

Software Subscription Agreement

PLEASE NOTE THAT YOU MAY NOT ACCESS THE SOFTWARE IF YOU ARE A DIRECT COMPETITOR OF PROTEAN, EXCEPT WITH PROTEAN'S PRIOR WRITTEN CONSENT. IN ADDITION YOU ARE NOT PERMITTED TO ACCESS THE SOFTWARE FOR THE PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

ACCEPTANCE TO THE TERMS OF THIS AGREEMENT

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER NAMED IN THE ORDER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE CUSTOMER AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. Software Licence

- 1.1 Subject to the Customer paying the Subscription Fees in accordance with clause 3.3 and clause 9, the restrictions set out in this clause 0 and the other terms and conditions of this agreement, Protean hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to permit the Authorised Users to use the Software and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 1.2 Where the Customer has entered into this agreement for use of the Software by Authorised Users on an On-Premise Subscription basis, Protean shall either make available the Software for download via (<http://support.proteansoftware.co.uk/home/download/>) or deliver copies of the Software on compact disc to the Site (as applicable) in order to fulfil the number of User Subscriptions purchased by the Customer.
- 1.3 Where the Customer has entered into this agreement for use of the Software using the Cloud Service, Protean shall make available the Software at <https://live.servicesight.com> in order to fulfil the number of User Subscriptions purchased by the Customer.
- 1.4 In relation to the Authorised Users, the Customer undertakes that:
 - 1.4.1 the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions specified in the Order (and any additional User Subscriptions that are purchased under clause 9);
 - 1.4.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;
 - 1.4.3 it shall implement and enforce its own IT Security Policy and shall ensure that each Authorised User shall keep a secure password for his use of the Software and Documentation, in particular ensuring that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential. For the avoidance of doubt Protean shall not be responsible nor have any liability in respect of the Customer's failure to comply with this clause 1.4.3;
 - 1.4.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Protean within 5 (five) Business Days of Protean's written request at any time or times;
 - 1.4.5 it shall permit Protean to enter the Site(s) to audit the Software in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Protean's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

- 1.4.6 if any of the audits referred to in clause 1.4.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Protean's other rights, the Customer shall promptly disable such passwords and Protean shall not issue any new passwords to any such individual; and
 - 1.4.7 if any of the audits referred to in clause 1.4.5 reveal that the Customer has underpaid Subscription Fees to Protean, then without prejudice to Protean's other rights, the Customer shall pay to Protean an amount equal to such underpayment as calculated in accordance with the prices set out in Protean's then current subscription price list within 10 (ten) Business Days of the date of the relevant audit.
- 1.5 In respect of the Cloud Service the Customer shall not, and shall procure that each Authorised User shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Cloud Service that:
- 1.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 1.5.2 facilitates illegal activity;
 - 1.5.3 depicts sexually explicit images;
 - 1.5.4 promotes unlawful violence;
 - 1.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 1.5.6 in a manner that is otherwise illegal or causes damage or injury to any person or property,
- and Protean reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 1.6 The Customer shall not:
- 1.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 1.6.1.1 and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 1.6.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 1.6.2 access all or any part of the Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation; or
 - 1.6.3 use the Software for a purpose other than the purpose specified in clause 1.1; or
 - 1.6.4 subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party except the Authorised Users, or
 - 1.6.5 attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation, other than as provided under this clause 0; and
 - 1.6.6 attempt to ascertain or list the source programs or source code relating to the Software.
- 1.7 The Customer shall:
- 1.7.1 ensure that its own computer systems and associated environment are protected against the introduction of any Viruses;

- 1.7.2 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation; and
 - 1.7.3 in the event of any such Virus being introduced or unauthorised access or use, promptly notify Protean.
- 1.8 The rights provided under this clause 0 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

2. Third Party Software and Open Source Software

- 2.1 Where the Software is supplied with third party software (including Microsoft SQL Server and/or Google Maps), the Customer shall:
- 2.1.1 enter into any third party licence agreements which Protean is required by the relevant licensor of the third party software to require its customers to enter into;
 - 2.1.2 comply with (and ensure that its Authorised Users comply with) all third party licence terms relating to the third party software including those contained in any agreements referred to in clause 2.1.1; and
 - 2.1.3 indemnify and hold Protean harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach any third party licence terms.
- 2.2 The Customer acknowledges that open source libraries are used and included within the Software. The open source libraries (as updated from time to time) are available on request from Protean.
- 2.3 The Customer acknowledges and agrees that open source libraries included in the Software are done so pursuant to each individual open source library license and subject to the disclaimers and limitations on liability set forth in each open source library license.
- 2.4 A breach of the licence terms for any third party software or any open source library licence shall constitute a breach of this agreement for the purpose of clause 14.2.1.
- 2.5 The indemnity given by Protean in clause 12 shall not apply to any third party software or to any open source libraries supplied with the Software.

3. Additional User Subscriptions

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and Protean shall grant access to the Software and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer may do so on line at <http://www.proteansoftware.co.uk/> or by telephoning Protean on the contact number set out on the Protean website.
- 3.3 The Customer agrees that for any additional User Subscriptions that are purchased by the Customer pursuant to clause 3.2:
- 3.3.1 Protean shall increase the Customer's Subscription Fees and direct debit payment accordingly; and
 - 3.3.2 such additional User Subscriptions shall be coterminous with the Subscription Term

4. Cloud Service

- 4.1 Where the Customer has entered into this agreement for use of the Software using the Cloud Service Protean shall, during the Subscription Term, provide the Cloud Service and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 Protean shall use commercially reasonable endeavours to make the Cloud Service available 24 (twenty four) hours a day, 7 (seven) days a week, except for:
- 4.2.1 planned maintenance carried out during the maintenance window specified in Protean's then current support documentation;
 - 4.2.2 any loss of the Cloud Service due to maintenance work carried out by third party hosting company that is responsible for hosting the Cloud Service;

- 4.2.3 any event beyond the reasonable control of Protean (including any force majeure event contemplated by clause 16); and
- 4.2.4 unscheduled maintenance performed outside Normal Business Hours, provided that Protean has used reasonable endeavours to give the Customer at reasonable notice in advance.

5. Support Services

- 5.1 Subject to clauses 5.3 and 5.5, Protean will provide the Customer with Protean's standard customer support services in accordance with the Support Plan for the Subscription Term. Protean may amend the Support Plan in its sole and absolute discretion from time to time.
- 5.2 Protean shall perform the Support Plan with reasonable skill and care.
- 5.3 The Customer acknowledges and agrees that:
 - 5.3.1 it shall provide Protean with all necessary access to its premises, computer and server infrastructure and any other computer systems (as applicable) in order to enable Protean to provide the Support Plan to the Customer;
 - 5.3.2 the Support Plan is not available for users who do not meet the minimum system requirements (available on request to Protean) for the Software;
 - 5.3.3 it must have a valid license for a supported version of the Software in order to be eligible to receive the Support Plan. If the Customer is not on a supported version of the Software, as set forth in the Protean Software Obsolescence Policy (available upon request from Protean), the Customer must license an upgrade to the latest version of the Software;
 - 5.3.4 Protean reserves the right to terminate the Support Plan and all other services, including but not limited to, any connectivity to any optional products and services (the "**Add-On Products and Services**") applicable to the Software in the event that the Software has become inoperable or incompatible with current operating systems, hardware, Add-On Products and Services or other technologies or as otherwise set forth in the Protean Software Obsolescence Policy (available upon request from Protean).
- 5.4 The obligation on protean to provide the Support Plan shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to Protean's instructions, or modification or alteration of the Software by any party other than Protean or Protean's duly authorised contractors or agents.
- 5.5 The Customer acknowledges and agrees that where it already pays for the Support Plan under a separate perpetual software licence and support agreement that it entered into with Protean prior to the Effective Date ("**Software Licence and Support Agreement**"), the support fees for such Support Plan shall continue to be paid for by the Customer under the Software Licence and Support Agreement.

6. Customer Data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Where the Customer stores the Customer Data on its own systems, the Customer shall follow its own back-up procedures for such Customer Data and Protean shall have no responsibility for any loss, destruction, alteration or disclosure of Customer Data that is held on the Customer's own systems.
- 6.3 Where Protean is hosting the Customer Data, Protean shall follow its back-up procedures for Customer Data (details of which are available on request from Protean) or such other website address as may be notified to the Customer from time to time, as such procedures may be amended by Protean in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Protean to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Protean in accordance with the back-up procedure described above. Protean shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except

those third parties sub-contracted by Protean to perform services related to Customer Data maintenance and back-up).

- 6.4 Protean shall, in supplying the Software to the Customer comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available on request to the Customer and on such website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Protean in its sole discretion.
- 6.5 If Protean processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Protean shall be a data processor and in any such case:
- 6.5.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Cloud Service and Protean's other obligations under this agreement;
- 6.5.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Protean so that Protean may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
- 6.5.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 6.5.4 Protean shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
- 6.5.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 6.6 Without prejudice to clause 4.2, the Customer acknowledges and agrees that:
- 6.6.1 Protean is reliant upon third party providers in order to supply the Cloud Service; and
- 6.6.2 Protean shall have no liability to the Customer for any loss (including any loss arising from the loss or misuse of Customer Data) to the Customer which is caused by an act or omission of such third party providers.
- 6.7 The Customer acknowledges and agrees that when using the Software:
- 6.7.1 it is able to integrate with third party software (such as accounting software) in order to submit and exchange Customer Data; and
- 6.7.2 it shall indemnify Protean for any claim against Protean by such third party software suppliers arising from the Customer's submission and exchange of Customer Data pursuant to clause 6.7.1.
- 6.8 The Customer hereby gives consent to Protean to allow Protean to collate and use its Customer Data for Protean's own marketing and other commercial purposes, provided that such Customer Data is anonymised by Protean prior to its use, and such use is subject to Protean's obligations of confidentiality under clause 11.

7. Third Party Providers

- 7.1 The Customer acknowledges that the Cloud Service may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Protean makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Protean. Protean recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Protean does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Cloud Service.

8. Customer's Obligations

8.1 The Customer shall:

8.1.1 provide Protean with:

8.1.1.1 all necessary co-operation in relation to this agreement; and

8.1.1.2 all necessary access to such information as may be required by Protean;

in order to provide the Software, the Cloud Service and Support Plan, including but not limited to Customer Data, security access information and configuration services;

8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;

8.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Protean may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 ensure that the Authorised Users use the Software and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Protean, its contractors and agents to perform their obligations under this agreement;

8.1.6 ensure that its network and systems comply with the relevant specifications provided by Protean from time to time (including the minimum system requirements, specified in clause 5.3.2); and

8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Protean's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. Charges and Payment

9.1 The Customer shall pay the Subscription Fees to Protean for the User Subscriptions in accordance with this clause 9.

9.2 Where the Customer has elected in its Order to use the Software for a free trial period no Subscription Fees shall be payable for the duration of such free trial period.

9.3 Where the Customer has elected in its Order to pay the Subscription Fees on a monthly basis, Protean shall invoice the Customer monthly in advance for the Subscription Fees and the Customer shall pay each invoice by direct debit within 30 (thirty) days after the date of such invoice.

9.4 Where the Customer has elected in its Order to pay the Subscription Fees on an annual basis, Protean shall invoice the Customer in advance on the Effective Date and annually thereafter for the Subscription Fees and the Customer shall pay each invoice by direct debit within 30 (thirty) days after the date of such invoice.

9.5 Where the Customer has elected in its Order to pay the Subscription Fees in a manner specified in the Order, Protean shall invoice and the Customer shall pay the Subscription Fees in accordance with the payment terms set out in the Order.

9.6 For the avoidance of doubt, during the Subscription Term the Customer shall not be permitted to reduce the number of its User Subscriptions and shall remain liable to pay the Subscription Fees for the full Subscription Term.

9.7 If Protean has not received payment within 30 (thirty) days after the due date, and without prejudice to any other rights and remedies of Protean:

9.7.1 Protean may, without liability to the Customer, disable the Customer's password, account and access to the Software and Protean shall be under no obligation to

- provide access to the Software while the invoice(s) concerned remain unpaid;
and
- 9.7.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3 (three) per cent over the then current base lending rate of Protean's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.8 All amounts and fees stated or referred to in this agreement:
- 9.8.1 shall be payable in pounds sterling;
- 9.8.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;
- 9.8.3 are exclusive of value added tax, or any analogous sales tax applicable to the supplies made by Protean under this agreement, which shall be added to Protean's invoice(s) at the appropriate rate.
- 9.9 Protean shall be entitled to increase the Subscription Fees at the start of each Renewal Period. Unless Protean provides the Customer with notice of any different price increase that will apply 60 (sixty) days prior to the start of the next Renewal Period, any such increase to the Subscription Fees shall be limited to the greater of:
- 9.9.1 an amount which represents and increase of up to 7% of the Subscription Fees;
and
- 9.9.2 the increase in the Retail Prices Index (excluding mortgage interest),
applicable in the 12 (twelve) month period which immediately precedes the start of the next Renewal Period.

10. Proprietary Rights

- 10.1 The Customer acknowledges and agrees that Protean and/or its licensors own all intellectual property rights in the Software, the Cloud Service and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Cloud Service or the Documentation.
- 10.2 Protean confirms that it has all the rights in relation to the Software, the Cloud Service and the Documentation that are necessary to grant all the rights it purports to grant to the Customer under, and in accordance with, the terms of this agreement.
- 10.3 Where the Customer or its Authorised Users provide feedback to Protean in respect of any aspect of the Software and its user experience the Customer hereby grants to Protean an irrevocable, royalty free right to use such feedback to improve its products and services.

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 11.1.2 was in the other party's lawful possession before the disclosure;
- 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Software, the Cloud Service, Support Plan and Documentation, constitute Protean's Confidential Information.
- 11.6 Protean acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. Indemnity

- 12.1 Protean shall defend the Customer, its officers, directors and employees against any claim that the Software, Cloud Service or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 12.1.1 Protean is given prompt notice of any such claim;
 - 12.1.2 the Customer provides reasonable co-operation to Protean in the defence and settlement of such claim, at Protean's expense; and
 - 12.1.3 Protean is given sole authority to defend or settle the claim.
- 12.2 In the defence or settlement of any claim, Protean may procure the right for the Customer to continue using the Software, Cloud Service and/or Documentation, replace or modify the Software or Cloud Service and/or Documentation, so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 (two) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.3 In no event shall Protean, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 12.3.1 a modification of the Software, Cloud Service or Documentation by anyone other than Protean; or
 - 12.3.2 the Customer's use of the Software, Cloud Service or Documentation in a manner contrary to the instructions given to the Customer by Protean; or
 - 12.3.3 the Customer's use of the Software, Cloud Service or Documentation after notice of the alleged or actual infringement from Protean or any appropriate authority.
- 12.4 The foregoing and clause 13.4.2 states the Customer's sole and exclusive rights and remedies, and Protean's (including Protean's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12.5 The Customer shall defend Protean, its officers, directors and employees against any claim that the Customer has made use of the Software or Cloud Service to infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify Protean for any amounts awarded against Protean in judgment or settlement of such claims, provided that:
 - 12.5.1 the Customer is given prompt notice of any such claim;
 - 12.5.2 Protean provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

12.5.3 the Customer is given sole authority to defend or settle the claim.

13. Limitation of Liability

13.1 This clause 13 sets out the entire financial liability of Protean (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

13.1.1 arising under or in connection with this agreement;

13.1.2 in respect of any use made by the Customer of the Software, Cloud Service and Documentation or any part of them; and

13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

13.2.1 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

13.2.2 the Software (including any third party software and open source software), Cloud Service and the Documentation are provided to the Customer on an "as is" basis without any warranty or representation of any kind.

13.3 Nothing in this agreement excludes the liability of Protean:

13.3.1 for death or personal injury caused by Protean's negligence;

13.3.2 for fraud or fraudulent misrepresentation; or

13.3.3 for any liability to the extent it could be limited or excluded by law.

13.4 Subject to clause 13.2 and clause 13.3:

13.4.1 Protean shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

13.4.2 Protean's total aggregate liability in contract (including in respect of the indemnity at clause 12.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid during the 12 (twelve) months immediately preceding the date on which the claim arose.

14. Term and Termination

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 (twelve) months (each a **Renewal Period**), unless:

14.1.1 either party notifies the other party of termination, in writing, at least [60 (sixty) days] before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

14.2.1 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;

- 14.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 14.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 14.2.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days;
 - 14.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.2 to clause 14.2.8 (inclusive);
 - 14.2.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3 Without prejudice to clauses 14.3 and 14.4, where clause 5.5 applies and the Customer terminates its Support Plan under the Software Licence and Support Agreement, this agreement and all licences granted under it shall immediately terminate.
- 14.4 On termination of this agreement for any reason:
- 14.4.1 all licences granted under this agreement shall immediately terminate;
 - 14.4.2 each party shall destroy, permanently erase or return and make no further use of any equipment, property, Documentation, Confidential Information and other items (and all copies of them) belonging to the other party;
 - 14.4.3 Protean may destroy or otherwise dispose of any of the Customer Data in its possession unless Protean receives, no later than 10 (ten) days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Protean shall use reasonable commercial endeavours to make the back-up available to the Customer for the exporting or downloading to its own systems within 30 (thirty) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Protean in destroying or disposing of Customer Data; and
 - 14.4.4 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 15. Export**
- 15.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such

data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

15.2 Each party undertakes:

15.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

15.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

16. Force Majeure

16.1 Protean shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, 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 Protean or any other party), failure of a utility service or transport or telecommunications 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 or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. Conflict

17.1 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedule, the provisions in the main body of this agreement shall prevail.

18. Variation

18.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Waiver

19.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. Rights and Remedies

20.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. Severance

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

21.2 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 parties.

22. Entire Agreement

22.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

22.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or

understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

23. Assignment

- 23.1 The Customer shall not, without the prior written consent of Protean, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 23.2 Protean 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 this agreement.

24. No Partnership or Agency

- 24.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the 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).

25. Third Party Rights

- 25.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Notices

- 26.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. Governing Law and Jurisdiction

- 27.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 27.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

28. Definitions and Interpretation

- 28.1 The definitions and rules of interpretation in this clause apply in this agreement:

Add-On Products and Services: has the meaning given to it in clause 5.3.4;

Authorised Users: means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and the Documentation, as further described in clause 1.4.4;

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

Cloud Service: the service provided by Protean which permits the Customer and its Authorised Users to access the Software via the internet;

Confidential Information: means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5;

Customer: the company specified in the Order;

Customer Data: means the data inputted by the Customer, Authorised Users, or Protean on the Customer's behalf for the purpose of using the Cloud Service or facilitating the Customer's use of the Cloud Service;

Documentation: means the documents made available to the Customer by Protean from time to time which sets out a description of the Software and the user instructions for the Software;

Effective Date: means the date of this agreement;

Initial Subscription Term: means a period of 12 (twelve) months from the Effective Date or such other period as set out in the Order;

Normal Business Hours: means 8.45am to 5.30pm local UK time, each Business Day;

On-Premise Subscription: means use of the Software by an Authorised User who has either downloaded or physically installed a copy of the Software to his computer device;

Order: the Customer's order for the Software, Cloud Service, Documentation and Support Plan (as applicable) placed using Protean's order form;

Protean: Protean Software Limited, a company incorporated and registered in England and Wales with company number 09532932 whose registered office is at Units 1130-40 Elliott Court, Herald Avenue, Coventry Business Park, Coventry, CV5 6UB;

Renewal Period: means the period described in clause 14.1;

Site(s): the Customer's premises as specified in the Order;

Software: means the software applications provided by Protean in accordance with this agreement;

Subscription Fees: means the subscription fees payable by the Customer to Protean for the User Subscriptions, as set out in the Order;

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);

Support Plan: means Protean's plan for providing support in relation to the Software as made available to the customer by email or such other form of electronic communication from time to time;

User Subscriptions: means the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Software and the Documentation and receive the Support Plan in accordance with this agreement;

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

- 28.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 28.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 28.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 28.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 28.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 28.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

- 28.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 28.9 A reference to writing or written includes faxes but not email.
- 28.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.