



PROSTRATEGY GENERAL TERMS OF BUSINESS

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GENERAL TERMS

In the absence of any signed Customer Agreement between PSC and its Customer these ProStrategy General Terms of Business (the “Terms” or “General Terms of Business”) shall govern the contractual relationship between the Customer and PSC together with any Software Provider Conditions and/or Ancillary Agreements and/or additional terms expressly agreed in writing between the Customer and PSC that are subject to these Terms. These Terms shall apply when the Customer accepts a proposal from PSC or when PSC performs services or carries out work or provides products or licenses for Software to the Customer pending the signing of a Customer Agreement between the Customer and PSC. The individual who accepts such a proposal or who requires PSC to perform services, carry out work or provide products or licences for Software represents that he or she is authorised to bind the Customer to these Terms.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in the Agreement and in any Ancillary Agreement (unless the context requires otherwise).

Affiliate: includes, in relation to either the Customer or PSC, each and any subsidiary or holding company of the Customer or PSC and each and any subsidiary of a holding company of the Customer.

Agreement: any contract formed between PSC and the Customer governed by these General Terms of Business together with Software Provider Conditions and/or Ancillary Agreements and/or any additional terms expressly agreed between the Customer and PSC that are subject to these Terms pending the signing of a Customer Agreement.

Ancillary Agreements: an agreement or document that is ancillary to these General Terms of Business and made subject to these General Terms of Business. The Statement of Work and all Software Provider Conditions that govern the provision of Software or Software Provider Services shall be considered Ancillary Agreements.

Authorised Localisation: means a specific Localisation for a specific geographic region that does not compete with any Localisation created or marketed by the Software Provider for such geographic region, together with any hot fixes, service packs, feature packs, error corrections or updates distributed by PSC.

Authorised Translation: means a specific Translation of any Software for a specific geographic region that does not compete with any Translation created or marketed by the Software Provider for such geographic region, together with any hot fixes, service packs, feature packs, error corrections or updates provided by PSC.

Authorised Use: the specified level at which the Customer is authorised to execute or run the Software and Authorised Work. That level may be measured by number of

users, millions of service units (“MSUs”) Processor Value Units (“PVUs”) or other level of use specified by the Software Provider.

Authorised Work: means a Customisation or an Authorised Localisation or an Authorised Translation.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: the date when the Customer accepts these Terms by accepting a proposal from PSC that was subject to these Terms or when the Customer requires PSC (and PSC agrees) to perform services, carry out work or provide products or provide a licence for Software in accordance with such a proposal unless otherwise expressly agreed in writing.

Confidential Information: information (whether or not recorded in document form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Customer or PSC for the time being confidential to the relevant party or any Software Provider and trade secrets including, without limitation, technical data and know-how relating to the business of the Customer or PSC or any Software Provider or any of their respective business contacts.

Customer: the registered corporate body that has accepted a proposal from PSC or requested PSC to perform services, carry out work or provide products or licenses for software to the Customer pending the signing of a Customer Agreement between the Customer and PSC or which has entered into one or more of the associated Ancillary Agreements subject to these General Terms of Business.

Customer Agreement: an agreement incorporating these Terms (save as expressly agreed to the contrary) signed in writing or electronically in an agreed, lawful and binding form by or on behalf of the Customer and PSC

Customisation: means:

- (1) any modification or other change that PSC makes to the code of the Software to meet a Customer’s specific business needs; or
- (2) any software that PSC independently develops for Customers that works with the Software; and
- (3) Customisations are not Localisations or Translations.

Data Protection Legislation: (i) up and until 25 May 2018, the Data Protection Acts 1988-2003; (ii) on and after 25 May 2018 when the Data Protection Acts 1988-2003 are no longer directly applicable in Ireland, the General Data Protection Regulation ((EU) 2016/679) (the “GDPR”) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in Ireland; and then (iii) any successor legislation to the GDPR.

Data Subject has the meaning set out in applicable Data Protection Legislation.

Deliverables: means the Software, Authorised Work and the Services as applicable.

Engagement: the engagement of PSC by the Customer on the terms of the Agreement and the Ancillary Agreements.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Personal Data has the meaning set out in applicable Data Protection Legislation.

Pre-Contractual Statement: any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the Engagement other than as expressly set out in the Agreement or any documents referred to in it.

PSC: Prostrategy-Colman limited an Irish registered company (C.R.O. number 106508) whose registered office is at The Monastery, Cork Road, Fermoy, County Cork

Quarter: any period of three consecutive calendar months which shall commence on the Commencement Date or any date which is the day after the end of the previous quarter.

Software: : the software to be licensed to the Customer (if any) whether developed by PSC or by a Software Provider as more particularly described in the Ancillary Agreements and if applicable as more particularly described in the Statement of Work.

Services: the services to be provided by PSC to the Customer, if any, more particularly described in the Ancillary Agreements and if applicable as more particularly described in the Statement of Work.

Software Provider: third party providers of Software (if any) as more particularly described in the Ancillary Agreements and if applicable as more particularly described in the Statement of Work.

Software Provider Conditions: such other terms and conditions as specified by the Software Provider from time to time (including without limitation in the applicable end user licence agreement, Software licence terms, applicable license information document, conditions relating to Software Provider Services and any “read me first” notices that apply to the Software or any Software Provider Services).

Software Provider Services: any services to be provided by a Software Provider to the Customer including, but not limited to, cloud hosting services, the provision of Software as a service, consulting services or services to customise Software or develop new Software or the provision of maintenance and support services in conjunction with the Software and/or Services that PSC provide.

Statement of Work: any statement of works agreed between the Customer and PSC as may be amended from time to time or added to by a subsequent statement of works by agreement between the Customer and PSC and shall also include any individual items of work that may be ordered by the Customer from time to time and agreed with PSC.

Substitute: a substitute for PSC in respect of all or any part of the Services appointed by PSC under the terms of clause 3.3.

Termination Date: the date of termination of the Agreement howsoever arising.

- 1.2 The headings in the Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

2. TERM OF ENGAGEMENT

- 2.1 The Customer shall engage PSC to provide the, Software and Services as applicable in accordance with the terms of these General Terms of Business and the Ancillary Agreements.
- 2.2 The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated as provided by the terms of the Agreement.
- 2.3 Subject to any testing and acceptance procedures agreed between the Customer and PSC in any Ancillary Agreement and without implying any warranty as to fitness for purpose or otherwise it shall be a matter for the Customer to satisfy itself that the Software and / or Services provided operate satisfactorily in the Customer's working environment in accordance with the agreed specifications, are compatible with other systems which may be operated by the Customer and that all Customer' employees and/or authorised contractors have received sufficient training. For this purpose the Customer shall engage in its own internal testing, training and verification processes to verify what has been delivered by PSC is operating satisfactorily in the Customer's working environment. It is agreed that such testing and / or verification process will be carried out by the Customer as soon as possible after confirmation of completion or delivery has been given by PSC. If such testing and / or verification has not been completed by the Customer within thirty days of delivery then the Software and other deliverables or products (if any) shall be deemed to have been accepted by the

Customer, all Services to have been performed at that date shall be deemed to have been carried out in accordance with the Agreement and all outstanding payments (if any) will become immediately due. For the avoidance of doubt, the Customer may not withhold payment for Software, Services, deliverables or products (if any) delivered for the reason that testing and / or verification has not been completed within thirty days of the completion or delivery notice. In the event that additional Services are required these must be agreed by the Customer and PSC or if so agreed adopted as a Change to the Agreement in accordance with clause 25. Any additional payments owing must be paid to PSC prior to such additional Services being performed and full access given or procured by the Customer to all premises or systems (including third party premises or systems) necessary to carry out such additional Services.

3. DUTIES

- 3.1 During the Engagement PSC shall provide Services with reasonable care and skill and supply, licence or sub-licence the Software as the case may be to the Customer in accordance with the terms of the Agreement and the Ancillary Agreements. Except as expressly provided in these terms and conditions or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act 1980 (“the 1980 Act”) all conditions or warranties (express or implied, common law, statutory or otherwise) which might have effect between the Customer and PSC or be implied or incorporated into the Agreement or any Ancillary Agreement or collateral contract, are hereby excluded to the maximum extent permitted by law, including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including for the avoidance of doubt Section 39 of the 1980 Act), implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of due skill, care and diligence. Time shall not be of the essence in relation to any deadlines specified save in relation to clause 4 unless otherwise expressly agreed in writing.
- 3.2 If PSC is unable to provide the Services or any portion thereof or to provide Software due to Force Majeure or other good and sufficient reason PSC shall advise the Customer of that fact as soon as reasonably practicable.
- 3.3 PSC may, with due notification to the Customer, appoint a suitably qualified and skilled Substitute to perform the Services or any portion thereof or to provide Software on its behalf. PSC shall continue to invoice the Customer in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.
- 3.4 Unless it has been specifically authorised to do so by the Customer by the provisions of the Agreement or the Ancillary Agreements or otherwise in writing, PSC shall not:
- (a) have any authority to incur any expenditure in the name of or for the account of the Customer; or
 - (b) hold itself out as having authority to bind the Customer.

- 3.5 PSC may use another person, firm or company to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services.

4. FEES & EXPENSES

- 4.1 In consideration of the provision of the Software and Services during the Engagement, the Customer shall pay the prices, costs, fees and expenses detailed in the Ancillary Agreements or otherwise agreed in writing (including by email) between the Customer and PSC in the course of performance of the Agreement and the Ancillary Agreements. All sums payable under the Agreement and the Ancillary Agreements are exclusive of VAT, for which the Customer shall be responsible.

- 4.2 If the Customer fails to pay any amount payable by it under the Agreement or an Ancillary Agreement, which shall be payable within 30 days of PSC's invoice unless otherwise expressly provided for, PSC shall be entitled (but not obliged) to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 7% per annum above the base rate for the time being of AIB. Such interest shall accrue on a daily basis and be compounded quarterly. PSC reserves the right in the alternative to claim interest under the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

- 4.3 The Customer shall reimburse (or procure the reimbursement of) all reasonable expenses properly and necessarily incurred by PSC in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

5. OTHER ACTIVITIES

- 5.1 Nothing in the Agreement or any Ancillary Agreement shall prevent PSC from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement.

6. CONFIDENTIAL INFORMATION

- 6.1 Each party shall, during the term of the Agreement and any Ancillary Agreements, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other party disclose to any third party any Confidential Information that may become known to such party from the other party, and which relates to the other party or any of its Affiliates, unless such information:

- (a) is public knowledge or subsequently becomes public knowledge other than by breach of the Agreement or an Ancillary Agreement; or
- (b) subsequently comes lawfully into the possession of such party from a third party; or
- (c) disclosure of such information is required by law.

- 6.2 The terms of the Agreement and any Ancillary Agreements may not be disclosed by the Customer (other than to its legal advisers) without the prior written consent of PSC.
- 6.3 The provisions of clause 6 shall remain in full force and effect notwithstanding termination of the Agreement or an Ancillary Agreement for any reason.
- 6.4 Nothing in this Clause shall restrict PSC from disclosing information to the Software Provider whether confidential or not and which is reasonably necessary for the purposes of the Agreement or any Ancillary Agreement. The Customer hereby authorises PSC to provide business contact information relating to the Customer to the Software Provider.

7. DATA PROTECTION

- 7.1 The Customer consents to PSC holding and processing data relating to it or its business contacts for legal, personnel, administrative and management purposes.
- 7.2 Both the Customer and PSC will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.3 For the purposes of the Data Protection Legislation, the Customer is the data controller and PSC is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 7.4 Unless specifically agreed between the Customer and PSC in accordance with clause 7, the data that shall be disclosed or transferred to PSC or that PSC would otherwise grant access to does not fall under any category of Personal Data (“**Non-personal Data**”).
- 7.5 The Customer consents to the transfer of Non-personal Data to the PSC's business contacts outside the European Economic Area as may be required in the ordinary course of PSC's business.
- 7.6 The Customer consents to PSC making Non-personal Data available to those who provide products or services to PSC such as Software Providers, suppliers, advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of PSC or any part of its business.
- 7.7 The Customer will not disclose, transfer or provide PSC or a Software Provider with access to any types of Personal Data, whether in data or any other form. The Customer indemnifies PSC against any liability, claim or loss whatsoever caused by the erroneous disclosure, transfer or provision of access to Personal Data by the Customer to PSC or the Software Provider, including where such disclosure, transfer or provision directly or indirectly leads to a breach by PSC or a Software Provider of their obligations under Data Protection Legislation.

- 7.8 Without prejudice to the foregoing, where it is agreed that the Customer shall disclose, transfer or otherwise provide access to Personal Data to PSC or a Software Provider, the Customer will ensure that, it has all necessary appropriate consents and notices in place (including from the relevant Data Subjects) to enable lawful transfer of the Personal Data to PSC or Software Provider and any proposed third-party processor for the duration and purposes of the Agreement.
- 7.9 PSC shall, in relation to any Personal Data processed in connection with the performance by PSC of its obligations under the Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless PSC is required by the laws of any member of the European Union or by the laws of the European Union applicable to PSC to process Personal Data (“**Applicable Laws**”). Where PSC is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, PSC shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit PSC from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer and the relevant Data Subjects has been obtained and the following conditions are fulfilled:
 - (i) such transfer of Personal Data outside of the European Economic Area is in accordance with and permissible under the Data Protection Legislation;
 - (ii) the Customer or PSC has provided appropriate safeguards in relation to the transfer;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;

- (iv) PSC complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (v) PSC complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain records and information where necessary to demonstrate its compliance with this clause 7
- 7.10 PSC will not appoint any third-party processor of the Customer's data without the consent of the Customer. If such appointment is made, then the terms and conditions that will govern such an appointment will be set out in a separate agreement except in the case that a Software Provider is hosting the Software on its own servers or cloud service where such a service will be subject to the Software Provider's terms and conditions.
- 7.11 PSC may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when updated in the Agreement).
- 7.12 If the Customer plans to transfer or share any Personal Data with PSC or permit PSC to copy such information, it should first provide a description of the scope, nature and purpose of processing by PSC, the duration of the processing and the types of Personal Data and categories of Data Subject of the data to be transferred or shared. This description must include the rules of use, the period of use and the date at which all such information will be returned and/or destroyed. No such data shall be transferred or shared without the express prior written agreement of PSC.

8. LIABILITY

- 8.1 Except as expressly stated in clause 8.3:
- (a) the total liability of PSC (including for the actions or omissions of its officers, employees, contractors and agents), whether in contract, tort (including negligence) or otherwise and whether in connection with the

Agreement, or any Ancillary Agreement or collateral contract, shall in no circumstances exceed a sum equal to the fees actually paid by the Customer to PSC pursuant to clause 4 in the year in which the liability arises;

- (b) PSC shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) special or punitive damages even though PSC was aware of the circumstances in which such special or punitive damages could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity or other form of economic loss ;
 - (v) loss of goodwill;
 - (vi) loss of data;

provided that this clause 8.1(b) shall not prevent claims for loss of or damage to the Customer's tangible property, caused by PSC, that fall within the terms of clause 8.1(a) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 8.1(b); and

- (c) the Customer agrees that, in entering into the Agreement, 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 Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in the Agreement) that it shall have no remedy in respect of such representations and (in either case) PSC shall have no liability otherwise than pursuant to the express terms of the Agreement.

8.2 The exclusions in clause 8.1 shall apply to the fullest extent permissible at law, but PSC does not exclude liability for death or personal injury caused by the negligence of PSC, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; or for any other liability or obligation which may not be excluded by law (including without limitation under the Sale of Goods Acts 1893 to 1980).

8.3 PSC's warranty and liability obligations to the Customer shall be further restricted or limited by any additional restrictions or limitations specified by the Software Provider Conditions whether or not notified to the Customer.

9. TERMINATION

- 9.1 PSC may terminate the Agreement by giving 90 days written notice to the Customer on the expiration of which all Ancillary Agreements shall also expire or be deemed to be terminated.
- 9.2 Either party may terminate the Agreement or any Ancillary Agreement at any time on written notice to the other if the other:
- (a) is in material or persistent breach of any of the terms of the Agreement or an Ancillary Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - (b) if the Software Provider informs PSC that the Software Provider has reasonable cause to believe that the Customer is not complying with any Ancillary Agreement terms specified by the Software Provider or otherwise and such non-conformance is not rectified within 30 days or as specified in Ancillary Agreement terms specified by the Software Provider; or
 - (c) is unable to pay its debts (within the meaning of section 570 of the Companies Act 2014), or becomes insolvent, or is subject to an order or a resolution for its liquidation, examinership, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has a receiver, manager, trustee, liquidator, examiner or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 9.3 PSC shall have the right, without prejudice to its other rights or remedies, to terminate the Agreement immediately by notice to the Customer if the Customer:
- (a) undergoes a change of control; or
 - (b) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
 - (c) disputes the ownership or validity of PSC's or the Software Provider's Intellectual Property Rights.
- 9.4 Each party shall have the right, without prejudice to its other rights or remedies, to terminate the Agreement immediately by notice to the other if the Software Provider terminates its contractual commitments with PSC in which event the Customer shall be entitled to request that Services be provided through an agreement with the Software Provider or with another primary support provider authorised by the Software Provider at the Software Provider's discretion.
- 9.5 Termination by either party shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

9.6 On expiry or termination for any reason of the Agreement or an applicable Ancillary Agreement respectively:

- (a) all rights granted to the Customer under the Agreement or the relevant Ancillary Agreement (as applicable) shall cease;
- (b) the Customer shall cease all activities authorised by the Agreement or the relevant Ancillary Agreement (as applicable);
- (c) the Customer shall immediately pay to PSC any sums due to PSC under the Agreement or the relevant Ancillary Agreement (as applicable); and
- (d) the Customer shall immediately destroy or return to PSC (at PSC's option) all copies of the Software then in its possession, custody or control further to the Agreement or the relevant Ancillary Agreement (as applicable) and, in the case of destruction, certify to the reasonable satisfaction of PSC that it has done so.
- (e) The Customer shall immediately return to PSC all property and materials containing Confidential Information belonging to PSC;

10. CONSEQUENCES OF TERMINATION

10.1 Any termination of the Agreement or any Ancillary Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of the Agreement or any Ancillary Agreement which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

10.2 For the avoidance of doubt in the event of any termination or expiry of the Agreement or any Ancillary Agreement it may not be possible or practicable for PSC to reinstate the relevant agreement or to resume providing the Services. In the event that it is possible or practicable for PSC to reinstate the relevant agreement or to resume providing the Services, the Customer may be required to pay a reinstatement fee in such amount as specified by PSC to facilitate payments required to the Software Provider and to compensate PSC for additional costs and expenses arising from services required in updating the Software and restoring other necessary systems and resources.

11. STATUS

11.1 The relationship of PSC to the Customer will be that of independent contractor and nothing in the Agreement or any Ancillary Agreement shall render PSC or any of its personnel engaged in the performance of the Services an employee, worker, agent or partner of the Customer and PSC shall not hold itself out as such. The Agreement together with the Ancillary Agreements constitute contracts for the provision of services and not contracts of employment.

11.2 Nothing in the Agreement, any Ancillary Agreement or elsewhere will prohibit, restrict or limit PSC's ownership and use of ideas, concepts, know-how, methods,

models, data, techniques, skill knowledge and experience that were used, developed or gained in connection with the Agreement and the Ancillary Agreements.

- 11.3 Any Intellectual Property Rights (if any) developed in the Deliverables and/or the results of the Services shall vest in and remain the property of PSC or of the Software Provider (if relating solely to the applicable Software) and the Customer shall have no interest therein.

12. AUTHORISED WORK

- 12.1 This clause 12 relates to Authorised Work (if any) provided by PSC.
- 12.2 PSC is authorised to provide the Authorised Work which includes certain bespoke Customisations for the Software.
- 12.3 PSC provides a licence to the Customer to use the Authorised Works for the period of time described in the relevant Statement of Work.
- 12.4 The description of the Authorised Work will be set out in the associated Statement of Work.
- 12.5 The number of users entitled to use the Authorised Work is described in the associated Statement of Work
- 12.6 The number of servers on which the Authorised Work may be installed is set out in the associated Statement of Work
- 12.7 Use of the Authorised Work shall be restricted to use in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Authorised Work by, or for the benefit of, any person other than an employee of the Customer).
- 12.8 the Customer may not use the Authorised Work other than as specified in clause 12.7 without the prior written consent of PSC and the Customer acknowledges that additional fees may be payable on any change of use approved by PSC.
- 12.9 the Customer may make back-up copies of any elements of the Authorised Work that has been installed on the Customer's servers or end user computers only as may be necessary for its lawful use and with full disclosure to and with the approval of PSC. The Customer shall record the number and location of all copies of the Authorised Work and take all necessary steps to prevent unauthorised copying.
- 12.10 the Customer has no right (and shall not permit any third party) to copy, adapt, reverse compile or engineer, decompile, disassemble, modify, adapt or make error corrections or translations of the Authorised Work in whole or in part (except as specifically permitted by law without the possibility of contractual waiver) and to the extent that any reduction of the Authorised Work to human readable form is necessary for the purposes of integrating the operation of the Authorised Work with

the operation of other software or systems used by the Customer then the Customer shall request PSC to carry out such action or to provide the information necessary to achieve such integration in accordance with the terms and conditions agreed between the parties in relation to such services.

- 12.11 the Customer may not use the Authorised Work for a service bureau application.
- 12.12 The Customer must have enough PSC end user licences for all Authorised Work to support the maximum number of users and/or devices that may access or use the Authorised Work in compliance with the Authorised Use;
- 12.13 If the Customer acquires additional versions of the Authorised Work as a program upgrade, after the Customer installs the upgrade the Customer may not use the previous version of the Authorised Work (unless permitted to do so by PSC) from which the Customer upgraded or transfer the previous version of the Authorised Work to another party.
- 12.14 PSC is solely responsible for the Authorised Work and Software Providers have no responsibility for the Authorised Work or the effect such Authorised Work may have on the functionality of the Software or the Customer's systems, business or operations.
- 12.15 The Customer may increase the number of its users/devices who are authorised to use the Authorised Work on written agreement with PSC and the relevant Statement of Work shall be deemed to be amended accordingly. Any increase in numbers of users/devices may result in additional fees becoming payable to PSC and such additional users/devices shall only be authorised to use the Authorised Work under the terms and conditions of this Agreement. The invoices raised by PSC from time to time shall be evidence of the amendment of relevant Statement of Work.
- 12.16 PSC warrants that the Authorised Work when used in its specified operating environment will conform in all material respects to the specification as set out in the associated Statement of Work for a period of 90 days from the date of initial provision of the Authorised Work for user acceptance testing (**Warranty Period**). If, within the Warranty Period, the Customer notifies PSC in writing of any defect or fault in the Authorised Work in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Authorised Work or used it outside the terms of this Agreement, for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by PSC, PSC shall, at PSC's option, do one of the following:
 - (a) repair the Authorised Work (as applicable); or
 - (b) replace the Authorised Work (as applicable); or

- (c) terminate this Agreement immediately by notice in writing to the Customer and refund any of the fee paid by the Customer for the specific Authorised Work that breaks this warranty as at the date of termination (less a reasonable sum in respect of the Customer's use of the Authorised Work to the date of termination) on return of the Authorised Work and all copies thereof,

provided the Customer provides all the information that may be necessary to assist PSC in resolving the defect or fault, including sufficient information to enable PSC to re-create the defect or fault.

- 12.17 PSC does not warrant that the use of the Authorised Work will be uninterrupted or error-free or that PSC will correct all software defects. The Customer is responsible for the results obtained from use of the Authorised Work.
- 12.18 The Customer accepts responsibility for the specification of the Authorised Work to achieve its intended results.
- 12.19 The Customer acknowledges that all Intellectual Property Rights in the Authorised Work (including any updates or modifications) belong and shall belong to PSC and the Customer shall have no rights in or to the Authorised Work other than the right to use it in accordance with the terms of this Supply Agreement and the Software Provider Conditions. The Authorised Work is copyrighted and licensed by PSC, not sold. The Customer shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as PSC may from time to time require for the purpose of giving PSC the full benefit of the provisions of this clause 12.

13. CHAIN OF COMMUNICATION

- 13.1 Each party shall appoint a representative. (the "Representative") The Representative shall be the single point of contact between PSC and the Customer and shall have the duties stated below. If either or both the Customer and PSC do not appoint a representative then the Customer's representative shall be the person who accepts PSC's proposal or who requires PSC to perform services, carry out work or provide products or provide a licence for Software or their successor and PSC's representative shall be the person designated by PSC to manage the account or their successor.
- 13.2 PSC's representative shall:-
 - (a) be the primary point of contact with the Customer for all relationship issues (but not operational issues which shall be addressed by the person named in the applicable Statement of Work Schedule or, in default, PSC's appointed Project Manager or Helpdesk Manager);
 - (b) be the primary person to whom the Customer should address any questions, notify any problems identify any issues or impart any information relating

to the performance of any existing services in the event that a resolution cannot be achieved by the operational contact;

- (c) prepare reports from time to time of ongoing matters for discussion with the Customer relationship manager of PSC;
- (d) be the primary person with initial responsibility to resolve any operational disputes that cannot be resolved at an operational level; and
- (e) do everything reasonably necessary or required to develop the day to day relationship between PSC and the Customer.

13.3 The Customer's representative shall:-

- (a) be the primary point of contact with PSC for all relationship issues;
- (b) be the primary person to whom PSC should address any questions, notify any problems identify any issues or impart any information relating to the performance of any existing services in the event that a resolution cannot be achieved by the operational contact; and
- (c) prepare reports from time to time of ongoing matters for discussion with the PSC relationship manager of the Customer;
- (d) be the primary person with initial responsibility to resolve any operational disputes which cannot be resolved at an operational level and;
- (e) do everything reasonably necessary or required to develop the day to day relationship between the Customer and PSC.

13.4 Instructions received from or information given by either party shall not be valid unless received from, given by, or verified by that party's Representative

13.5 Either party can change their Representative on a permanent or temporary basis from time to time on giving the other party written notice.

14. DISPUTE RESOLUTION

14.1 The Customer and PSC shall attempt to resolve any dispute arising out of or relating to any matter arising from or relating to the Agreement or any Ancillary Agreement through negotiations between senior executives of the Customer and PSC, who have authority to settle the same.

14.2 Either Party may issue a written "invitation to negotiate" to the other and the receiving Party shall have thirty days to make its initial response. The "invitation to negotiate" must contain sufficient detail to allow the receiving Party consider the issue of dispute and to make a response. Any such negotiation shall be without prejudice to the payment obligations of the Customer which must be honoured in full subject to the Customer's right to obtain a refund of a portion of the amount paid if agreed or determined by subsequent arbitration.

14.3 If the matter is not resolved by negotiation within 60 days of receipt of a written 'invitation to negotiate' then it shall be referred to mediation, and in default of agreement as to the mediator to be appointed and applicable rules, a mediator shall be nominated by the President for the time being of the Law Society of Ireland or the next available officer thereof ("LSI"). The mediation shall be carried out in accordance with such rules and process as shall be agreed between the Customer and PSC or as the mediator may decide. In default of resolution at the mediation, the dispute shall be referred to Arbitration and in default of agreement as to the arbitrator to be appointed and applicable rules, an arbitrator shall be nominated by LSI and the Arbitration shall be carried out in accordance with the Arbitration Acts for the time being in force and under the rules of the Chartered Institute of Arbitrators in Ireland.

15. RISK AND TITLE

15.1 Risk in, any media, hardware, equipment or other products bearing any Software, Authorised Work or documentation or other information that may from time to time be supplied by PSC to the Customer shall pass to the Customer on delivery to the Customer.

15.2 If any hardware or other tangible products are sold to the Customer (the "**Hardware**"), ownership of and legal title in the Hardware provided to the Customer by PSC shall not pass to the Customer until PSC has received payment in full of all monies owed by the Customer to PSC. Until ownership of the Hardware passes to the Customer, the Hardware shall be adequately stored separately by the Customer (in a satisfactory condition) from other goods held by the Customer, shall be clearly identifiable and shall not be mixed with other goods or altered in any way.

15.3 The Customer shall lose its rights to possession of the Hardware if the Customer is in material breach of the Agreement or the relevant Ancillary Agreement (including for failure to pay) or the Agreement or Ancillary Agreement terminates and the Customer does not pay all outstanding amounts under the relevant agreement within 30 days of such amounts becoming due. If the Customer loses its rights to possession of the Hardware, PSC may require the Customer (at the Customer's own expense) to deliver up the Hardware in its possession or irrevocably incorporated into another product.

15.4 The Customer grants to PSC an irrevocable licence for PSC, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether the Hardware is stored there and to inspect, count, recover and repossess the Hardware.

16. NOTICES

16.1 Any notice given under the Agreement or any Ancillary Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post

to the relevant party at its last known address. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

16.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

17. ENTIRE AGREEMENT

17.1 The Agreement, the Statement of Work, the Ancillary Agreements, the documents annexed as appendices to the Ancillary Agreements or otherwise referred to herein (and in the Ancillary Agreements) including without limitation any Software Provider Conditions and additional requirements and licence terms relating to the Software contain the whole agreement between the Customer and PSC relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Customer and PSC relating to that subject matter. In the event of any conflict between any provision of the Agreement and any Software Provider Conditions or Software Provider additional requirements and licence terms relating to the Software, the Software Provider Conditions, Software Provider's requirements and licence terms shall prevail SAVE THAT any provision of the Software Provider's licence terms relating to a money back guarantee are hereby expressly excluded. By downloading, installing, copying, accessing, clicking on an "accept" button or otherwise using the Software the Customer agrees to any additional requirements and licence terms relating to the Software required by the Software Provider.

18. VARIATION

Without prejudice to the provision for approving Changes in clause 26 the Customer and PSC may agree to vary the terms of the Agreement, including the Statement of Work and Ancillary Agreements in writing and signed by or on behalf of each of the Customer and PSC.

19. [INENTIONALLY DELETED – USED FOR NUMBER REFERENCING ONLY]

20. SEVERANCE

20.1 If any provision of the Agreement or any Ancillary Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Customer and PSC.

21. WAIVER

No forbearance or delay by the Customer or PSC in enforcing its rights under the Agreement or an Ancillary Agreement shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach..

22. FORCE MAJEURE

Neither the Customer nor PSC shall be liable to the other for any delay or non-performance of its obligations under the Agreement or any Ancillary Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this clause 21 shall excuse the Customer from any payment obligations under the Agreement or any Ancillary Agreement. Where such a delay is requested or initiated the following shall apply: -

- a. All invoices issued by PSC shall become payable within seven days.
- b. Insofar as may be possible, an orderly shutdown of work will be required to bring work in progress to a stable position.
- c. All work in progress at PSC will be brought to an orderly shutdown and PSC will issue an invoice to the Customer for all work completed up to the end of the orderly shutdown.
- d. At a later point in time, without prejudice to clause 22.1, when the conditions causing the delay cease, PSC may have extraordinary costs associated with the resumption of the Services. The Customer and PSC will take reasonable steps to mitigate such costs but subject to this PSC shall not be obliged to resume Services unless such extraordinary costs are paid.

- 22.1 In the event that such delay or prevention continues for more than eight weeks, the party whose performance is not delayed or prevented may terminate the Agreement on 30 days' written notice to the other party, in which case the provisions of clause 10 and any applicable sub-clauses of clause 9 shall apply.

23. NON-SOLICITATION

Each of the Customer and PSC agree that, during the term of the Agreement and for a period of twelve months from the date of termination of the Agreement, it shall not (without the other party's prior agreement in writing, which shall not be unreasonably withheld or delayed) directly or indirectly offer to employ, engage as an independent contractor or induce any person who has been associated in a technical or managerial

capacity with any of the Services during the preceding twelve months to leave the other party's employment. For the avoidance of doubt, this clause shall continue to apply where an Ancillary Agreement has been terminated but the Agreement remains in force with the relevant twelve month period only beginning on termination of the Agreement and not the termination of an Ancillary Agreement.

24. ASSIGNMENT

24.1 The Customer has no right to sub-license, sub-contract or to assign the benefit or burden of the Agreement or any Ancillary Agreement in whole or in part, or in any way transfer any of its rights or obligations under the Agreement or any Ancillary Agreement without the prior written consent of PSC and/or the Software Provider and any attempt to do any of the foregoing without such consent is void.

24.2 In addition to its right to appoint a substitute pursuant to clause 3.3 PSC may sub-license, sub-contract, assign, charge or otherwise transfer any of its rights or obligations under the Agreement or any Ancillary Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer.

25. GOVERNING LAW AND JURISDICTION

25.1 The Agreement, any Ancillary Agreements and any dispute or claim arising out of or in connection with the Agreement, any Ancillary Agreement or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Irish law.

25.2 The Customer and PSC irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement, any Ancillary Agreement or their subject matter or formation (including non-contractual disputes or claims).

26. CHANGE MANAGEMENT

26.1 Any change to or requirement for a change to the Agreement, any Ancillary Agreement or the Services requested by the Customer (a “**Change**”) shall be made in accordance with the following procedure:

- (a) The Customer will provide PSC with a written request detailing the proposed Change and the person within the Customer’s undertaking to whom all correspondence in respect of the Change must be addressed (the “Change Representative”);
- (b) PSC will provide the Change Representative with an evaluation report on the proposed Change which will cover feasibility, impact on any time or other schedules contained or referred to in the Agreement, any Ancillary Agreement, the Clauses, the Schedules, resource requirements and/or any cost effects (the “Evaluation Report”);

- (c) the Change Representative will consider the Evaluation Report and will notify PSC in writing, within a reasonable time of receipt of the Evaluation Report having regard to the nature and extent of the proposed Change of the Customer's decision whether or not to request PSC to proceed with the Change.
- 26.2 If the Customer and PSC agree that the proposed Change is acceptable the Customer and PSC shall use their reasonable endeavours to carry out the Change. In the event that either party decides not to proceed, it will give written notice of its decision to the other party within 15 working days following consideration of the Evaluation Report or such shorter timescale as shall be necessary in relation to the Services which are the subject of the proposed Change.
- 26.3 PSC reserves the right to charge reasonable costs for preparing the Evaluation Report at a rate to be agreed between the Customer and PSC.
- 26.4 PSC may propose a Change in accordance with the procedure detailed in Clause 26.1 above adapted mutatis mutandis to refer to PSC.
- 26.5 No modifications or alterations to the Agreement, the Ancillary Agreements or the Services will be valid unless such modifications or alterations are in writing and signed by a duly authorised representative of each party.