

PROCEQ S.A.

GENERAL TERMS AND CONDITIONS OF SOFTWARE SUBSCRIPTION

Please read these Terms and Conditions carefully before activating the Software Subscription.

1. GENERAL PROVISIONS

- 1.1 These General Terms and Conditions of Software Subscription of Proceq S.A. (the **Company**), as amended from time to time (the **Terms and Conditions**) shall govern and apply to the subscription, license and use of the Software and any Services (as defined below) which the Company or any its entities controlling, controlled by or under control by the or with the Company (**Affiliates**) may provide in connection therewith to all the Company's customers, as subscribers and licensees (the **Customer**). For purposes of these Terms and Conditions, the term Company shall include all its Affiliates. Reference to these Terms and Conditions shall include the Company's Data Privacy Policy (as defined below), the applicable ordering document according to which the Customer orders and subscribes for the Software (together with any renewal thereof) (the **Order Form**). In case of conflict between the documents comprising these Terms and Conditions, the Order Form shall prevail.
- 1.2 By downloading, activating and using the Software the Customer acknowledges that it has read and understood the Terms and Conditions and agrees to be legally bound by these Terms and Conditions. If the Customer does not agree to the terms stipulated in these Terms and Conditions, it should not install, activate and/or use the Software and, if presented with the option to "agree" or "disagree" to the Terms and Conditions, select "disagree".
- 1.3 The Company reserves any and all right to amend and change these Terms and Conditions at its own discretion. The Customer has the right, at any time, to request from the Company a copy of the currently applicable Terms and Conditions.
- 1.4 Any deviation from these Terms and Conditions shall only be valid if agreed upon between the Company and the Customer exclusively in written form. Any general terms and conditions of a Customer or any third party shall not apply, irrespective of whether the Company expressly objects in a particular case or not.
- 1.5 If individual provisions of these Terms and Conditions should be invalid in whole or in part, the validity of the remaining provisions or the valid parts of such provisions shall not be affected.

2. SOFTWARE SUBSCRIPTION

- 2.1 Subject to full payment of the applicable Fees the Company grants to the Customer a revocable, non-exclusive, non-transferable, non-sublicensed, renewable fixed and limited license to:

- (a) download, install, activate, access to and use the Company's integrated system comprised of hardware-bound algorithms, software application, cloud services and computer programs in object form provided connected and associated to the Company's branded instrument as described under the Order Form (the **Software**) in Customer's normal course of business in one (1) or multiple hardware devices owned or otherwise controlled by the Customer strictly in accordance with these Terms and Conditions. The Customer's user account shall be at all times associated with the Company's branded equipment referred to in the respective Order Form; and
 - (b) access, stream, download, and use on or through the Software the data and content made available in or otherwise accessible through the Software and storage of such data in the cloud platform together with any Services provided by the Company connected thereto, strictly in accordance with these Terms and Conditions (the **Software Subscription**).
- 2.2 For purposes of these Terms and Conditions, Software means the initial version subscribed by the Customer together with certain periodic updates and upgrades which may not necessarily include all existing features or new features that the Company releases for newer or other models or any new releases of a Software or products or any additional functionality for which the Company, in its sole discretion, generally charges or might charge customers of the Software in addition (collectively **Updates**).
- 2.3 The Software together with any third party software, documentation, interfaces, content, fonts and any data accompanying the Software whether preinstalled on the Company's branded hardware, on disk, in read only memory, on any other media or in any other form are an integral part of the Software and are provided to the Customer by the Company for use only under these Terms and Conditions.
- 2.4 The Software may be delivered to the Customer by data media or by electronic means via data networks such as the Internet, or third parties' platforms. The Company offers no guarantee for the availability of such networks or platforms nor for the correct transfer and download of the Software.
- 2.5 The Company reserves the right to, at any time and at its sole discretion, discontinue the Software and consequently cease the provision of Updates and/or Maintenances and Support Services and consequently cancel and terminate the Software Subscription without reason. In such case, the Company will use reasonable efforts to notify the Customer at least eighteen (18) months prior and any Fees which have been already paid for the remainder of the Subscription Period will be returned to the Customer on a pro-rata basis from date of discontinuation until expiry of the Subscription Period.
- 2.6 In the event of the Company releasing an alternative software product that substantially incorporates the functionality of the Software version the Customer has subscribed for, the Company may, but shall not be obliged to, make such new release available to the Customer. In such case different fees may apply.
- 2.7 The Customer agrees that these Terms and Conditions will apply to any software product that may be preinstalled on the purchased hardware, unless such product is accompanied

by a separate agreement, in which case the Customer agrees that the terms of that agreement will govern its use of that product.

- 2.8 The Software may be used to access and use various products and services of the Company (**Services**). All access to and use of such Services by means of the Software, including any charges for such access and use, will be governed by the terms applicable to the relevant Services.

3. USE OF THE SOFTWARE

- 3.1. The Customer acknowledges and agrees that the Software shall be used in connection with the Company's branded hardware specified in the respective Order Form that meets specified system requirements as indicated by the Company and that the use of and access to certain features of the Software and certain Services may require the Customer to apply for a unique user name and password combination.
- 3.2. Any offering made hereunder by the Company does not include access to the Internet or any other network or to any communications services or any hardware, software, storage, security or other resources necessary for accessing or using the Software. The Customer and other suppliers and service providers are responsible for acquiring all such items and for their reliability, security and performance. Installation of all the hardware and supporting software necessary to ensure that minimum configuration requirements for installation and operation of the Software are satisfactorily met as well as the installation and operation of the Software itself is the sole responsibility of the Customer.
- 3.3. The Customer shall be solely responsible for:
- (a) installing any Updates and ensuring that the Software, in particular the display unit and firmware, are up to date;
 - (b) ensuring the compatibility, capability and appropriateness of all devices and operation systems used in connection with the Software and that any such devices meet the minimum requirements for the intended use of the Software;
 - (c) providing and maintaining, to the extent deemed required during the use of the Software the necessary Internet access for its use of the Software, and connection to the Company's cloud to store and manage its data;
 - (d) safeguarding, preventing and securing its device and the Software from any unauthorized access and use which violate or may violate any of the provisions set forth herein, including without limitation application of cybersecurity measures required to best ensure security.
- 3.4. The Customer shall not and shall not permit any person to:
- (a) copy the Software, except as expressly permitted by these Terms and Conditions;
 - (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software;
 - (c) reverse-engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source or binary code of the Software or any part thereof;

- (d) transfer the Software to a different programming language or to another operating system or cloud platform, adapt or make error corrections, or incorporate the software, in whole or in part, in any other program;
 - (e) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Software, including any copy thereof;
 - (f) rent, lease, lend, sell, sub-license, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any third party for any reason;
 - (g) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Software;
 - (h) use the Software in any manner which does not comply with any indication or specification provided by the Company with regards to the relevant equipment and/or of the Software;
 - (i) reproduce all or any portion of the Software (except as expressly permitted herein) or any accompanying documentation, or modify, translate or otherwise create derivative works of the Software.
- 3.5 Upon request and subject to the Company's prior written approval, the Customer may be permitted to sub-license the Software in cases of rental of the Company's branded hardware described to in the Order Form and associated with the Software Subscription. In such case, the Customer shall enter into a separate agreement with the Company. The Company reserves all right to, at its entire discretion, prohibit any such sub-licensing. In such cases and for the avoidance of doubt, the Customer shall remain at all times fully liable for the appropriate use of the Software and compliance with these Terms and Conditions.
- 3.6 Customer agrees to notify its employees, representatives and agents who may have access to Software of the restrictions contained herein and to ensure their compliance at all times with these restrictions.
- 3.7 Except as expressly permitted herein, Customer agrees that it shall make no use of the Software, the documentation or any other related materials without Company's prior written consent. Any and all goodwill associated with such rights shall inure directly and exclusively to the benefit of the Company.
- 3.8 The Customer agrees that outputs from the Software will not, under any circumstances, be considered legal or professional advice and are not meant to replace the experience and sound professional judgment of professional advisors in full knowledge of the circumstances and details of any matter on which advice is sought.
- 3.9 The Company shall have the right to perform or have performed on its behalf periodic vulnerability tests of the Software or Services.

4. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Customer hereby acknowledges and agrees that the Company and/or Affiliates, its licensors, if any, have and shall retain entire the right, title and interest in and to the Software and to any Updates and derivative works thereto, including but not limited to any and all copyrights, patents, trademarks, know-how and other intellectual property rights in, deriving or relating thereto. The Company reserves any and all rights not expressly granted to the Customer hereunder.
- 4.2 Customer acknowledges and agrees that it does not acquire any ownership interest in and to the Software, or any other rights thereto other than to use the Software in accordance with the Software Subscription granted, and subject to all terms, conditions, and restrictions, under these Terms and Conditions.
- 4.3 At all times during the Subscription Period and at any time thereafter, Customer covenants and agrees not to take any action, either directly or indirectly, to (a) challenge, question, or attempt to invalidate any of the ownership rights of the Company in connection with the Software; or (b) assert any intellectual property or other rights in or to the Software, other than the limited license granted to Customer according to the Software Subscription.
- 4.4 Title and intellectual property rights in and to any content displayed by or accessed through the Software by the Customer belongs to the respective content owner. Such content may be protected by copyright or other intellectual property laws and treaties and may be subject to terms of use of the third party providing such content. Except as otherwise provided herein, the Software Subscription does not grant the Customer any rights to use such content nor does it guarantee that such content will continue to be available to the Customer.

5. UPDATES TO THE SOFTWARE

- 5.1. The Company may, at its discretion, make available future Updates to the Software for the Customer's compatible Company-branded devices. These Terms and Conditions will govern any Software Updates provided by the Company to the original Software product, unless such Update is accompanied by a separate agreement in which case the Customer agrees that the terms of that agreement will govern such Updates.
- 5.2. Certain Updates may modify or delete in whole or in part certain features and functionalities of the Software. The Customer acknowledges and agrees that the Company has no obligation to make any Updates available nor to continue, provide or enable any particular feature or functionality.
- 5.3. Updates, if any, will be made available to Customer based on Customer's settings, and when its device is connected to the Internet either:
- (a) the Software will automatically download and install available Updates; or
 - (b) Customer may receive notice of or be prompted to download and install available Updates.

5.4. The Customer shall promptly download and install all Updates and acknowledges and agrees that the Software or portions thereof may not operate properly should the Customer fails to do so.

6. DATA

6.1. Data processed by the Company through or in connection with the Software Subscription are subject to the Company's Data Privacy Policy, as amended from time to time at the Company's sole discretion, available at <https://www.proceq.com/service/overview> (the **Privacy Policy**). By means of the Software Subscription, the Customer consents to all actions taken by the Company with respect to its data pursuant to the terms of the Privacy Policy.

6.2. The Customer hereby acknowledges and agrees to be, at all times, fully responsible and liable for the accuracy, quality, integrity and lawfulness of the data and content, independent of its form or the manner in which such data is obtained, used, generated, collected, provided, uploaded or loaded through or into the Software and uploaded by the Customer in the Company's cloud platform, including, without limitation, historical data to permit the use of the Software and maintenance thereof.

6.3. Customer retains all right, title and interest in and to the data referred to in Clause 6.2 and hereby grants to the Company a non-exclusive right to use any such data, in an anonymized way, including without limitation any measurement, metadata and results collected or generated through or by means of the Software during the Subscription Period as well as any intellectual property rights thereunder according to the Company's Privacy Policy. This right to use such data shall survive the termination or expiry of the Subscription for whatever reason.

6.4. Any comments, ideas, or reports the Customer may provide to the Company regarding the Software and any Services provided in connection therewith or installation, functionality, performance, accuracy, consistency, and ease of use of the Software or Services (**Feedback**) will be considered the Company's property and shall be treated by the Customer as confidential. The Customer hereby irrevocably transfers and assigns to the Company all rights embodied in or arising in connection with such Feedback. The Company in its sole discretion, may freely use all Feedback, without attribution or compensation to the Customer.

7. FEES

7.1. The fees payable by Customer in consideration of the Software Subscription for the relevant Subscription Period will be in Swiss francs (CHF) and as specified in the applicable Order Form issued by the Company (the **Fees**).

7.2. Where the Subscription Period starting date has for any reason to be adjusted by the Company, the Company may at its discretion either (a) adjust the Subscription Period to run from the revised start date; or (b) reduce it and invoice on a pro-rata basis for the reduced period.

8. SUSPENSION OF THE SOFTWARE SUBSCRIPTION

8.1 The Company shall have the right, but not the obligation, in addition to any other rights it holds pursuant to these Terms and Conditions or remedies available at law or equity, to immediately disable or suspend the Customer's access to and use of the Software without further notice for an undetermined period of time, upon occurrence of any of the following events:

- (a) any breach of any of the provisions of these Terms and Conditions by the Customer, including without limitation non-payment, in whole or in part, of any Fees due hereunder within the given timeline;
- (b) in case the Company believes in good faith that the Customer's conduct or failure to act may (i) pose a security risk or otherwise adversely impact the Software and/or the Company; (ii) constitute or enable tampering with, removing, disabling or otherwise limiting the effectiveness of any technical protections (including any mechanisms for managing, monitoring, controlling or analyzing the installation of, access or, or use of the Software or protections of the Company's intellectual property rights); (iii) subject the Company or any of its partners or representatives or any other user to liability. Unless the Company reasonably determines that immediate action is prudent, the Company will seek to notify the Customer of the planned disabling or suspension before it takes effect.

8.2 The Company reserves the right to, at its sole discretion, charge to the Customer an additional fee for the reactivation of the Software Subscription.

9. SOFTWARE DEFECTS

The Company will use reasonable efforts to, within a commercially reasonable period of time, correct Software defects which materially impair the performance and specified functionality of the Software discovered during the Subscription Period (the **Defects**). The Company has no obligation to rectify or provide support or maintenance services related to devices used in connection with the Software and errors that arise out of or result from (a) modifications to the Software or hardware made by the Customer or a third party not authorized by the Company; (b) Customer's operation or use of the Software other than as strictly specified by the Company; (c) any failure, including failure to promptly install any Update; (d) continued use of the Software after the Company has recommended install of an Update; or (e) any material breach of these Terms and Conditions by the Customer.

10. PAYMENT AND BILLING

10.1. All Fees payable under the Software Subscription are exclusive and net of applicable sales, use, value added, personal property, withholding taxes applicable in the territory of the Customer and other taxes, which are and shall be payable solely by the Customer.

10.2. All telecoms charges incurred in using the Software are the sole responsibility of Customer.

- 10.3. All Fees for the Software Subscription shall be paid in accordance with the payment terms and method stipulated in the applicable Order Form.
- 10.4. If full payment is not made by the due date, except to the extent that any part non-payment relates to a *bona fides* disputed invoice, without prejudice to any rights or remedies otherwise available, the Company reserves the right to (a) charge interest on the outstanding balance of all overdue sums at the rate of 5% per annum; (b) suspend the Software Subscription as per Clause 8; (c) charge to the Customer an additional fee for administration costs at the Company' applicable rates; and (d) require and Customer shall cease all use of the Software.

11. TERM AND TERMINATION

- 11.1. The term of the Software Subscription shall commence on the date stipulated in the respective Order Form and will continue in effect for the period of time stated thereunder together with any renewals thereof or as terminated in accordance with this Clause 11 (the **Subscription Period**).
- 11.2. Notwithstanding any of the foregoing, the Software Subscription may be terminated with immediate effect by the Company at any time in the event of the following:
- (a) the Customer breaches any provision of the Terms and Conditions and fails to remedy such breach within thirty (30) calendar days of its notification by the Company. For the avoidance of doubt, any failure to make timely payments is considered a material breach;
 - (b) if any organization, entity or person, which the Company acting reasonably determines to be a competitor of the Customer acquires control of the Customer; or
 - (c) the Customer becomes insolvent or bankrupt, seeks deferred payment authorization, goes into liquidation, has an administrator, administrative receiver or receiver appointed, makes a voluntary arrangement with its creditors, or proceedings are brought by a creditor in respect of any of the foregoing.
- 11.3. In the event of early termination without reason by the Company, if Customer has pre-paid any Fees in respect of the then current Software Subscription, the Company's sole liability to Customer in respect of such termination shall be to refund the pre-paid Fees in respect of the remainder Subscription Period. No such refund shall be required in event of termination for Customer's breach of any of the terms hereunder.
- 11.4. Upon expiry or termination of the Subscription Period by either the Customer or the Company for whatever reason:
- (a) all rights granted to the Customer hereunder will automatically and immediately terminate;
 - (b) the Company may provide, upon written request, to the Customer a limited right to retrieve all archived data stored in the cloud platform provided that such request is made within a period of thirty (30) days after termination or expiry.
- 11.5. Termination for whatever cause will not limit any of Company's rights or remedies at law or in equity.

12. RENEWAL OF THE SOFTWARE SUBSCRIPTION

- 12.1. Unless the Company receives a written termination notice from the Customer at least three (3) months prior the expiry of each Subscription Period (the **Termination Notice**), the Software Subscription will automatically renew for successive periods of one (1) year each (each a **Renewal Period**). For purposes of these Terms and Conditions, Subscription Period shall include all Renewal Periods.
- 12.2. The Company reserves the right to modify the Fees for each Renewal Period in respect of any Software Subscription. The Company will endeavor to issue Customer with a renewal notice e specifying the new applicable Fees for the Software Subscription no less than four (4) months before the end of the Subscription Period.
- 12.3. Customer is deemed to have agreed to extend the Software Subscription for the Renewal Period and to pay the Fees for the Software Subscription for the Renewal Period unless the Company receives a Termination Notice within the stipulated timeline.
- 12.4. Where, on expiry of the Subscription Period the applicable Fees are under active *bona fide* discussion between the parties, the Company will:
 - (a) whilst, in Company's reasonable opinion, such discussions are proceeding without undue delay, continue licensing the relevant Software on the terms of these Terms and Conditions during that period and to bill Customer for Fees incurred at the existing rates;
 - (b) be entitled, once agreement has been reached on Fees applicable for such Renewal Period to invoice for the additional amounts due in respect of the period between the start of the Renewal Period and such agreement being reached; and
 - (c) in the event that such agreement is not reached within a reasonable period, at Company's sole discretion have the right to require to withdraw Customer's access to the Software. In such case, Customer shall cease all use of the Software, uninstall the Software and confirm by email to Company that the said Software has been uninstalled.

13. MAINTENANCE AND SUPPORT SERVICES

- 13.1. During the Subscription Period and provided that the Customer is not in breach of any its obligations under these Terms and Conditions, the Company will provide to the Customer certain maintenance and support services in connection with the Software, including rectification and correction of defects as per Clause 9, and Software quality testing, cloud maintenance and backups (the **Maintenance and Support Services**).
- 13.2. The Company will only provide Maintenance and Support Services to the Customer with the most current version and the immediately preceding version of the Software.
- 13.3. If the Company determines that any of the Customer's reported maintenance problems cannot be resolved due to Customer's failure to install Updates or procure new versions of the Software, Customer will be given a reasonable opportunity to install such Updates or procure a new version. If, after such opportunity, Customer fails or otherwise refuses to

install such Updates or procure such new version, Company shall be relieved of its obligations.

- 13.4. The Company's obligations under the Software Subscription provided hereunder will extend only to Updates of the Software provided to Customer by the Company so long as the Software or hardware has not been modified or altered in any way by anyone other than by the Company or by an authorized representative of the Company.
- 13.5. Customer shall ensure that the Company personnel are provided with such information under Customer's control as is reasonably necessary to enable the Company to comply with its obligations hereunder.
- 13.6. Any services, training or other requirements not expressly included in these Terms and conditions are outside the scope of this Software Subscription and may be only provided subject to the Company's availability and for additional fees. Fees for such items are payable as specified in the applicable Order Form.

14. **THIRD-PARTY MATERIALS**

- 14.1. The Software or any Services may contain, be dependent on, display, include, or make available third-party products or content (including without limitation data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising (**Third-Party Materials**). The Customer acknowledges and agrees that the Company is not responsible for any Third-Party Materials and will not have any liability or responsibility to the Customer or any other person or entity for any Third-Party Materials. For Third-Party Materials respective warranty and terms of use of the such third parties shall apply exclusively.
- 14.2. Third-Party Materials and links thereto are provided solely as a convenience to the Customer, and Customer's access and use them entirely at its own risk and subject to such third parties' terms and conditions.

15. **WARRANTY AND LIMITATION OF LIABILITY**

- 15.1. Except as specifically and expressly provided in these Terms and Conditions and to the fullest extent permitted by law, the Software and any Services provided hereunder are provided "*as is*" and "*as available*" without warranty of any kind, whether express or implied or statutory including but not limited to warranties of performance, merchantability, fitness for a particular purpose, accuracy, omissions, completeness, correctness and delays. To the maximum extent permitted under applicable law, the Company, on its own behalf and on behalf of its Affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory, or otherwise, with respect to the Software, and any Services, including without limitation all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage, downtime or trade practice. Without limitation to the foregoing, the Company provides no warranty or undertaking, and makes no representation of any kind that the Software will

- meet the Customer's requirements, achieve any intended results, be compatible, or work with any other software, devices, applications, systems, or services, operate without interruption, meet any performance or reliability standards, or be error-free, or that any errors or defects can or will be corrected.
- 15.2. Neither the Company, its Affiliates nor any licensors, of the foregoing make any warranty, express or implied that access to any Software or Services will be uninterrupted, secure, complete or error free.
 - 15.3. To the fullest extent permitted by applicable law, in no event will the Company or its Affiliates, or any of its or their respective licensors or service providers, have any liability arising from or related to the Customer's use of or inability to use the Software or the content, the data, and Services for damages in amounts that in the aggregate exceed the amount actually paid by the Customer for the Software Subscription.
 - 15.4. The foregoing limitations will apply whether such damages arise out of breach of contract, tort (including negligence), or otherwise and regardless of whether such damages were foreseeable, or Company was advised of the possibility of such damages.
 - 15.5. The Customer hereby acknowledges that some systems, hardware and/or software may not be capable of supporting the Software. The Customer hereby further acknowledges (a) that it has made appropriate investigations into the necessary systems, hardware and/or software required to support Customer's use of the relevant Software and (b) that performance of the Software may vary with equipment and telecommunications links with which it is used.
 - 15.6. In addition to the disclaimers of warranties and limitation of liability set forth in these Terms and Conditions, the Company cannot guarantee and does not assume any responsibility or liability regarding the access to the online platform where the Software will be made available for download, nor for any purchases, payments, transactions, or other commerce activity made using third parties pay features. The Customer acknowledges the previous and agrees to look solely to agreements it may have with its card issuer, payment network, or merchant or platform to resolve any questions or disputes relating to its supported cards, virtual supported cards and associated commerce activity.
 - 15.7. Other than in respect of the warranties expressly given herein, the Company, its authorized partners or licensors shall not be directly or indirectly liable in contract, tort, delict or otherwise for:
 - (a) any loss of whatsoever kind howsoever arising or suffered in connection with the Software, including without limitation, any loss of or event related to any data collected or obtained through the Software and stored in the Company's cloud platform;
 - (b) any losses arising out of or connected with damage from any security breach or any other security intrusion of the Software;
 - (c) any loss of revenue, business, anticipated savings or profits, loss of goodwill, reputation or data or for any indirect or consequential loss whatsoever, howsoever arising or suffered in connection with the Software;

- (d) any claim(s) relating in any way to Customer's inability or failure to perform legal or other research related work or to perform such legal or other research or related work properly or completely, even if assisted by the Company, its Affiliates and/or licensors of the foregoing or any decision made or action taken by Customer in reliance on the Software;
 - (e) any lost profits (whether direct or indirect) or any consequential, exemplary, incidental, indirect or special damages relating in whole or in part to Customers' rights hereunder or use of or inability to use the Software even if the Company, its Affiliates and/or licensors of the foregoing have been advised of the possibility of such damages;
 - (f) any liability of Customer to any third party which might arise.
- 15.8. Customer shall accept sole responsibility for and the Company shall not be liable for the use of the Software by Customer, including without limitation any content uploaded, stored or obtained in connection therewith, or any user and Customer shall hold the Company, its Affiliates, employees, directors or representatives harmless and fully indemnified against any claims, costs (including, without limitation, legal costs), damages, loss and liabilities arising out of any such use.
- 15.9. The Company will not and shall not be responsible to the extent that the Software fails to perform due to one or more of the following: (a) the malfunction of software not provided by the Company; (b) the malfunction or non-compatibility of any third party's hardware, systems, software or devices used by or in connection with the Software; (c) Customer's negligence or fault; (d) Customer's failure to follow the instructions set forth in the instructions provided by the Company; (e) changes in the operating environment not authorized by the Company; (f) modifications to or changes in the Software and/or hardware not made, authorized or suggested by the Company; or (g) Customer's failure to update the Software to last made available by the Company and implement and maintain a proper and adequate backup and recovery system for the Software and associated files.
- 15.10. If the Company discovers that a failure is caused by the occurrence of any of events stipulated in Clause 15.9 the Company reserves the right to charge Customer for its work in investigating such failure at its applicable rates. At Customer's request and at a fee to be agreed upon, Company will thereafter assist Customer in resolving such failure.
- 15.11. Nothing in these Terms and Condition confer or purport to confer on any third party any benefit or any right to enforce any term hereof.
16. **INDEMNITY AND REMEDIES**
- 16.1. The Customer agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, Affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Software or Customer's breach of these Terms and Conditions including but not limited to the content the Customer submits or make available through the Software.

- 16.2. Customer's sole and exclusive remedy for the Company's breach of its obligations arising out of the Software Subscription will be to have Company re-perform the defective services so that they conform to the specifications provided herein as per Clause 9.
- 16.3. Other than in respect of the warranty given herein, Customer's exclusive remedy and the Company's, its Affiliates' and/or licensors of the foregoing entire liability under the Software Subscription if any, for any claim(s) for damages relating to the Software made against them individually or jointly whether based in contract or negligence shall be limited to the aggregate amount of the Fees pre-paid by Customer relative to the specific aspect of the Software which is the basis of the claim(s) during the twelve (12) month period preceding the event giving rise to such claim.
- 16.4. The remedies provided in these Terms and Conditions are Customer's exclusive remedies and are in lieu of all other legal or equitable remedies and all liabilities or obligations on the part of the Company for any direct or indirect damages arising out of, relating to, or in connection with the Software Subscription and use of the Software including, but not limited to, the licensing, delivery, installation, use or performance of the Software or the integration of the Software with other software or hardware, and any data collected.

17. INFRINGEMENT CLAIMS

- 17.1. Customer shall promptly inform the Company if Customer becomes aware of:
 - (a) any unauthorised use of the Software;
 - (b) any actual, threatened, or suspected infringement of any intellectual property of the Company, its Affiliates and/or licensors of the foregoing in the Software which comes to Customer's notice; or
 - (c) any claim by any third party coming to its notice that the Software infringes the intellectual property or other rights of any other person.
- 17.2. Customer shall at the request and expense of the Company do all such things as may be reasonably required to assist the Company in taking or resisting proceedings in relation to any infringement or claim referred to in this Clause 17 and in maintaining the validity and enforceability of the intellectual property of the Company, its Affiliates and/or licensors of the foregoing in the Software.
- 17.3. In the event a claim of infringement is made against the Company or Customer with respect to the Software, the Company shall have the right to terminate the Software Subscription and, in such case, return to the Customer pre-paid Fees for the remainder relevant Subscription Period.
- 17.4. These Terms and Conditions contain the Company's entire obligation and the exclusive remedies of Customer with regard to any claimed infringement arising out of or based upon the Software used by Customer.

18. COMPLIANCE WITH APPLICABLE LAWS

- 18.1. The Customer agrees to use the Software and any of the Services provided in connection therewith in compliance and conformity with all applicable laws, including local laws of the

country or region in which the Customer resides or in which the Customer downloads or uses the Software and/or Services. Features of the Software and/or the Services may not be available in all languages or regions and some features may vary by region. An Internet connection is required for some features of the Software and/or Services.

- 18.2. Customer agrees to comply with all relevant export laws and regulations (collectively, **Export Laws**) to ensure that the Software or any portion of it is not exported, directly or indirectly, in violation of any Export Laws, and that no access to the specified services is given by Customer to any embargoed country or their nationals, or any other embargoed/denied persons listed from time to time by Switzerland, Germany and the United States or other countries. The Company will not be liable for any default or delay caused by the Customer's efforts to comply with any Export Laws. If Export Laws change after the commencement of the Subscription Period and such changes materially inhibit or prohibit the Company from performing its obligations hereunder, the Company will not be liable for their non-performance and either or both Company and Customer will have the right to terminate the Software Subscription with respect to the applicable Software without any compensation or remedy.
- 18.3. The Software may be subject to certain Export Laws in particular in Switzerland, Germany and the United States. The Customer shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from or to any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation in particular in those jurisdictions. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available.

19. GENERAL PROVISIONS

- 19.1. The Company reserves the right to amend or modify any provision of these Terms and Conditions. Unless the Customer is notified to the contrary by the Company in writing any such amendments shall only apply after the expiry of the Initial Subscription Period, or after the expiry of the current Renewal Period as the case may be.
- 19.2. The Company shall not be liable for any delay or failure in performing hereunder if caused by factors beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, failure of telecommunications or Internet services, industrial or labor dispute, inability to obtain necessary supplies and the like.
- 19.3. The Company may assign or transfer any its obligations under these Terms and Conditions or any rights and obligations hereunder either to an Affiliate or to a third party in each case, without the prior consent of the Customer. The Company may without the prior written consent of Customer and without notice assign any benefit or transfer, delegate or sub-contract any of their duties and obligations hereunder to any third party.

- 19.4. The Customer shall not assign, sub-license or otherwise transfer any part or portion of the Software Subscription.
- 19.5. Except as otherwise provided, all notices and correspondence must be given in writing to the Company at Ringstrasse 2, 8603 Schwerzenbach, Switzerland or info@proceq.com or such other addresses as may from time to time be notified to the Customer in writing; and to Customer at the address set out in the applicable Order Form unless otherwise notified to the Company in writing.
- 19.6. The Company's General Terms and Conditions of Sale and General Terms and Conditions of Rental, as amended from time to time, located at www.proceq.com/service/overview may supplement these Terms and Conditions and govern the Software Subscription and use of the Software by the Customer.

20. GOVERNING LAW AND JURISDICTION

- 20.1. Unless specified otherwise, the place of performance of these Terms and Conditions shall be the Swiss registered domicile of the Company.
- 20.2. These Terms and Conditions and this Clause 20 shall be governed, construed and interpreted in accordance with the internal laws of Switzerland (excluding Swiss private international law and international treaties and the Vienna Convention on the International Sale of Goods dated 11 April 1980), particularly the provisions of the Swiss Code of Obligations (the **CO**), namely articles 253 et seq. CO.
- 20.3. All disputes arising out of or in connection with these Terms and Conditions, including disputes on its conclusion, binding effect, amendment and termination shall be brought exclusively before the Courts of the Canton of Zurich, Switzerland. Place of jurisdiction shall be Zurich, Canton of Zurich, Switzerland.

Date: 28 August 2019