

## PROTIRUS UK LIMITED

### Terms and Conditions

#### 1. Interpretation

##### 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

**Applicable Laws:** the laws of any member of the European Union or any laws applicable to Protirus with regard to the Customer and the processing of personal data.

**Business Day:** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Contract:** the SOW or Simplified Ordering Form, the PO and Protirus' acceptance of it under condition 3 and these terms and conditions.

**Customer:** the person, firm or company who purchases Services from Protirus.

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with condition 5.1(a).

**data processor, data controller, personal data and processing:** have the meanings as defined in the Data Protection Legislation.

**Data Protection Legislation:** all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction including without limitation the GDPR, the Privacy and Electronic Communications Regulations, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and any order, guidelines and instructions issued by a relevant national or judicial authority in England or the European Union.

**Deliverables:** all products and materials developed by Protirus while performing the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**End User:** the end user identified in the SOW or Simplified Ordering Form.

**GDPR:** the General Data Protection Regulation (CEU 2016/679) and any national implementing laws, regulations and secondary or related legislation (including as transposed into domestic legislation).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography

rights, moral 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 for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Normal Work Day:** comprises of seven and a half hours during Normal Work Hours (exclusive of any applicable statutory rest periods).

**Normal Work Hours:** 8.00 a.m. to 6.00 p.m. local time, excluding weekends and public holidays as observed in the country in which the Services are performed.

**Partner Company:** the partner company identified in the SOW or Simplified Ordering Form.

**Pre-existing Materials:** materials which existed before the commencement of the Services.

**Project:** any project described in a SOW.

**PO:** means purchase order.

**Protirus:** Protirus UK Limited, company number 6772473.

**Services:** the services to be provided by Protirus under the Contract.

**Simplified Ordering Form:** means Protirus' Consulting Services Simplified Ordering Form.

**Subcontract:** any contract between Protirus and a third party pursuant to which Protirus agrees to source the provision of any of the Services or goods from that third party.

**Subcontractor:** those persons with whom Protirus enters into a Subcontract or its or their servants or agents, and any third party with whom that third party enters into a subcontract or its servants or agents.

**Sub-processors:** a natural or legal person, public authority, agency or other body contracted by Protirus to process personal data for the purpose of carrying out a specific processing activity on behalf of the Customer.

**SOW:** means statement of work.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings do not affect the interpretation of these terms and conditions.

- 1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.4 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to writing or written includes email but not fax.
- 2. Order of Precedence**
- 2.1 In the case of any conflict of interest, the order of precedence shall be:
- (a) these terms and conditions;
  - (b) any applicable SOW or Simplified Ordering Form; and
  - (c) any applicable PO.
- 2.2 Any variation of the Contract shall be in writing and signed by both parties.
- 3. Consideration**
- The Customer's PO constitutes an offer by the Customer to purchase the Services specified in it on the terms of this Contract. Accordingly Protirus' acknowledgement of receipt of the PO shall establish a contract for the supply and purchase of those Services on the terms of this Contract. No contract will come into being until Protirus has acknowledged receipt of the PO, and the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the PO shall not govern the Contract.
- 4. Protirus' obligations**
- 4.1 Protirus shall provide the Services with reasonable care and skill.
- 4.2 If the Services are to be provided for a fixed price, Protirus shall use reasonable endeavours to manage and complete its agreed activities, and to deliver any Deliverables to the Customer, in accordance in all material respects with the SOW or the Simplified Ordering Form.
- 4.3 Protirus shall use reasonable endeavours to meet any performance dates specified in the SOW or Simplified Ordering Form but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.4 Protirus reserves the right to amend the SOW or Simplified Ordering Form and these terms and conditions if necessary to comply with any applicable laws or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and Protirus shall notify the Customer in any such event.
- 5. Customer's obligations**
- 5.1 The Customer shall:
- (a) procure that any Partner Company and any End User complies with these terms and conditions as if they were the Customer;
  - (b) enter into a written agreement with any Partner Company or End User incorporating terms which are substantially the same as these terms and conditions;
  - (c) co-operate with Protirus in all matters relating to the Services and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Services;
  - (d) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Protirus;
  - (e) provide in a timely manner such information as Protirus may request, and ensure that such information is accurate in all material respects;
  - (f) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
  - (g) fulfil any other obligations and satisfy any other requirements identified by Protirus, subject to Protirus confirming said obligations and requirements to the Customer in writing.
  - (h)
- 5.2 If Protirus' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, the Customer's agents, sub-contractors or employees, or any Partner Company or End User, the Customer shall be liable to pay to Protirus on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Protirus confirming such costs, charges and losses to the Customer in writing.
- 5.3 The Customer shall not, without the prior written consent of Protirus, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Protirus or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Protirus.
- 5.4 Any consent given by Protirus in accordance with condition 5.3 shall be subject to the Customer paying to Protirus a sum equivalent to 20% of the then current annual remuneration of Protirus' employee or sub-contractor or, if higher, 20% of

- the annual remuneration to be paid by the Customer to such employee or sub-contractor.
- 5.5 Within five (5) days of Protirus' delivery to the Customer of any Deliverable, the Customer shall review the Deliverable to confirm that it functions in material conformance with the applicable specification. If the Deliverable fails in any material respect to conform with the applicable specification, the Customer shall give Protirus a detailed description of any such non-conformance (**Error**), in writing, within the five-day review period.
- 5.6 With respect to any Errors contained in any Deliverables delivered to the Customer, Protirus shall use reasonable endeavours to correct any such Error within a reasonable time and, on completion, submit the corrected Deliverable to the Customer. The provisions of condition 5.5 shall then apply again, up to three additional times. If Protirus is unable to correct such Error after three attempts, either party may terminate the relevant section of the relevant SOW.
- 5.7 If the Customer does not provide any written comments in the five (5) day period outlined in condition 5.5 or if Protirus can demonstrate that a Deliverable conforms to the specification the Deliverable shall be deemed accepted.
- 5.8 The Customer shall indemnify Protirus against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Protirus as a result of:
- (a) the Customer's breach of these terms and conditions howsoever arising;
  - (b) the acts or omissions of any Partner Company or End User; or
  - (c) any negligent or wrongful act of the Customer, its officers, employees, contractors, agents or sub-licensees.
- 6. Change control**
- 6.1 Subject to condition 4.4, if either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, Protirus shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
  - (b) any variations to Protirus' charges arising from the change; and
  - (c) any other impact of the change on the terms of the Contract.
- 6.3 Subject to condition 4.4, if Protirus requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes Protirus to proceed with the change, Protirus has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.
- 7. Charges and payment**
- 7.1 Without prejudice to any other right or remedy that Protirus may have, if the Customer fails to pay Protirus on the due date Protirus may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Protirus may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) suspend all Services until payment has been made in full.
- 7.2 Time for payment shall be of the essence of the Contract.
- 7.3 All outstanding unpaid invoices, interest and payments payable to Protirus under the Contract shall become due immediately on termination of the Contract, despite any other provision. In respect of Services supplied but for which there is no invoice, Protirus shall submit an invoice, which shall be payable by the Customer immediately on receipt. This Condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.4 Protirus may, without prejudice to any other rights it may have, set off any liability of the Customer to Protirus against any liability of Protirus to the Customer.
- 8. Intellectual Property Rights**
- 8.1 All Intellectual Property Rights and all other rights in the Deliverables, shall be owned by Protirus. Protirus hereby licenses all such rights to the

Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of any Deliverables and the Services as is envisaged by the parties. If Protirus terminates the Contract under any of the circumstances set out in conditions 12.1(a) to 12.1(g), this licence will automatically terminate.

8.2 The Customer may sub-licence the rights in condition 8.1. to any Partner Company or End User, but shall not otherwise sub-licence, assign or otherwise transfer the rights in condition 8.1.

8.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Protirus obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Protirus to license such rights to the Customer.

## 9. Confidentiality and Protirus' property

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Protirus or its employees or agents, and any other confidential information concerning Protirus' business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors on a need-to-know-basis for the purpose of discharging the Customer's obligations to Protirus, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by Protirus to the Customer shall at all times be and remain the exclusive property of Protirus, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Protirus, and shall not be disposed of or used other than in accordance with Protirus' written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

## 10. Data Protection

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

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation and this Contract, the Customer is the data controller and Protirus is the data processor.

10.3 Without prejudice to the generality of condition 10.1, the Customer:

(a) warrants and represents that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Protirus for the duration and purposes of this Contract;

(b) warrants and represents that all instructions given to Protirus for the processing of personal data are lawful and as a minimum include the nature and purpose of the processing, type of personal data and categories of data subjects to whom the personal data related; and

(c) acknowledges that as data controller it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to Protirus for the purpose of carrying out the relevant services under this Contract.

10.4 Without prejudice to the generality of condition 10.1, Protirus shall, in relation to any personal data processed in connection with the performance by Protirus of its obligations as data processor under this Contract:

(a) process that personal data only on the written instructions of the Customer unless Protirus is required to process said data by any Applicable Laws. Where Protirus is relying on Applicable Laws as the basis for processing personal data, Protirus shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Protirus from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, 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 has been obtained and the following conditions are fulfilled:
- (i) the Customer or Protirus has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Protirus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred;
  - (iv) Protirus 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 Contract unless required by Applicable Laws to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this condition 10 and allow for audits by the Customer or the Customer's designated auditor.
- 10.5 The Customer provides their consent for Protirus to use Sub-Processors in the delivery of the Services. Protirus shall enter into a written agreement with such Sub-processors incorporating terms which are substantially the same as those set out in this condition 10. As between the Customer and Protirus, Protirus shall remain fully liable for all acts and omissions of any Sub-processor appointed by it pursuant to this condition 10.5. Where required by law, Protirus shall inform the Customer of any intended changes concerning the addition or replacement of a Sub-processor with access to personal data and give the Customer the opportunity to object to such changes.
- 10.6 Either party may, at any time of not less than thirty (30) days' notice, revise this condition 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when replaced by attachment to this Contract).
- 11. Limitation of liability**
- 11.1 The following provisions set out the entire financial liability of Protirus (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
  - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes the liability of Protirus:
- (a) for death or personal injury caused by Protirus' negligence; or
  - (b) for fraud or fraudulent misrepresentation; or
  - (c) anything else excluded by law.
- 11.4 Subject to condition 11.2 and condition 11.3:
- (a) Protirus shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
    - (i) *loss (whether direct or indirect) of profits; or*
    - (ii) *loss (whether direct or indirect) of business; or*
    - (iii) *depletion of goodwill or similar losses (whether direct or indirect); or*
    - (iv) *loss (whether direct or indirect) of anticipated savings; or*
    - (v) *loss (whether direct or indirect) of goods; or*
    - (vi) *loss (whether direct or indirect) of contract; or*
    - (vii) *loss (whether direct or indirect) of use; or*
    - (viii) *loss (whether direct or indirect) or corruption of data or information; or*

(ix) *any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.*

- (b) Protirus' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Services in the twelve calendar months prior to the date the claim was made.

## 12. Termination

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract with immediate effect without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g)

(h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or there is a change of control of the Customer.

12.2 Without affecting any other right or remedy available to it, Protirus may at its discretion, suspend or terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

## 13. Consequences of termination

13.1 On termination of the Contract, the Customer shall deal with the Pre-Existing Materials and any Deliverables which have not been fully paid for in accordance with Protirus' instructions, which may require the return or deletion of said materials. If the Customer fails to do so, then Protirus may enter the Customer's premises and take possession of said materials. Until said materials have been dealt with in accordance with Protirus' instructions, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 14. Force majeure

Protirus shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Protirus or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic or default of suppliers or Subcontractors.

## 15. Waiver

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

15.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law

shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 16. Entire Agreement

16.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

## 17. Assignment

17.1 Subject to condition 5.1(b) and condition 8.2, the Customer shall not, without the prior written consent of Protirus, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 Protirus may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.3 As between the Customer and Protirus, Protirus shall remain fully liable for all acts and omissions of any Subcontractor appointed by it pursuant to condition 17.2.

## 18. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 19. Third party rights

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else. For the avoidance of doubt, neither a Partner Company nor an End User has any right to enforce this Contract against Protirus.

## 20. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

## 21. Notices

21.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at the address specified in the Contract; or
- (b) sent by email to the email address specified in the Contract.

21.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this condition 21.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

21.3 This condition 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 22. Governing law and jurisdiction

22.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).