

TERMS AND CONDITIONS FOR CLOUD SUBSCRIPTION SERVICES

GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND APPLICATION OF TERMS

The definitions and rules of interpretation in this Clause 1.0 apply in these Terms.

- 1.1 These Terms and Conditions for Cloud Subscription Services are the terms and conditions on which the Cloud Subscription Services will be provided to Customer.
- 1.2 Unless expressly stated to the contrary, all defined terms in these Terms shall have the meaning set out in Clause 1.10.
- 1.3 Clause headings are included for convenience only, have no legal effect and shall be ignored when constructing these Terms.
- 1.4 References to Clauses are to the clauses of these Terms.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.6 In the event of any conflict among the terms and conditions of a Contract, the following order of precedence shall be observed:
 - 1.6.1 the Supplier Terms;
 - 1.6.2 the applicable Quotation;
 - 1.6.3 these Terms.
- 1.7 Company and Customer may hereinafter individually be referred to as “Party” and collectively as the “Parties”.
- 1.8 For the avoidance of doubt the Parties agree that any document that purports to amend the terms of these Terms, a Quotation or a Contract and which is not in compliance with these Terms or the Contract (including without limitation any Purchase Order or Purchase Order confirmation or similar document that carries terms not expressly included in these Terms or the Contract) shall be of no effect.
- 1.9 Company may revise these Terms from time to time by changing it on Company’s website. By continuing to purchase Cloud Subscription Services Customer accepts the terms and conditions of these Terms. It is Customer’s responsibility to check the Terms each time Customer places a Purchase Order for Cloud Subscription Services. These Terms were last updated on 9 October 2020.
- 1.10 Definitions:

“**Activation**” means the point in time when a Cloud Subscription Service has been delivered, enabled or made available and is ready for service, and terms such as ‘Activated’ shall be interpreted in this context;

“**Anniversary Date**” means the date twelve (12) months after the Commencement Date;

“**Business Day**” means a day other than a Saturday, Sunday or public or bank holiday in the UK;

“**Charges**” means the fees specified in the applicable Quotation together with any additions thereto or deductions therefrom agreed by the Parties in advance in writing under the Contract;

“**Cloud Subscription Services**” means the Supplier’s Software-as-a-Service (SaaS) offering, including any Supplier’s associated software and services, as detailed in the Cloud Services Order;

“**Cloud Services Order**” means an individual contract for the provision of Cloud Subscription Services incorporating these Terms and the relevant Quotation;

“**Commencement Date**” means the date the Cloud Subscription Services are provisioned by the Supplier;

“**Company**” means Prodec Networks Limited, a company registered in England and Wales (Registration No. 03645275) and having its registered office at Unit 7, The Pavilions, Ruscombe Business Park, Ruscombe, Reading, RG10 9NN;

“**Confidential Information**” means any information disclosed to it by the other Party, concerning the terms of this Contract, the business affairs of the other Party, or of any member of the group of companies to which the other Party belongs, including (but not limited to) information relating to a Party’s or group member’s operations, forecasts, processes, plans, data, materials;

“Contract” means a Cloud Services Order;

“Customer” means the customer entity identified in the Contract;

“End User” means an employee (either permanent or temporary) or other agent approved by Customer to access the Cloud Subscription Services;

“Incident” means any event with deployed Cloud Subscription Services, which is not part of the standard operation of the Cloud Subscription Services which causes, or may cause, an interruption to, or a reduction in, the quality of the Cloud Subscription Services to Customer (and Fault shall have the same meaning);

“Personal Data” means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

“Personal Data Breach” shall have the meaning set out in the Applicable Data Protection Law as defined in Clause 12.1;

“Processing, Process” in relation to information or data means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including a) organisation, adaptation or alteration of the information or data, b) retrieval, consultation or use of the information or data, c) disclosure of the information or data by transmission, dissemination or otherwise making available, or d) alignment, combination, blocking, erasure or destruction of the information or data;

“Processor” in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“Quotation” means a written document provided by Company constituting a firm offer and detailing the Cloud Subscription Services requested by Customer from time to time;

“Service Period” means the duration of the Contract as set out in Clause 13.1;

“StarLeaf” is a registered trademark of Starleaf Technology Ltd;

“Supplier” means the supplier, licensor, publisher, manufacturer or other third party provider of the Cloud Subscription Services;

“Supplier Terms” means the terms under which the Supplier will provide the Cloud Subscription Services to the Customer as set out in the Supplier’s agreement expressly referenced in Clause 3.0;

“Support Desk” means the Company’s support desk;

“Terms” means these Terms and Conditions of Cloud Subscription Services inclusive of any associated addendum or applicable schedule.

2.0 GENERAL

- 2.1 Each Party acknowledges that, in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that its only liability in respect of those statements, representations, assurances and/or warranties set out in this Contract (whether made innocently or negligently) shall be for breach of contract.
- 2.2 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 2.3 Nothing in this Clause 2 shall limit or exclude any liability for fraud.

3.0 CLOUD SUBSCRIPTION SERVICES

- 3.1 From time to time, as requested by Customer, Company shall issue a Quotation to Customer. The Quotation constitutes an offer by Company to provide the Cloud Subscription Services subject to these Terms. Customer may accept the Quotation by issuing a Purchase Order referencing the Quotation. Upon Customer’s acceptance of the Quotation the Quotation shall be considered a Cloud Services Order incorporating these Terms.
- 3.2 In consideration of payment of the Charges by Customer, Company shall make available or arrange the provision of the Cloud Subscription Services by the Supplier to Customer in accordance with the terms and conditions of this Contract and the Supplier Terms available at:

3.2.1 <https://support.starleaf.com/legal-information/> for StarLeaf services;

3.2.2 Not currently in use.

3.3 If Customer requires Company to provide products, goods and/or installation services that are outside the scope of this Contract, then Customer should make a formal request to Company in writing whereupon Company will provide Customer with a quotation for the provision of the requested products, goods and/or services.

3.4 Any provision of products, goods and/or installation services shall be subject to Company's terms and conditions of sale (the "TCofS"). The TCofS can be found on Company's website at:

<https://www.prodec.co.uk/terms-and-conditions-of-sale/>

4.0 TECHNICAL SUPPORT

4.1 For StarLeaf Cloud Subscription Services during the Service Period:

4.1.1 Company shall provide to Customer level 1 and level 2 support of the Cloud Subscription Services consisting of:

4.1.1.1 level 1 support – initial determination of issue and basic trouble-shooting,

4.1.1.2 level 2 support – technical analysis and advanced trouble-shooting.

4.1.1.3 Company shall refer any escalation for level 3 support (diagnosis of service performance issues related to Customer located network equipment that cannot be resolved by Company and analysis of service performance issues related to IP connectivity) directly to Supplier. Supplier may contact Customer directly to resolve level 3 support issues.

4.1.2 All calls by Customer to Company relating to support for the Cloud Subscription Services shall be in accordance with Schedule 1.

4.2 In the event that Customer shall request Company to provide technical support over and above that specified in the Cloud Subscription Services, Company shall:

4.2.1 respond reasonably promptly to the request; and

4.2.2 have the right to charge Customer any reasonable additional cost involved provided that the additional cost is agreed with Customer in writing in advance.

5.0 MISTAKES IN INFORMATION

5.1 Company and Customer shall each be responsible for the accuracy of information supplied by them to the other Party and shall correct any discrepancies, errors or omissions therein at no cost to the other Party as soon as reasonably practicable.

6.0 ASSIGNMENT

6.1 Neither Party may assign this Contract without the others prior written consent, such consent shall not be unreasonably withheld.

7.0 LIABILITY

7.1 Nothing in this Contract shall limit or exclude Company's liability for;

7.1.1 death or personal injury caused by its negligence;

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to Clause 7.1, Company shall not be liable to Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:

7.2.1 loss of profits;

7.2.2 loss of sales or business;

7.2.3 loss of agreements or contracts;

7.2.4 loss of anticipated savings;

- 7.2.5 loss of or damage to goodwill;
 - 7.2.6 loss of use or corruption of software, data or information; and
 - 7.2.7 any indirect or consequential loss.
- 7.3 Subject to Clause 7.1, Company's total liability to Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to 125% of the annual Charges paid or payable by the Customer under this Contract.
- 7.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

8.0 TERMS OF PAYMENT

- 8.1 Customer shall pay the Charges as specified in the applicable Quotation and any additional Charges payable pursuant to the Contract.
- 8.2 Customer will pay the Charges and any other agreed additional Charges falling properly due under the Contract thirty (30) days from date of VAT invoice. If Customer, in good faith, disputes any amount of an invoice, it shall, within (30) days after the date of receiving the invoice, notify Company of the amounts which are not in dispute which shall become due and payable in accordance with this Clause 8.2 and of the amounts which are in dispute (providing reasonable details of why these are in dispute). Both Parties will then actively work to achieve a resolution. If no such resolution is agreed within thirty (30) days of notification of dispute, Company reserves the right to take legal action.
- 8.3 Payments which are not received when the amount invoiced is properly due and payable will be considered overdue and will remain payable by Customer. Company reserves the right, without prejudice to any other right or remedy available to Company, to exercise Company's statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.4 The Charges and any other prices set out in the Contract assume that the Cloud Subscription Services will incur no tax liabilities in the country in which the Cloud Subscription Service is provided. However, if the situation arises that tax will be incurred by Company then these charges will be for the account of Customer and will be added to each invoice raised by Company at the current rates. These taxes and duties include but are not limited to:
- 8.4.1 profit taxes;
 - 8.4.2 withholding taxes;
 - 8.4.3 income tax and social contributions in respect of employees providing and/or working on Cloud Subscription Services;
 - 8.4.4 sales taxes and turnover taxes;
 - 8.4.5 import duties, levies and taxes on vehicles and equipment used to provide the Cloud Subscription Services.

9.0 STATUTORY AND OTHER REGULATIONS

- 9.1 Customer shall comply with all applicable laws and regulations in respect of the use of the Cloud Subscription Services.
- 9.2 The Cloud Subscription Services and all matters arising from the provision of the Cloud Subscription Services shall be performed in accordance with all applicable laws and regulations.

10.0 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Customer acknowledges that the Cloud Subscription Services are the intellectual property of the Supplier. Nothing contained herein shall be deemed to grant any right or title to such intellectual property to Customer. Customer further agrees not to translate, reverse compile or disassemble any software provided as part of the Cloud Subscription Services and agrees to use the software in accordance with the Supplier Terms or any other license agreement provided by the Supplier. Customer will not remove, alter or destroy any form of copyright notice, proprietary markings, serial numbers, or confidential legends placed upon or contained within any Cloud Subscription Services.

- 10.2 Customer understands and agrees that Company will not and has no duty to indemnify, defend or hold Customer or a third party harmless from or against any claims, losses, liabilities, damages, costs and expenses, judgments or settlement amounts arising out of or in connection with the actual or alleged infringement of a third party's intellectual property rights, except and only to the extent that a Supplier has expressly agreed to offer such indemnification and defence to Customer on a pass through basis.
- 10.3 Nothing contained herein shall be construed as authorizing or granting to Customer any right or license to use any logo, trademark or trade name of Company or any Supplier, any license of which shall be subject to separate agreement including any then current policies of Company or its Suppliers, as appropriate.

11.0 CONFIDENTIALITY

- 11.1 Each Party undertakes that it shall not at any time during this Contract, or after its termination, disclose to any person any Confidential Information disclosed to it by the other Party and shall keep such Confidential Information secret, secure and confidential, except as permitted by Clause 11.2.
- 11.2 Each Party may disclose the other Party's Confidential Information:
- 11.2.1 to its employees, officers, consultants, sub-contractors, representatives and/or advisers ("Representatives") who need to know such information for the purposes of carrying out the Party's obligations under this Contract. Each Party shall ensure that its Representatives to whom it discloses the other Party's Confidential Information shall comply with this Clause 11.0. The receiving Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Clause 11.0 and, if necessary, shall promptly enforce such obligations either of its own motion or at the request of the disclosing Party; and
 - 11.2.2 as may be required by a Court of law in connection with a dispute concerning this Contract; and
 - 11.2.3 as may be required by law or regulation, or by the order of a court of competent jurisdiction or any appropriate governmental or regulatory authority, and the Confidential Information is disclosed in compliance therewith.
- 11.3 The provisions of Clauses 11.1 and 11.2 shall not apply to any Confidential Information that:
- 11.3.1 was generally accessible to and publically known prior to the date of this agreement or subsequently becomes so through no wrongful act, omission or fault of the receiving Party;
 - 11.3.2 is at the time of disclosure already known to the receiving Party, unless such knowledge is subject to a restriction as to use or disclosure; or
 - 11.3.3 is acquired from a third party who is lawfully in possession of such information in good faith and without an obligation of confidence being owned by that third party (whether to the receiving Party or otherwise) in respect thereof.

12.0 DATA PROTECTION

- 12.1 Each Party will comply with its obligations under the Data Protection Act 2018 and subsequent legislation (including without limitation the General Data Protection Regulation 2016/679/EU) and all applicable laws and regulations relating to the Processing of Personal Data and privacy, including where applicable any guidance and codes of practice issued by the UK Information Commissioner or any other relevant supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction ("Applicable Data Protection Law") and each Party shall not do or omit to do any act which may cause the other Party to breach Applicable Data Protection Law.
- 12.2 If Company Processes any Personal Data on behalf of Customer when performing Company's obligations under this Contract, the Parties record their intention that Customer shall be the Controller and Company shall be Processor and in any such case:
- 12.2.1 Customer shall ensure that it is entitled to transfer the Personal Data to Company so that Company may lawfully Process the Personal Data in accordance with this Contract on behalf of Customer. Schedule 2 to this Contract sets out the subject-matter and duration of the Processing of Personal Data, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects. In the event of any change during the term of this Contract, the Parties shall work together in good faith to amend Schedule 2 by written agreement;

- 12.2.2 Customer shall not instruct Company to Process Personal Data where such processing would be unlawful and shall have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Company for the duration and purposes of this Agreement;
- 12.2.3 Company shall Process the Personal Data only in accordance with the terms of any documented instructions given by Customer (and this Contract and any configuration of the Cloud Subscription Services instructed by Customer shall be deemed to be Customer's documented instructions) from time to time;
- 12.2.4 in the event that Company considers Customer's instructions relating to Processing of Personal Data under this Contract infringes the Applicable Data Protection Law, Company shall inform Customer and Customer shall assess its instructions and Applicable Data Protection Law. Company shall not be obliged to Process any Personal Data until Customer notifies Company that its instructions are non-infringing or amends its instructions to make them non-infringing and notifies Company accordingly;
- 12.2.5 each Party shall take appropriate technical and organisational measures to ensure a level of security appropriate to the risk involved in Processing the Personal Data pursuant to this Contract;
- 12.2.6 Company may Process Personal Data other than in accordance with Customer's documented instructions where required to do so by applicable law provided that (unless prohibited by applicable law) Company shall notify Customer of such legal requirement before such Processing;
- 12.2.7 Company shall not transfer Personal Data outside of the European Economic Area without Customer's prior documented consent and in compliance with the following conditions: (i) Company or Customer has provided appropriate safeguards in relation to the transfer; (ii) the Data Subject has enforceable rights and effective legal remedies; and (iii) Company complies with its obligations under Applicable Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred;
- 12.2.8 Company shall ensure that individuals engaged in the Processing of Personal Data under this Contract are subject to obligations of confidentiality in respect of such Personal Data;
- 12.2.9 Company may engage such other processors ("Sub Processors") as it considers reasonably appropriate for the Processing of Personal Data in accordance with the terms of this Contract (including in connection with support, maintenance and development, staff augmentation and the use of third party data centres) provided that Company shall notify Customer of the addition or replacement of such Sub Processors and Customer may, on reasonable grounds, object to a Sub Processor by notifying Company in writing within 5 days of receipt of Company's notification, giving reasons for the objection. The Parties shall work together to reach agreement on the engagement of Sub Processors. Company shall require all Sub Processors to enter into an agreement of equivalent protective effect to the terms of this Clause 12.2 and Company shall remain responsible and liable for Sub Processors' acts and omissions in connection with the Processing of Personal Data;
- 12.2.10 in the event that any Data Subject exercises its rights under Applicable Data Protection Law against Customer, Company shall use reasonable commercial efforts, to assist Customer in fulfilling its obligations as Controller following written request from Customer provided that Company may charge Customer on a time and materials basis in the event that Company considers, in its reasonable discretion, that such assistance is onerous, complex, frequent or time consuming;
- 12.2.11 Upon discovering a Personal Data Breach, Company shall notify Customer as soon as reasonably practicable and shall assist Customer to the extent reasonably necessary in connection with notification to the applicable supervisory authority (as defined in the GDPR) and Data Subjects, taking into account the nature of Processing and the information available to Company;
- 12.2.12 In the event that Customer considers that the Processing of Personal Data performed pursuant to this Contract requires a privacy impact assessment to be undertaken, following written request from Customer, Company shall use reasonable commercial endeavours to provide relevant information and assistance to Customer to facilitate such privacy impact assessment. Company may charge the Customer for such assistance on a time and materials basis;

- 12.2.13 Unless otherwise required by applicable law, following termination or expiry of this Contract Company shall, at Customer's option, delete or return all Personal Data Processed on behalf of Customer under this Contract and all copies thereof to Customer;
- 12.2.14 Where requested by Customer, Company shall make available all information necessary to demonstrate Company's compliance with the above paragraphs and shall contribute to audits conducted by Customer or another auditor mandated by Customer;
- 12.2.15 Company reserves the right to amend this Clause 12.0 if Company considers it reasonably necessary as a result of any changes in law or practice relating to the protection or treatment of Personal Data.

13.0 DURATION AND TERMINATION

- 13.1 This Contract shall have the initial Service Period set out in the applicable Quotation from the Commencement Date and shall renew and continue in effect for one yearly terms thereafter unless terminated in accordance with Clause 13.2.
- 13.2 Either Party may terminate this Contract by written notice which must be received by the other Party by email or registered post at least ninety (90) days prior to the end date of the initial Service Period or subsequent anniversary dates of yearly terms thereafter if renewed.
- 13.3 either Party may terminate the Contract forthwith on written notice if:
 - 13.3.1 the other Party commits a material breach of any term of this Contract (other than failure to pay any Charges due under this Contract) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 13.3.2 the other Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 13.3.3 an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or
 - 13.3.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 13.3.5 a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or
 - 13.3.6 the other Party makes any arrangement or composition with its creditors; or
 - 13.3.7 the other Party ceases, or threatens to cease, to trade; or
 - 13.3.8 an 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 paragraphs 13.3.3 to 13.3.7 (inclusive) above.
- 13.4 Termination of the Contract shall not prejudice any rights of either Party, which have arisen on or before the date of termination.
- 13.5 This Clause 13.5 and the following clauses shall survive termination of this Contract and shall continue in full force and effect: Clause 1.0 (Interpretation and Application of Terms); Clause 2.0 (General); Clause 7.0 (Liability); Clause 11.0 (Confidentiality); Clause 13.0 (Duration and Termination); Clause 14.0 (Anti- Corruption); Clause 15.0 (Waiver); Clause 16.0 (Third Party Rights); Clause 18.0 (Severance); Clause 19.0 (Governing Law and Jurisdiction).

14.0 ANTI CORRUPTION

- 14.1 Company warrants that it shall neither:

- 14.1.1 offer nor give nor agree to give to any third party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Contract or any other agreement with Customer or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; nor
 - 14.1.2 enter into this Contract if in connection with it commission has been paid or agreed to be paid by Company or on Company's behalf or to Company's knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to Customer.
- 14.2 Company further represents and warrants that it shall:
- 14.2.1 comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 - 14.2.2 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements (and shall provide a copy of the same to Customer upon request and/or allow Customer to undertake an audit to confirm Company's compliance with this Clause 14.0);
 - 14.2.3 ensure that all persons associated with Company or other persons who are performing services in connection with this Contract comply with this Clause 14.0; and
- 14.3 For the purpose of this Clause 14.0, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 14.0 a person associated with Company includes but is not limited to any subcontractor of Company.

15.0 WAIVER

- 15.1 No failure or delay by a Party to exercise any right or remedy provided under this Contract 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.
- 15.2 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

16.0 THIRD PARTY RIGHTS

- 16.1 No terms of this Contract are enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

17.0 NOTICES

- 17.1 Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or other next working day delivery service to the other Party at its address as set out in this Contract, or such other address as may have been notified by a Party in writing for such purposes.
- 17.2 A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post or other next working day delivery service shall be deemed to have been received at 9.00am on the second Business Day after posting or (if applicable) on the date and at the time that the delivery receipt is signed by the recipient.

18.0 SEVERANCE

- 18.1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

19.0 GOVERNING LAW AND JURISDICTION

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

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

20.0 VARIATION

20.1 No variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

21.0 NO PARTNERSHIP

21.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, or authorize any Party to make or enter into any commitments for or on behalf of any other party.

22.0 ACCEPTABLE USE OF SERVICES

22.1 The Cloud Subscription Services provided by Company may only be used by Customer and End Users for lawful purposes, and Customer agrees to be bound by Company's Acceptable Use Policy as detailed at <https://www.prodec.co.uk/solutions/legal/acceptable-use-policy/> in relation to the use of the Cloud Subscription Services.

22.2 Customer shall indemnify Company and its suppliers and keep Company and its suppliers indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Company and its suppliers arising from any claim brought by a third party ("Claim") arising out of or in connection with Company's Acceptable Use Policy, except to the extent that such liabilities have resulted directly from Company's failure to properly observe its obligations under Clause 22.3.

22.3 Company shall:

22.3.1 notify Customer in writing of any Claim;

22.3.2 allow Customer to conduct all negotiations and proceedings and provide Customer with such reasonable assistance as is required by Customer, each at Customer's cost, regarding the Claim; and

22.3.3 not, without prior consultation with Customer, make any admission relating to the Claim or attempt to settle it, provided that Customer considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of Company into disrepute.

SCHEDULE 1 - SUPPORT DESK SERVICES

1.0 SERVICES

1.1 Where Clause 4.0 (Technical Support) identifies that technical support is included with the Cloud Subscription Services the Support Desk shall be Customer’s point of contact for such remote technical support. Any calls to the Support Desk may be recorded for quality and training purposes.

1.2 Hours of Cover

1.2.1 Unless otherwise agreed in writing the Support Desk hours of cover are 08:00 to 18:00, Monday to Friday excluding bank holidays.

1.3 Support Desk

1.3.1 Incident Classifications are based on the:

- (a) **Priority of an Incident:** At the highest level, the priority of an Incident is determined based on the impact to the business and the urgency of the restoration.
- (b) **Category of an Incident:** Relating to the configuration item that is causing the Incident to occur.

Note: Cases raised which do not relate to an interruption or degradation of a service will be classed as a Service Request.

1.4 Incident Priority

1.4.1 The priority of an Incident is determined by:

- (a) **Impact:** Impact of the Incident on the business. The number of Customers or the importance of the system affected.
- (b) **Urgency:** How severely the Customer’s work process is affected. This influences the timeframe that is allowed to resolve the Incident.

1.4.2 The Impact/Urgency matrix, shown below determines the priority of the Incident.

		Impact			
		1 - Business	2 - Site	3 - Work Group	4 - Single User
Urgency	Critical	1	1	2	2
	High	2	2	2	2
	Medium	3	3	3	4
	Low	4	4	4	4
Service Request		5	5	5	5

1.5 Impact

1.5.1 Impact is the effect on the business due to the loss of service. Impact is assessed as follows:

Impact Value	Definition
Single User	<ul style="list-style-type: none"> • A minimal number of users are affected but are able to deliver an acceptable service but this requires extra effort. • A minimal number of users are affected and/or inconvenienced but not in a significant way.
Work Group	<ul style="list-style-type: none"> • A moderate number of users are affected and/or not able to do their job properly. • A moderate number of users are affected and/or inconvenienced in some way.

Impact Value	Definition
Site	<ul style="list-style-type: none"> • A large number of users are affected and/or not able to do their job. • A large number of users are affected and/or acutely disadvantaged in some way.
Business	<ul style="list-style-type: none"> • There is a business wide outage

1.6 Urgency

1.6.1 Urgency is defined according to the following:

Urgency Value	Definition
Low	<ul style="list-style-type: none"> • The Incident has not impeded or disrupted the service and is more of an inconvenience. This will include all Incidents that don't fit the Medium, High or Critical definition
Medium	<ul style="list-style-type: none"> • The Incident has not resulted in a complete work stoppage, but has impaired the user's ability to perform their normal business operation. • Work completed by users is not time sensitive.
High	<ul style="list-style-type: none"> • The Incident has not resulted in a work stoppage, but has significantly impaired the user's ability to perform their normal business operation and a workaround is not available. • Work completed by users is time sensitive • A single user with VIP status is affected.
Critical	<ul style="list-style-type: none"> • The Incident has the potential to cause a large financial or reputational impact to the business. • A vital business function or service is unavailable. Examples Include Complete loss of site connectivity or Applications unavailable such as payroll. • Multiple users with VIP status is affected.

1.6.2 It is understood and agreed that over time the impact and/urgency of an Incident may change, which would in turn change its priority. This may be due to a change of circumstances or via escalation.

1.7 Response and Resolution Targets

1.7.1 Once the Priority has been identified the below targets will come into effect.

Priority	Response	TTR
1	15 Min	4 Hours
2	30 Mins	8 Hours
3	1 Hour	2 Days
4	4 Hours	5 Days
5	8 Hours	5 Days

1.8 **Response** - Response times are measured from the time the ticket gets logged to a communication being sent to Customer to help diagnose the issue. If the ticket is received by telephone, this is classified as the response being hit, in hours, as the fault will be triaged at the point of entry.

1.9 **Target time to resolution (TTR)** - The target time to resolve a ticket based on priority. Measured from ticket raised to ticket resolved.

2.0 CALL LOGGING

3.1 The following contact details shall be used to log an Incident:

- Service Desk **+44 (0) 808 164 3617**
- If non-urgent or requesting an update via Email support@prodec.co.uk

3.2 The following information will be required to log and classify the Incident:

- Provide the fullest possible explanation of the fault (this will allow the service desk to accurately prioritise your Incident):
 - A clear and concise description of fault
 - The level of urgency
 - Business impact
- Confirm Customer name, address and contact person.
- Provide your internal helpdesk reference nNumber that you want us to tie our call reference number to for audit purposes.
- Should technical support be needed, this will typically form part of this initial call, however in the event of a peak in activity, then the appropriate technical services engineer will be alerted and will contact you as soon as possible.

SCHEDULE 2

Details of Data Processing

Subject-matter of the processing of Customer's Personal Data:

- Company shall Process Customer's Personal Data for the purpose of providing the Cloud Subscription Services specified in the Contract.
- Company shall Process Customer's Personal Data for the purpose of providing IT support services.

Duration of the Processing of the Customer's Personal Data:

- During the initial Service Period and any subsequent Service Periods.
- After termination or expiry of the Contract the Personal Data may be returned to Customer or deleted at Customer's option.

Nature of processing	Purpose of Processing	Type of Personal Data	Categories of data subject
Automated and manual collection, structuring, use, storage and retrieval of Personal Data, accessing Personal Data.	The provision of the Cloud Subscription Services.	Such data as may be provided to the Company or accessed by the Company in the performance of the Company's services.	Customer personnel, including employees, officers, agents and workers, Customer contractors, individuals within organisations with whom Customer deals or corresponds (such as suppliers, customers or commercial partners), enquirers and other contacts.

Security Standards

Company shall take steps in accordance with good industry practice to preserve the confidentiality, integrity and availability of Personal Data and prevent the corruption or loss of Personal Data where Personal Data is accessed, stored or processed by Company or any sub-contractor.

To this end Company agrees to hold and maintain the following industry standards: Cyber Essentials, ISO27001:2013 for the term of the Contract.