to Use the Application(s) and the Application Documentation during the Contract Term solely on the terms of the Contract.
- **Permitted Use of Applications: general:** unless ProNett consents otherwise in writing, Customer may Use the Application(s) only:-
  - In order to process data for the normal internal business purposes of Customer (which shall not, for the avoidance of doubt, include any activity prohibited by 'Prohibitions on Customer' Condition or 'Use of Services' Condition);
  - in accordance with reasonable instructions issued by ProNett to Customer from time to time;
  - by means of properly-trained Customer Staff;
  - in relation to the End Users;
  - as the same may be amended or upgraded from time to time by any Release; and
  - at times when there are no limitations agreed between the Parties in writing on Customer's access to the Application.
- **Definition of "Use": "Use of Application"** means loading the Application into temporary memory or permanent storage on the Customer Equipment, and "Use of Application Documentation" means only such activities as are necessary to enable and facilitate Use of the Application to which it relates.
- **Application Documentation:** Customer may make 1 (one) copy only of the Application Documentation for each End User.
- **Obligations on Customer:** In addition to its obligations under 'Use of Services', 'Intellectual Property' and 'Confidentiality' Conditions, Customer shall implement and maintain measures to safeguard the Application(s) and the Application Documentation from unauthorised access, use or copying that are (a) adequate and (b) at least as stringent as the measures used by it to safeguard its own software and software documentation.
- **Prohibitions on Customer:** unless ProNett consents otherwise in writing, Customer may not:-
  - (other than as expressly permitted (if at all) under the Contract or by any Law that is incapable of exclusion by agreement between the parties) copy, duplicate, frame, mirror, re-publish, download, display, transmit, reduce to human-perceivable form, adapt, reverse-engineer, decompile, disassemble, develop or modify any Application or any Application Documentation in whole or in part;

- create any derivative work from all or any part of any Application or any Application Documentation, or access any Service in order to build an Application or Service which competes with any Service;
- use any Application or any Application Documentation by, and/or for the benefit of, any person other than a member of Customer's Staff;
- (other than as expressly permitted (if at all) under the Contract, including but not limited to pursuant to the 'Transfer and Sub-Contracting' Condition) sell, rent, lease, transfer, assign, charge, sub-license, delegate, dispose, commercially exploit or make available any Application or any Application Documentation;
- cause, allow, authorise, facilitate or permit any Application to become the subject of any charge, lien or encumbrance;
- (subject only to the End Users) distribute any Application or any Application Documentation to any third party;
- remove, or otherwise amend any notice on any Application or Application Documentation or any technical measure taken by ProNett and/or any third party to protect any Application or Application Documentation; or
- use any information provided by ProNett and/or obtained by Customer pursuant to or in contemplation of the Contract to create any software whose expression is substantially similar to that of any ProNett Application or any Application Documentation or use such information in any manner that would be restricted by any IPR subsisting in any ProNett Application or any Application Documentation.

## 9. USE OF SERVICES

- **Prohibitions:** Insofar as the Customer is aware may not use any Service or Hosting Service for the purpose of or in connection with:-
  - breaking any Law or infringing or violating any right (including IPRs) or occasioning the loss of property;
  - accessing, storing, receiving, transmitting, reproducing, uploading, downloading or distributing any material that:-
    - is unlawful, harmful, threatening, defamatory, obscene, infringing, offensive, abusive, indecent or harassing;
    - depicts sexually explicit images;
    - promotes or encourages illegal activity;
    - is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity;
    - comprises or includes any Virus.
  - sending data to the Internet that use forged addresses and/or that are intended to adversely affect remote equipment;
  - running "port scanning" and/or other software intended to probe, scan, test the vulnerability of the system.
  - gaining unauthorised access to the system.
- **Customer Data:** Customer irrevocably acknowledges that ProNett and/or the Host may be required by current or future Laws to access, process, store, copy or otherwise use Customer data stored within or received or transmitted by or pursuant to any Service or Hosting Service, and agrees that ProNett and/or the Host may access, process, store, copy or otherwise use the same only in connection with any investigation pursuant to any such Law and may only disclose the same to any third party who has a legitimate interest in the said investigation or its outcome.
- ProNett shall ensure that second-line support (as specified in the Support Services Specification) is available by telephone and/or email during the Standard Support Hours to provide assistance to the Customer in respect of the following:
  - remedying defects in each Application; and
  - providing advice on the use of each Application.
- ProNett shall deal with all such defects notified to it by Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedures:
  - within 2 (two) Standard Support Hours of notification of a defect, ProNett shall acknowledge receipt of the notification and shall determine, in consultation with Customer, how seriously the defect affects Customer's operations;
  - if the defect halts or substantially impairs Customer's operations, ProNett shall start work on correcting the defect within 4 (four) Standard Support Hours after receipt of such notification, shall use best efforts to correct the defect as soon as possible, and shall keep Customer informed of progress towards correction of the defect;
  - if a notified defect, while not halting or substantially impairing Customer's operations, causes those operations to become

significantly slowed or causes substantial inconvenience, ProNett shall work on correcting the defect within 2 (two) Standard Support Days after receipt of such notification and shall use all reasonable efforts to correct the defect as soon as possible;

- in the case of defects other than those specified above, ProNett shall start work on correcting the defect as soon as it's workload allows and shall use commercially reasonable efforts to correct the defect.
- ProNett shall use its best endeavours to comply with all of its obligations specified in the Support Services Specification.

## 10. INTELLECTUAL PROPERTY

- **Existing IPRs:** Subject to the "Licence to use Input Material" Condition, all IPRs in and associated with any ProNett Application are owned exclusively (as between the Parties) by ProNett, as to which all rights are expressly reserved by ProNett. The provision of any ProNett Application to Customer does not constitute the transfer to Customer of any of those IPRs in the ProNett Application other than permitted under the Contract, or the grant of any permission to use any of them, other than as permitted under the Contract.
- **New IPRs:** Subject to the 'Licence to use Input Material' Condition, any IPR that comes into existence after the Commencement Date as a direct or indirect result of the creation of any Application Software by ProNett and/or its provision of such Application Software by ProNett to Customer, and/or the performance by ProNett of any other obligation under the Contract, shall be owned (as between the Parties) exclusively by ProNett.
- **Further Assurance:** In the event that any interest in any IPR referred to above is or becomes owned by Customer, it shall hold the same as bare trustee for ProNett, and shall, if so requested by ProNett and at ProNett's cost, promptly take any reasonable step and/or execute any Document that is reasonably requested by ProNett to confirm or give effect to the above 'IPR' Conditions, as the case may be, and/or to evidence such IPR, including any assignment or waiver by any Customer Personnel of any IPR to or in favour of ProNett.
- **Safeguarding of IPRs:** In order to safeguard the IPRs referred to above, Customer shall:-
  - give to ProNett (at ProNett's reasonable expense) any assistance in connection with taking action against that use as ProNett may reasonably request (all compensation from which shall be for the exclusive account of ProNett), and acknowledge that ProNett is exclusively entitled to take any such action;
  - reproduce on any copy that it makes of any ProNett Application and its Documentation any copyright or other IPR proprietary notice that is on it;
  - not remove, obscure, change or amend any copyright or other IPR notice on or relating to any ProNett Application or its Documentation; and
  - not by any act or omission jeopardise the validity or enforceability of any of the IPRs referred to the IPR Conditions above.
- **Licence to use Input Material:** Customer grants to ProNett throughout the Contract Term a non-exclusive revocable royalty-free licence to use the Customer's Input Material for the sole purpose of providing the Services to Customer and performing its obligations under the Contract. Customer warrants to ProNett that its exercise of that licence will not infringe or contravene any Law or third party rights (including IPRs), and shall at all times (both during and after the Contract Term) indemnify ProNett against all Losses that it may incur arising directly or indirectly from any actual breach of the said warranty. ProNett acknowledges that the provision of such Input Material to ProNett by the Customer does not constitute the transfer to ProNett of any IPRs in such Input Material and that, as between the Parties, title to the Input Material shall remain exclusively vested in the Customer.
- **Infringement Claim:** If an Infringement Claim is made or threatened during the Contract Term and provided that it is not directly or indirectly attributable to any Default by or on behalf of Customer, ProNett shall indemnify the Customer against any and all Losses that it may incur as a result of such Infringement Claim, refer to the Indemnities Condition.

## 11. CONFIDENTIALITY

- **Duty of confidentiality:** The Recipient:-
  - shall not without the Discloser's prior consent use any Confidential Information other than for the direct purposes of the Contract, and
  - (save as may be required under any applicable Law or by any Authority) shall keep all Confidential Information strictly confidential and shall not, without the Discloser's prior consent, disclose any of it to any person other than to those of its Personnel:-

- who need to be informed of it in order to enable the Recipient to perform its obligations or exercise its rights under the Contract, or to take advice on them, and
- who have been informed of the Confidential Information's confidentiality and directed to keep it confidential, and
- who are under an enforceable obligation of confidentiality to the Recipient (which the Recipient shall enforce) no less onerous than the provisions of this Confidentiality Condition.

- **Specific Confidential Information:** For the purposes of this Condition the Confidential Information received by Customer from ProNett shall be considered to include all IPRs in any Output Material and the terms of the Contract, and the Confidential Information received by ProNett from Customer shall be considered to include all IPR's in any Input Material and the performance or otherwise of ProNett's obligations thereunder.
- **Notification of breach:** The Recipient shall immediately notify the Discloser of any actual, suspected or threatened use or disclosure of the Discloser's Confidential Information in breach of this Condition of which it becomes aware, and shall give such assistance, at the Discloser's reasonable cost, to restrain such use and/or disclosure as the Discloser may request.
- **Remedies:** Each Party acknowledges that, in the event of a breach or threatened breach of this Condition, the other Party may have no adequate remedy in money or damages, and accordingly may be entitled to injunctive relief.
- **Preserved rights:** The provisions of this Condition are additional and without prejudice to the Parties' respective rights in law and equity.

## 12. LIABILITY

- **Applicability:** Except for any specific limitations of liability contained elsewhere in the Contract, this Condition sets out the entire liability of either Party to the other Party (including any liability of any of its Affiliates and of any Personnel of any of the foregoing) in respect of any Default by ProNett or Customer.
- **Non-excluded liability:** The limitations of liability in the Contract shall apply to the fullest extent permissible at Law, but notwithstanding anything in the Contract to the contrary neither Party excludes liability: for death or personal injury caused by its negligence; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; for deliberate personal repudiatory breaches of the Contract; or for any other liability which may not be excluded by Law.
- **Exclusion of economic loss:** ProNett shall not be liable to Customer nor Customer be liable to ProNett in respect of any Default to the extent that it gives rise to or can be categorised as a claim for:
  - any Loss in respect of:
    - of actual revenue or profits;
    - loss of actual or anticipated savings;
    - loss of goodwill or reputation;
    - loss of business opportunity;
    - loss of data (save that ProNett shall use reasonable endeavours at its own cost to restore lost data that it has stored or managed for Customer where such loss has been caused by a failure by ProNett to adhere to data back-up processes agreed between the Parties in writing);
  - any Loss suffered by third parties;
  - any type of special, punitive or consequential Losses whether or not any such Loss was direct, foreseen, foreseeable, known or otherwise, and whether or not the Party that suffers such a loss was aware of the circumstances in which such Loss could arise.
- **General cap:** The entire liability of ProNett or Customer in respect of any Claimed Default (other than any claim by the Customer or ProNett pursuant to the 'Infringement Claim' Condition) shall in no event exceed an amount equal to the Charges paid by Customer to ProNett under the Contract in relation to the specific Service(s) to which the Claim relates during the 12 (twelve)-month period prior to the month in which the Claimed Default occurred, and ProNett's liability shall be further limited to Losses sustained as a direct result of the said Default.
- **Collateral exclusions:** ProNett shall have no liability for a Default arising out of or connected with:
  - the use of any Output Material for a purpose not specified in or otherwise contemplated by the Contract;
  - the use of any Output Material with any hardware, software or service supplied by Customer or any third party;
  - any modification to any Output Material that is not made by ProNett or a person acting on the express instructions of ProNett;

- Customer's failure to keep full and up-to-date security copies of any Output Material, unless ProNett is contracted to provide this service;
  - any failure by the Customer to comply on time with any of its obligations under the Contract;
  - any action taken by ProNett at Customer's direction;
  - any act or omission by any third party.
- **Claims:** ProNett shall have no liability to Customer and Customer have no liability to ProNett in respect of any Losses arising from any Default unless Customer or ProNett shall have served Notice of its Claim for those Losses on ProNett or Customer within 12 (twelve) months after the date on which the Claim arose, failing which Customer or ProNett irrevocably and unconditionally abandons its right to such Claim to the fullest extent permitted by Law.
  - **Force Majeure:** Neither Party shall be liable to the other Party for any Loss caused directly or indirectly by any failure or delay by such Party in performing any of its obligations (other than the obligation to pay Charges) under the Contract to the extent that the same results directly or indirectly from any Force Majeure. Such Party shall notify the other Party of that failure or delay, use all reasonable efforts to try and resolve the Force Majeure as soon as reasonably practical, and keep it informed of any change of circumstances while the Force Majeure continues. In the event that the period of Force Majeure continues for 30 (thirty) days or more, either Party may terminate the Contract by giving no less than 30 (thirty) days' notice to the other Party.
  - **Exclusion of Implied Terms:** Except as expressly provided in the Contract (if at all), ProNett excludes to the fullest extent permissible by Law all Implied Terms. Customer accepts responsibility for the selection of the Products provided to it by ProNett in order to achieve its intended results.
  - **Exclusion of representations:** Each Party acknowledges that, in entering into the Contract, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract or (if it did rely on any representations, whether written or oral, not expressly set out in the Contract) that it shall have no remedy in respect of such representations.
  - **Responsibility of Customer:** Customer acknowledges that the Services are provided to it on an "as is" basis, and assumes sole responsibility for all results obtained from them and for conclusions drawn from Customer's use thereof.

### 13. TERMINATION OF CONTRACT

- **Termination without cause:** Either Party may terminate the Contract without cause as set out in the Order Form.
- **Termination for breach: general:** Either Party ("the First Party") may terminate the Contract by the service of Notice on the other Party if the other Party:-
  - is in material breach of any of its obligations under the Contract, and the breach is not capable of remedy; or
  - is in material breach of any of its obligations under the Contract that is capable of remedy, and has not remedied it within 30 (thirty) days after the service on it of a Notice by the First Party requiring it to be remedied and referring to this Condition.
- **Breaches that are capable of remedy:** A breach by either Party of any of its obligations under the Contract shall be considered capable of remedy if that Party can perform the obligation in all respects other than as to time of performance.
- **Termination for an Insolvency Event:** Either Party may terminate the Contract by the service of Notice on the other Party if the other Party becomes the subject of an Insolvency Event.
- **Termination: ProNett:** ProNett may terminate the Contract by the service of Notice on Customer if any amount due from Customer to ProNett under the Contract has not been paid by its Due Date and remains outstanding no less than 60 (sixty) days after the service on Customer of a Notice by ProNett requiring payment thereof.

### 14. CONSEQUENCES OF TERMINATION OF CONTRACT

- **Cessation of Rights:** Unless otherwise stated by the Contract, all Rights shall cease on and with effect from the Termination Date.
- **Cessation of provision of Services:** ProNett shall cease to be obliged to provide any Service to Customer on and with effect from the Termination Date.
- **Payment of Sums:** The Customer is to make payment of all invoices fairly due for services actually provided by the Termination date.
- **Applications, Application Documentation and Confidential Information:** Customer shall within 7 (seven) days after the Termination Date return to ProNett all tangible elements and irrevocably erase all electronic records

of the Application Documentation and ProNett's other Confidential Information in its possession, power, custody or control as at the Termination Date.

- **Survival of terms:** The termination of the Contract shall not affect the continuance in force of the Conditions set out in this document and
  - any other term of the Contract which is expressly or by implication intended to continue in force after termination.
- **Customer Documents, data and information**

Prior to the Termination Date Customer shall be at liberty to export and download into a CSV file all or any of its Documents, data and information that it has stored during the Term on each Application, by means of the export tools included in each Application, and (provided that Customer is not in Default and that no notice has been served by ProNett under the 'Termination of Contract' Conditions with the exception of 'Termination Without Cause') ProNett shall endeavour to provide such reasonable advice and assistance to Customer as Customer may reasonably request to assist the implementation of the foregoing during the period that commences 30 (thirty) days prior to the Termination Date and expires 30 (thirty) days after the Termination Date. ProNett shall be entitled to add to any Charge its fees for the provision of such advice and assistance.
- **Input Material:** Subject always to the above Condition ProNett shall, within 7 (seven) days after the Termination Date, return to Customer all tangible elements of all (if any) Input Material (including Confidential Information) in ProNett's possession, power, custody or control as at the Termination Date.
- **Accrued rights:** The termination of the Contract shall not affect any rights accrued in favour of either Party in respect of any breach committed by the other Party before the Termination Date.
- **No further obligations:** Except as stated under the 'Consequences of 'Termination of Contract' Condition, neither Party shall have any further obligation to the other under the Contract after the Termination Date.

### 15. TRANSFER AND SUB-CONTRACTING

- **Transfer and sub-contracting by Customer:**
  - delegate, dispose of or deal in any of its rights or obligations under the Contract to any of its Affiliates provided that it gives as much advance notice as reasonably possible thereof to ProNett of the same and provided that the assignee or transferee agrees in writing with ProNett to be bound by each obligation of Customer hereunder that is so assigned or transferred.
  - Save as permitted pursuant to the above Condition, Customer may not transfer, assign, charge, sub-license, sub-contract, delegate, dispose of or deal in any of its rights or obligations without the prior written consent of ProNett, such consent not to be unreasonably withheld.
- **Transfer and sub-contracting by ProNett:** Provided that it notifies Customer and provided that the assignee or transferee agrees in writing with Customer to be bound by each obligation of ProNett hereunder that is so assigned or transferred, ProNett may transfer, assign, charge, sub-license or sub-contract any of its rights or obligations under the Contract, in whole or in part.
- **Liability for sub-contractors etc.:** Each Party shall be primarily liable for any act or omission by any person to whom it sub-licenses, sub-contracts or delegates any of its rights or obligations hereunder that would have constituted a Default had the aforesaid Party been responsible for it.

### 16. NOTICES

- **Notices:** All Notices that either Party is required or entitled to give or make to the other under the Contract shall (unless expressed to the contrary in the Contract) be in writing and in the English language.
- **How to serve Notices:** All Notices served by one Party on the other shall be delivered by hand or sent by email or by pre-paid first-class post marked for the attention of the other Party's contact person as specified in the Order Form.
- **Where to serve Notices:** The address and email of each Party to which any Notice to be served on it by the other Party should be delivered or sent are set out in the Order Form. If either Party changes that address it may serve Notice of that change on the other, but no such Notice shall take effect until or unless actually received by the other Party.
- **Date of Service:** The date of service of Notices shall be:
  - (for Notices served by hand) the day of delivery or (if it is not a Business Day) the next Business Day thereafter;
  - for Notices served by pre-paid first-class post) the day that falls 2 (two) days after the date of posting or (if that day is not a Business Day) the next Business Day thereafter;

- (for Notices served by email) the day of transmission or (if it is not a Business Day and/or if transmission takes place after 17:00 hours) the next Business Day thereafter, provided that a successful transmission report has been produced, and (in the case of Notices served under the 'Liability' Condition provided that a confirming copy is sent by pre-paid first-class post to the other Party within 24 (twenty-four) hours after transmission.
- **Prevention or delay:** Neither Party shall prevent or delay the service on it of a Notice or attempt to do so.
- **Legal proceedings:** This Condition does not apply to the service of any proceedings or other documents in any legal action or arbitration.

## 17. GENERAL PROVISIONS

- **Entire Agreement:** The Contract embodies the entire agreement between ProNett and Customer in respect of its subject matter, and supersedes any prior contract or understanding (written or oral) between the Parties relating to that subject matter. The Contract shall not be governed by any terms and Conditions (whether in any side letter or unilateral amendment by Customer to the Order Form or other Document issued by either Party, or whether any Implied Term) other than those instruments listed in this contract.
- **Amendments:** Subject to the 'Variation of Charges' and 'IPR Further Assurance' Conditions, no amendment to the Contract or any part of it shall have any effect unless it is in writing, refers specifically to the Contract, and is signed on behalf of each Party.
- **Rights and remedies:** Neither Party will lose any right under the Contract if it fails to use it or delays in using it. No allowance of time to pay any Charge or any other form of indulgence by ProNett shall prejudice ProNett's rights to payment pursuant to the Contract. Unless otherwise stated in the Contract, no right or remedy given to either Party under the Contract is exclusive of any other right or remedy to which it may be entitled.
- **Relationship:** ProNett and Customer are not partners, or in a relationship of employer and employee, or in a relationship of principal and agent. Unless expressly authorised under the Contract, neither Party has the authority to act on behalf of the other Party or to make any representation on its behalf, and will not represent that it has such authority.
- **Independence of terms:** If any term of the Contract is ruled by an Authority to be invalid, unlawful, void, voidable or unenforceable, it shall be deleted from the remaining terms of the Contract, which shall continue to be valid, lawful and enforceable to the fullest extent permitted by Law.
- **Third parties:** The terms of the Contract are not intended to confer any right of enforcement on any third party, and the Contracts (Rights of Third Parties) Act 1999 shall not apply to it.
- **Costs:** Each Party shall bear its own costs and expenses in relation to the exercise of its rights and the performance of its obligations under the Contract.
- **Indemnities:** Any indemnity given in the Contract to either Party ("A") by the other Party ("B") in respect of any category of Losses arising from any Claim shall be subject to the following provisions:
  - A shall notify the Claim to B as soon as reasonably practicable after becoming aware of it;
  - A shall not attempt to settle the Claim, or admit any liability to it, or by act or omission jeopardise any defence by B to it without B's prior consent;
  - A shall give to B the sole conduct of the defence to the Claim and all such reasonable assistance in defending it, at B's reasonable expense, as B shall request;
  - A shall not incur any legal costs or expenses in relation to the Claim without B's prior consent; and
  - A shall use all reasonable efforts to mitigate its Losses.

## 18. INTERPRETATION OF THE CONTRACT

The provisions of this Condition shall be used to interpret the Contract, unless the Contract expresses otherwise or unless otherwise required by its context.

- **Order of priority:** If there is any inconsistency between any of the different provisions or parts of the Contract, the order of priority listed in the Governing Terms shall be used for interpreting them.
- **Conditions:** Any reference to a Condition is to the relevant paragraph of the General Conditions.
- **Headings:** The headings of Conditions and other parts of the Contract are included for convenience only and do not affect the interpretation of the Contract.

- **Parties:** A "Party" means either party to the Contract and includes (and the Contract shall be binding on and inure to the benefit of) its permitted assignees (if any) and/or the successors in title to substantially the whole of its undertaking, and "Parties" shall be construed accordingly.
- **Persons:** References to "persons" shall include individuals, bodies corporate, unincorporated associations, firms, partnerships, trusts, governments, states or agencies of any state or any other legal or commercial entity undertaking, in each case whether or not having a separate legal personality and irrespective of the jurisdiction in or the Law under which it was incorporated or exists;
- procurement of the provision by ProNett of that Service.
- **Documents:** Any reference to any Document (including the Contract) is a reference to it as amended, varied, supplemented, or novated (in each case, other than in breach of the Contract) at any time.
- **Undertakings:** Any undertaking by Customer not to do any act or thing shall be deemed to include an undertaking not to cause, allow, authorize, facilitate, permit or attempt the doing of that act or thing.
- **Legislation:** Any reference to Legislation shall be construed as referring to such Legislation as amended and in force from time to time and to any Legislation which enacts or consolidates (with or without modification) any such Legislation.
- **General:**
  - "loss" includes loss, theft, destruction, damage, deterioration, corruption and "loss of property" includes damage to and theft of property, loss of profits and loss of use; "month" means "calendar month" unless otherwise defined; "personal injury" includes sickness and death; "provision of an Application" means making the Application available to Customer pursuant to the Hosting Services; and "writing" excludes any method of representing words electronically or in other transitory formats;
  - references to the time of day are references to Greenwich Mean Time.

## 19. LAW AND JURISDICTION

The Contract and any and all disputes as matters arising out of or in connection with it (including all non-contractual disputes or matter) are governed by English Law. Any dispute between the Parties relating to the Contract that cannot be resolved by a settlement agreed between them in writing shall be dealt with exclusively by the courts of England.