

1. Subject Matter of the Contract

- (1) These General Terms and Conditions ("GTC") are set forth by Proalpha Software Corp., registered with the commercial register of the district court Hillsborough County, New Hampshire, and the affiliated companies within the Proalpha Group ("Proalpha").
- (2) The subject of these GTC are the Proalpha Cloud Services offered by Proalpha to the Customer ("Customer") and agreed with the Customer (hereinafter referred to as the "Services").
- (3) These GTC in the version valid at the time of the conclusion of the Contract shall become part of the Contract by reference in Proalpha's offer. The offer, these GTC and all other referenced documents constitute the contractual relationship between Proalpha and the Customer ("Contract"). The Contract is concluded by the Customer countersigning the offer or by another declaration of acceptance by the Customer. These GTC shall also apply to future orders or offers, even if these no longer explicitly refer to the GTC. Special provisions in the offer shall take precedence over these GTC.
- (4) The Contract conclusively regulates the content of the contractual relationship between Proalpha and the Customer, to the exclusion of other contractual provisions, such as verbal agreements or general terms and conditions or purchasing terms of the Customer. Proalpha expressly objects to such contractual conditions of the Customer.

2. Scope of Services

- (1) The offer specifies the scope of the Services to be provided by Proalpha with reference to the service description, which is available in the Proalpha [Trust Center](#). Proalpha can unilaterally change the service description and the type of service provision in the course of updating the Services, provided that this does not lead to a loss of essential functionality existing at the time the Contract is concluded. Customers have no right to the continued existence of individual functions or features that do not significantly impair the intended use.
- (2) Details such as the expected provision date, remuneration, term, capacities and number of users are specified in the offer. The expected provision date stated in an offer is not a fixed date for the provision of the Services. Proalpha will inform the Customer of any changes to the expected provision date.

- (3) The Customer may use the Services for its internal business purposes in accordance with the technical specifications agreed in the service description and up to the scope of the capacities and user numbers specified in the offer. The commitment to the availability SLAs and the calculation basis for the availability of the Services are set out in the service description.
- (4) Proalpha is free to select the components (e.g., hardware or software) of the provided Services. Proalpha is not obligated to customize the Services to meet the individual needs of the Customer.
- (5) Proalpha shall inform the Customer of any disruptions to the Services using the e-mail address agreed in the offer.
- (6) The location of the data center from which Proalpha provides the contractual Services is described in the service description. Proalpha is entitled to move the location of the data center within the member states of the European Union at its own discretion.

3. Subcontractor

Proalpha is authorized to engage subcontractors to provide the Services. Insofar as a subcontractor is engaged for the processing of personal data, the regulations regarding the engagement of subcontractors in the data processing agreement ("DPA") concluded between the parties shall apply. Both the DPA and the list of approved subcontractors can be found in the Proalpha [Trust Center](#).

4. Use of the Services

- (1) The Customer and its affiliated companies within the meaning of Sections 15 et seq. German Stock Corporation Act (Aktiengesetz) may use the Services.
- (2) The Customer agrees not to place any illegal content on the Services provided that violates the law or official requirements or the rights of third parties. In the event of culpable infringement of third-party rights, the Customer shall indemnify Proalpha against third-party claims. The Customer undertakes not to overload the Proalpha Cloud or parts thereof through improper use. The Customer shall also ensure that programs and scripts installed by it do not disrupt and/or endanger the operation of the Proalpha Cloud, in particular the communication network or the security and integrity of the Proalpha Cloud and/or the operation of the data center,

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including the data of third parties.

- (3) To access the Services, the Customer shall only use end devices that are equipped in accordance with generally recognized security standards and protected against unauthorized access by third parties. The Services of Proalpha do not release the Customer from its obligation to comply with the usual and recognized security standards in its local IT infrastructure, such as the use of regularly updated anti-virus programs, a plausibility check for incoming data, regular data backups, regular password changes and standard access control. Passwords must comply with the Proalpha password policy (available in the [documentation portal](#)).
- (4) In the event of an imminent or actual breach of the Customer's contractual obligations, Proalpha is entitled to temporarily block Services in whole or in part with immediate effect, e.g. to avert any risks. Proalpha will inform the Customer of this measure immediately. Proalpha will immediately lift the block as soon as there is no further breach of duty or imminent risks have been averted. Proalpha reserves all further rights.

5. Cooperation Obligations of the Customer

- (1) The Customer is obliged to fulfill all necessary obligations to cooperate free of charge and in good time. This includes, in particular, creating the system requirements necessary for proper operation and maintaining them over the period of use, granting system access, making regular data backups and minimizing the consequences of a disruption to the Services.
- (2) If the Customer has connected external applications to the Services via interfaces, the Customer is responsible for the operation of these external applications, their licensing and their connection.
- (3) In the event of a service disruption, the Customer must inform Proalpha of the disruption immediately.
- (4) Proalpha is not responsible for delays in the provision of Services due to the fact that the Customer or a third party commissioned by the Customer does not provide the necessary cooperation or supplies, or does so late, incompletely or inadequately. During such delays, Proalpha is relieved from its obligation to provide Services.
- (5) Proalpha may invoice the Customer separately for any additional expenses incurred by Proalpha as a result of the Customer or a third party commissioned by the Customer failing to fulfill the cooperation obligations or fulfilling them late or

incompletely. Proalpha reserves all further rights.

6. Payment

- (1) Proalpha shall invoice the Customer monthly in advance, whereby the net prices plus statutory VAT shall be invoiced and payments shall be made by the Customer without deduction within 14 days of invoicing.
- (2) Proalpha reserves the right to increase the fees for the Services upon the expiration of the Initial Term or any Renewal Term, provided that such increase shall not exceed ten percent (10%) per year unless justified by increased costs of operation or market conditions.
- (3) Proalpha shall notify Customer in writing of any fee increase at least 3 months prior to the effective date of such increase.
- (4) Continued use of the Services after the effective date of the price adjustment shall constitute acceptance of the new fees.
- (5) Should the costs of the infrastructure service provider engaged by Proalpha change after conclusion of the Contract, Proalpha reserves the right to adjust the remuneration accordingly, irrespective of the provisions of the previous paragraph.
- (6) To set up the agreed Services, the Customer pays the one-off setup fee agreed in the offer. The setup fee will be invoiced after conclusion of the Contract.

7. Contract Term

- (1) The Contract becomes effective upon its conclusion. The minimum term for the agreed Services is 36 months and begins upon operational provision of the Services. Operational provision is deemed to have occurred when Proalpha has sent the Customer the access credentials required to access the Services by e-mail and the Customer is able to log in to the Services.
- (2) After expiry of the minimum term, the Contract shall be automatically renewed for additional 12 months ("Contract Renewal Period"), unless it is terminated in writing by either party with a notice period of 3 months either at the end of the minimum term or at the end of each respective Contract Renewal Period.
- (3) The Customer places a binding order for the service packages defined in more detail in the service description for the duration of the minimum term or a Contract Renewal Period. Optional services ordered in addition to such a service package can be canceled by the Customer in writing

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with a notice period of one month to the end of the month.

- (4) The right to terminate for good cause remains unaffected. A good cause that entitles Proalpha to terminate the Contract without notice or to temporarily suspend Services exists if (a) the Customer is in arrears with the payment of the remuneration in an amount that reaches the regular remuneration for two months or (b) insolvency proceedings have been opened against the Customer's assets and/or the Customer's insolvency is imminent.

8. Consequences of Contract Termination

- (1) Upon termination of the Contract, Proalpha will return all documents and data that Proalpha has received from the Customer to the Customer in a suitable form at the Customer's request. Proalpha will delete or destroy all copies, documents and/or data of the Customer that are still in Proalpha's possession upon the termination of the Contract and that the Customer does not request to be returned within a reasonable period of time, and confirm the deletion/destruction to the Customer in writing. This does not apply to correspondence and other documents, data or records to be retained in accordance with statutory provisions or to documents, records or data intended to remain with Proalpha.
- (2) Upon termination of the Contract, regardless of the legal grounds, all of the Customer's authorizations to use the Services shall end.

9. Malfunctions

- (1) Proalpha shall rectify malfunctions within a reasonable period of time and in accordance with the service description of the agreed Services.
- (2) In the case of planned or unplanned maintenance of the Services, as defined in the service description, or if the Customer is responsible for the malfunction, there is no malfunction to be remedied. In particular, the Customer is responsible for a malfunction if it is caused by unauthorized interference with the Services or by improper operation or handling of the Services. The actions of third parties commissioned by the Customer or other third parties using the Customer's access shall be deemed equivalent to the actions of the Customer.
- (3) The Customer must reimburse Proalpha for the expenses incurred by Proalpha as a result of the inspection or malfunction rectification if it is established after the inspection that there was no

malfunction to be rectified.

10. Liability

- (1) Except for Customer's payment obligations, Customer's breach of Section 5 (Cooperation Obligations of the Customer), or either party's possible indemnity obligations, the cumulative liability of each party and its affiliates shall be limited to 100% to the annual amount of the fees paid by the Customer in the last 12 months prior to the damaging event under this Contract.
- (2) Except for Customer's breach of Section 5 (Cooperation Obligations of the Customer) or either party's breach of Section 11 (Confidentiality), neither party will be liable for special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to business interruption, lost profits, loss of data or cost of cover, even if such party knew or should have known of the possibility of such damages.
- (3) The waivers and limitations in this Section 10 apply regardless of the form of action or theory of liability asserted, whether in contract, tort (including negligence), strict liability, product liability, or any other legal or equitable theory, and will survive and apply even if any limited remedy in the agreement fails of its essential purpose.
- (4) Neither party limits or excludes its liability for: (a) death or personal injury caused by negligence; (b) fraudulent misrepresentation or willful misconduct; or (c) any other liability to the extent that such liability cannot be excluded or limited by applicable law.
- (5) Liability of Proalpha shall be excluded in all other respects.
- (6) The present agreed liability shall also be applicable for legal representatives, organizations, subcontractors, and vicarious agents of Proalpha insofar as these persons are personally liable to the Customer.

11. Confidentiality

- (1) Both parties mutually agree to keep confidential all non-public information from the domain of the other party that becomes known to them as a result of the offer (hereinafter referred to as "Confidential Information"), and to use it only for the performance of the contractual relationship. However, the obligation of confidentiality shall not apply to such information for which the receiving party proves that it: (a) was known to it prior to the time of disclosure by the disclosing party without an obligation of confidentiality; or

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(b) is made available to it after the time of disclosure by the disclosing party by an authorized third party for the purpose of free use and without breach of contractual or statutory confidentiality obligations; or (c) is known to the public at the time of disclosure by the disclosing party without breach of a contractual or statutory obligation of confidentiality or subsequently becomes known; or (d) has been independently developed by the receiving party prior to disclosure by the disclosing party.

- (2) By way of exception, the receiving party is authorized to disclose or make accessible the Confidential Information made available to it by the disclosing party to the following persons to the extent necessary: (a) to the employees of the receiving party's own company or of companies affiliated with the receiving party, and (b) to the lawyers, tax consultants and auditors commissioned by the receiving party. Furthermore, Proalpha is authorized to disclose Confidential Information of the Customer to the necessary extent to employees of companies that Proalpha engages as subcontractors in accordance with the provisions of this Contract.
- (3) Insofar as the receiving party is authorized to disclose Confidential Information of the disclosing party to third parties, this right is subject to the condition precedent that the receiving party has previously informed the third party of the confidential nature of the information in question and has obligated the third party in writing to treat it confidentially in a manner appropriate to the present confidentiality provisions, unless such a written confidentiality obligation of the third party already exists on the basis of another legal or contractual basis (e.g., by law or on the basis of an employment contract).
- (4) Unless a longer confidentiality obligation applies by individual contract or by law, Confidential Information of the disclosing party shall be kept confidential by the receiving party for a period of three (3) years after termination of this Contract.

12. Data Protection

Where Proalpha processes personal data on behalf of Customer, a Data Processing Agreement (DPA) under applicable U.S. data protection laws shall be executed.

13. Force Majeure

- (1) Proalpha shall not be held liable for any delays in performance resulting from force majeure or similar circumstances. In the event of such occurrences, Proalpha reserves the right to defer the

affected performance for the duration of the force majeure event, plus an appropriate period of time before resuming the provision of Services.

- (2) Force majeure is an external, unforeseeable event that cannot be averted or cannot be averted in time even if reasonable care and technically and economically reasonable means are applied, including the associated official or sovereign measures. Force majeure may include the following events in particular: war, riot, civil unrest, embargo, explosion, fire, flooding, severe weather, terrorist attacks, sabotage, nuclear and reactor accidents, pandemics or large-scale failure of power or communication networks / the Internet.
- (3) If a force majeure event lasts longer than one month and the parties cannot find a way to replace the affected Services, the parties may terminate the Contract with a notice period of three (3) months to the end of the month.

14. Export Control

- (1) All deliveries and services provided by Proalpha abroad or accessed from abroad are subject to the provision that there are no obstacles to fulfillment due to national or international export regulations, in particular export control regulations, embargoes or other restrictions on the export of deliveries and services. The parties mutually undertake to provide all information and documents falling within their respective areas of responsibility that are required for the export/transfer/import/access. Delays due to export inspections or authorization procedures shall suspend deadlines and delivery times. If necessary export licenses are not granted by the competent authorities, the individual contract shall be deemed null and void with regard to the parts concerned. Claims for damages are excluded in this respect and due to the aforementioned failure to meet deadlines; the provisions of Clause 100 remain unaffected by this.
- (2) Proalpha advises the Customer that the Services are subject to the regulations of the United States Department of Commerce and the United States Export Administration Act. Proalpha and the Customer are therefore obliged to observe the following restrictions, which are subject to the aforementioned US regulations:
 - a. The Services may not be made accessible from a country against which the United States of America has imposed an embargo.
 - b. Furthermore, the Services may not be

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used directly or indirectly in connection with the planning, development, production or use of nuclear, chemical or biological weapons without the prior authorization of the competent authorities of the United States of America, which will be obtained by Proalpha at the Customer's request. This prohibition also includes the obligation not to develop, offer and/or deliver any products or Services that serve the aforementioned prohibited purposes with the help of the Services in question.

15. Assignment

The Customer is not authorized to assign contractual claims arising from this Contract, in whole or in part, to third parties without the prior written consent of Proalpha. This does not apply to any monetary claims of the Customer.

16. Ancillary Agreements

This Contract and its annexes constitute the entire agreement between the parties. No tacit, oral or written ancillary agreements have been made. Amendments or additions to the framework agreement are only effective if they are agreed in writing. This also applies to any amendment to the written form requirement.

17. Governing Law and Venue

This Agreement is governed by the laws of the State of New Hampshire, excluding its conflict of law rules. The exclusive venue shall be in the courts located in Hillsborough County, New Hampshire.

18. Severability

- (1) Should a provision of this Contract or its annexes be or become invalid or contain a gap, the validity of the remaining provisions shall remain unaffected in case of doubt. In place of the invalid provision, a valid provision shall be deemed to have been agreed which comes as close as possible to the economic intentions of the parties. The same applies to the filling of a gap.
- (2) In the event of a legally inadmissible deadline, an effective deadline shall be deemed to have been agreed.