

# G-CLOUD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

These PROVENTEQ G-Cloud Services Terms and Conditions ("**PROVENTEQ Terms**" or "**Supplier Terms**") form part of an agreement for the provision of services by PROVENTEQ Limited ("**PROVENTEQ**") under a call-off agreement ("**Call-Off Agreement**") as defined in the UK Government Procurement Services G-Cloud Services Framework Agreement between PROVENTEQ and the Government Procurement Service ("**Framework Agreement**"). They apply between PROVENTEQ and each party ("**the Customer**") entering into a Call-Off Agreement.

## SERVICES COVERED

These Terms and Conditions apply to the following G-Cloud Services being provided by PROVENTEQ:

- i. Cloud Support

Section 1 General Terms, applies to all Services. Subsequent sections set out terms which are specific to particular G-Cloud Services ("**Services**" or "**Service**").

## 1. GENERAL TERMS

### 1.1. Services

- 1.1.1 Upon subscription to the relevant PROVENTEQ G-Cloud Service, PROVENTEQ grants the Customer a non-exclusive, non-transferable right during the term specified in the Customer's Call-Off Agreement, to receive and use the specific Service described in the Service Description relating to that Service.
- 1.1.2 Unless specified in the Service-Specific Terms below the Customer may only use a Service for their internal business purposes, and services may not be re-sold.
- 1.1.3 Whilst using the Services the Customer may access software which is located on PROVENTEQ's servers ("**Software**"). Except in relation to CLOUD SUPPORT and in accordance with the relevant Call-Off Agreement, the customer does not have any right to receive a copy of such Software either in source or object code form; and does not receive any title rights or ownership in or to the software.
- 1.1.4 The Customer is responsible for ensuring that:
  - 1.1.4.1 the infrastructure it uses to access the Services is compatible with the interfaces provided within the specific Service;

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- 1.1.4.2 for taking adequate precautions within the Customer's own infrastructure to prevent the spread of viruses or malicious software;
- 1.1.4.3 for ensuring that those to whom it grants access rights comply with the provisions of any UK legislation including the 1998 Data Protection Act
- 1.1.4.4 they comply with the License terms of any 3rd party Software provided by PROVENTEQ in the delivery of this service
- 1.1.4.5 they comply with any further Service-Specific usage restrictions set out in the Service-specific section below
- 1.1.5 The Customer will comply with all statutory and other legal requirements applicable to its conduct and operations.
- 1.1.6 PROVENTEQ shall have no liability or obligation with respect to the fitness for purpose, functionality or the performance of 3rd party Software Licenses supplied.
- 1.1.7 Time shall not be of the essence as to the performance of PROVENTEQ's obligations.
- 1.1.8 All ownership, license, intellectual property and PROVENTEQ rights and interests in the Software, services and any associated documentation remains solely with PROVENTEQ and or Licensors on whose behalf PROVENTEQ may be providing components of the Services. Please refer to section 5.6 for more detail on the licensing and intellectual property rights which apply to software created on behalf of the customer.
- 1.1.9 PROVENTEQ reserves the right to change or update the Services or Software at any time so long as this does not materially affect the overall service. PROVENTEQ will provide the Customer 15 days' notice of any update which it regards as material, unless such an update is necessitated by security considerations, in which case the update and any associated notice will be immediate.

## 1.2. Service Restrictions

The Customer must not:

- 1.2.1. Exceed any set usage limits or restrictions set out in the Service Description and / or Call-Off Agreement
- 1.2.2. Save as set out in any Service-specific section, sell, rent or lease the Services in any way, or transfer to any other person any of its rights hereunder
- 1.2.3. Create any derivative works based upon the Software or Services, save as otherwise permitted in accordance within a Service Description
- 1.2.4. Adapt, translate, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, nor take any other steps to discover confidential information or trade secrets in the Software of Services, save as permitted under European Law for the purposes of Interoperability.

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### 1.3. Additional Services

Additional Services may be ordered by the Customer:

- 1.3.1. By extension or issue of a Call-Off Agreement
- 1.3.2. By electronic request via the Customer Administration Portal, if this is available for the Service
- 1.3.3. By a request from a Customer representative who PROVENTEQ reasonably believe to have authority to place such a request

### 1.4. Invoicing VAT and Payment

Unless otherwise stated, invoices will be raised for Services on a monthly basis. Value Added Tax, will (where appropriate) be added to the amount of an invoice for any Service at the prevailing rate.

- 1.4.1. Invoices must be paid in full within 30 days of the date of issue
- 1.4.2. If any payment is overdue PROVENTEQ may (without prejudice to any other right or remedy available to it) suspend the relevant Service until payment in full thereof has been made, at which point a re-connection charge equivalent to half a month's charges for the relevant Service will be applied. Invoices remaining unpaid after 60 days will attract a surcharge of 4% on the current Royal Bank of Scotland base rate for the full period the debt has been outstanding.
- 1.4.3. The Customer shall not be entitled to withhold payment in whole or in part on the ground that it has a claim, counterclaim or set-off against PROVENTEQ.

### 1.5. Liability

- 1.5.1. Except as provided in these Terms and Conditions, and in the Service Description relating to the Service, no warranty condition, undertaking or term, expressed or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Services is given or assumed by PROVENTEQ and all such warranties, conditions, undertaking and terms are hereby excluded.
- 1.5.2. PROVENTEQ will provide the Services with reasonable skill and care, but (except as provided in these Terms and Conditions and the relevant Service Description shall not under any circumstances in relation to its providing the Services be liable (whether in Contract, tort or otherwise) for any loss or damage of whatsoever nature suffered by the Customer whether arising from any act, default or neglect on the part of PROVENTEQ, its employees, agents or sub-contractors or from any defect in, failure in, or unsuitability for any purpose of, the Services, or otherwise howsoever, to the extent that the amount of such loss or damage exceeds (or would when aggregated with the amount of any previous loss or damage exceed) the greater of:
  - 1.5.2.1. For the provision of Cloud Software, the value of any Service Credit

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- 1.5.2.2. For the provision of CLOUD SUPPORT: the value of services called off over the previous three months
- 1.5.2.3. The amount (if any) which PROVENTEQ is entitled to claim under the terms of any insurance policy in force at the time, up to a maximum of one million pounds (£1,000,000).
- 1.5.3. PROVENTEQ shall not in any event be liable for any indirect or consequential loss whatever or however caused.
- 1.5.4. The Customer agrees fully and promptly to indemnify PROVENTEQ against all costs, claims, demands, damages, losses and expenses to which PROVENTEQ may become liable for which PROVENTEQ may suffer or incur as a result directly or indirectly of PROVENTEQ acting in accordance with the Customer's instructions, or arising from any act, default or neglect on the part of the Customer, its employees, agents or subcontractors.
- 1.5.5. Notwithstanding anything to the contrary, however, nothing in these Terms and Conditions shall operate to exclude or restrict PROVENTEQ's liability for death or personal injury resulting from negligence within the meaning of the Unfair Contract Terms Act 1977.

## 1.6. Termination

The supply of Services may be terminated by either party by notice in writing to the other having immediate effect if the other shall commit any breach of these Terms and Conditions which breach (if capable of remedy) is not remedied within 30 days of notification or if the other shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

The termination (howsoever arising) shall be without prejudice to the rights and remedies of the parties accrued before such termination and nothing shall prejudice the right of either party to recover any amount of outstanding at the termination howsoever caused.

## 1.7. Entire Agreement

Save for additional documents created in the provision of Applications Software Delivery under CLOUD SUPPORT (see section 4.1 Supplementary Documentation below), these Terms and Conditions, the relevant Service Description, the Call-Off Agreement, and the Framework Agreement constitute the entire understanding between the Customer and PROVENTEQ relating to the subject matter, with the order of precedence as set out in Clause 1.2 of the Call-Off Terms at Framework Schedule 2). It supersedes all previous communications, representations and Contracts either written or oral. The Customer acknowledges that it is not entering into the Contract in reliance upon any representation not set out in the documents referred to above.

No amendment to these Terms and Conditions shall be binding unless in writing, signed by the parties or their duly authorised representatives and expressed to be for the purpose of such amendment.

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## 2. SPECIFIC TERMS RELATING TO THE SUPPLY OF CLOUD SOFTWARE

- 2.1. This Clause 3 sets out terms relating to the supply of software applications ("**Software**") and documentation ("**Documentation**") provided by the Supplier online by subscription service as more particularly described in the G-Cloud Service Descriptions ("**Cloud Software**").
- 2.2. Subject to the Customer purchasing the subscriptions ("**User Subscriptions**") for the individuals the Customer authorizes to use the Supplier's Cloud Software Services ("**Authorized Users**") in accordance with Call-Off Agreement the restrictions set out in this clause 3 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorized Users to use the Services and the Documentation during the term of the subscription as set out in the Call-Off Agreement ("**Subscription Term**") solely for the Customer's internal business operations. The Customer may purchase additional User Subscriptions in accordance with the price list associated with the relevant Service Description.
- 2.3. The Supplier shall, during the Subscription Term, provide the Cloud Software Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 2.4. The Supplier shall use commercially reasonable endeavors to provide the service availability set out in the relevant Service Description, except for:
  - 2.4.1. planned maintenance carried out outside the Normal Service Hours as set out in the Service Description, in which case the Supplier will provide a working weeks' notice
  - 2.4.2. unscheduled maintenance performed outside the Normal Service Hours as set out in the Service Description, provided that the Supplier has used reasonable endeavors to give the Customer at least 4 Normal Service Hours' notice in advance.
- 2.5. The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Service Hours in accordance with the relevant Service Definition in effect at the time that the Services are provided. The Supplier may amend the support services in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 2.6. In relation to the Authorized Users, the Customer undertakes that:
  - 2.6.1. Where the number of User Subscriptions is under the control of the Customer, the maximum number of Authorized Users that it authorizes to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time.
  - 2.6.2. It will not allow or suffer any User Subscription to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services and/or Documentation.

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- 2.6.3. Each Authorized User shall keep a secure password for his use of the Services and Documentation.
- 2.7. The Customer shall not access, store, distribute or transmit any viruses or other disruptive elements of the type described at Clause 7.1 of the Framework Agreement ("Viruses"), or any material during the course of its use of the Services that:
- 2.7.1. Is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.
  - 2.7.2. Facilitates illegal activity.
  - 2.7.3. Depicts sexually explicit images.
  - 2.7.4. Promotes unlawful violence.
  - 2.7.5. Is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or
  - 2.7.6. Causes damage or injury to any person or property;
  - 2.7.7. And the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.8. The Customer shall not:
- 2.8.1. Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - 2.8.2. 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
  - 2.8.3. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 2.8.4. Access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.8.5. Use the Services and/or Documentation to provide services to third parties; or
  - 2.8.6. License, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorized Users, or
  - 2.8.7. Attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; and
- 2.9. The Customer shall:

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- 2.9.1. Use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify the Supplier.
- 2.9.2. Carry out all other Customer responsibilities set out in this agreement in relation to the Cloud Software Services 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, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 2.9.3. Ensure that the Authorized Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorized User's breach of this agreement;
- 2.9.4. Obtain and shall maintain all necessary Licenses, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- 2.9.5. Ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 2.9.6. Be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centers, 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.
- 2.9.7. The rights provided under this clause 3 are granted to the Customer only. The Supplier reserves all rights in and to the Software and the Documentation

### **3. SPECIFIC TERMS RELATING TO THE SUPPLY OF CLOUD SUPPORT AND SERVICES DELIVERED UNDER CLOUD SOFTWARE FROM THE SFIA RATE CARD**

#### **3.1. Charges**

- 3.1.1. The Customer is charged on a daily basis at the rates quoted in the Service Description and/or Call-Off Agreement. Fractions of a day are charged on an hourly pro rata basis.
- 3.1.2. These rates do not include Value Added Tax which will (where appropriate) be added to the amount of an invoice at the prevailing rate.
- 3.1.3. PROVENTEQ's charges exclude travel or hotel expenses and the costs of materials and services not provided directly by PROVENTEQ, unless these have been explicitly included in the Service Description or Call-Off Agreement. Any additional expenses necessarily incurred with relation to the provision of CLOUD SUPPORT will be charged at cost. Clause 4.6 outlines how expenses are calculated for site work.

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- 3.1.4. The charges quoted will be fixed for the period of service provision or 6 months, whichever is the shorter. Revised charges will be included in any published updates to the Service Description.

### 3.2. The Working Day and Overtime

The normal working day is seven and a half hours. This may be subject to alteration by mutual agreement for work carried out on the Customer's premises. Overtime is charged at time and a third and work necessarily carried out during week-ends, or public holidays is charged at double time. Where the required working period is substantially outside the normal working day the charge rate premium will be subject to negotiation.

### 3.3. Invoicing

Unless specified otherwise in the Call-Off Agreement, invoices are submitted at the end of each calendar month. These are based on time logs filled in by staff on the project. These are included with the invoice. PROVENTEQ reserves the right to submit time sheets which have not been countersigned if the Customer unreasonably withholds authorisation.

### 3.4. Duties of PROVENTEQ

- 3.4.1. PROVENTEQ shall assign personnel of appropriate qualification and experience to perform the CLOUD SUPPORT.
- 3.4.2. PROVENTEQ shall use all reasonable efforts to avoid changes to the personnel named in the Call-Off Agreement to perform the CLOUD SUPPORT. In the event of any such named personnel being unavailable to perform the CLOUD SUPPORT, PROVENTEQ shall make all reasonable efforts to promptly replace such individual with another person of equivalent competence and experience.
- 3.4.3. PROVENTEQ will exercise reasonable skill and care in performing the CLOUD SUPPORT and shall comply with the reasonable requests and directions of the Customer including complying with reasonable health, safety and security policies advised to PROVENTEQ by the Customer while working on the Customer's premises.

### 3.5. Duties of the Customer

- 3.5.1. The Customer shall, at its own expense, supply PROVENTEQ with all documents, software, inventions, data or other materials and instructions necessary to perform the CLOUD SUPPORT in accordance with the Contract and shall retain copies of any such documents, software, data or other materials so supplied.
- 3.5.2. The Customer shall provide PROVENTEQ with access to all personnel of the Customer and to its systems and software and, where PROVENTEQ is required to work on the Customer's premises, accommodation and other assistance as may be necessary for performing the CLOUD SUPPORT.

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- 3.5.3. The Customer shall arrange all interviews and meetings with its own personnel that may have been agreed in any project plan forming part of the CLOUD SUPPORT.

### 3.6. Site Work

Unless stated in the Call-Off Agreement, for work on the Customer's site, travelling time in excess of the employee's normal travel to work time will be charged at cost. On such journeys the cost of air travel, rail travel or a car mileage allowance at the prevailing company rate will be charged (as appropriate). For site work involving overnight stays the cost of bed, breakfast and evening meal and the cost of PROVENTEQ's standard employee disturbance allowance, and (only for site work outside the UK), any incidental expenses such as travel and medical insurance will be charged.

### 3.7. Staff Transfer

- 3.7.1. In this Clause 4.7, the "**Relevant Period**" is the period starting on the Commencement Date and ending 12 months after the Contract has ended
- 3.7.2. Neither the Customer nor PROVENTEQ during the Relevant Period will employ directly or indirectly, make or seeks to make any offer of employment to any of the other's staff directly involved in executing or receiving Services
- 3.7.3. The Customer and PROVENTEQ shall each procure that during after the Relevant Period, no related party (such as their own customers or suppliers involved with the execution or provision of the Services), will employ directly or indirectly, or make or seek to make any offer of employment to any of PROVENTEQ's or Customer's staff as the case may be) involved in executing or receiving the services.

### 3.8. Applications Support

- 3.8.1. The provisions of this Clause 4.8 apply where the Supplier is providing the Applications Support Management service, as described in Applications Support Management Service Description ("**Applications Support**")
- 3.8.2. The Appendices to the Applications Support Management Service Description Service will apply. These set out the Service Level Agreement.
- 3.8.3. **Customer Obligations.** The Customer will:
- 3.8.3.1. Provide a first line support helpdesk via which requests will be received and responses given, and to filter queries and provide desktop support when this is needed.
- 3.8.3.2. Provide helpdesk and other authorization contacts prior to the start of the contract.
- 3.8.3.3. (Where the application is not hosted by the Supplier) provide a suitable hosting environment, operational support and remote access for diagnostic and software update purposes.

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3.8.3.4. (Where the application is not hosted by the Supplier) provide a user contact and a deputy, who will be available to provide 'hands on' assistance to the Supplier's support staff on site by running Supplier directed tests, reporting results, etc.

3.8.4. **General exclusions.** There are a number of general exclusions to the work covered by fixed price elements of any supply contract unless they have been specifically included in Call-Off-Agreement. These are:

3.8.4.1. Any work which is carried out on site due to remote access restrictions, over and above any site visit allowance set out in the Call- Off Agreement

3.8.4.2. Any development work e.g. changes of controls, unless covered under a pre-defined 'call-off' allowance, as part of the contract take-on or as otherwise specifically agreed in writing

3.8.4.3. Remedial work arising as a result of changes made to the configuration of the system, data or software by the Customer that have not been assessed and agreed with PROVENTEQ before hand

3.8.4.4. Restoration of systems and data after a failure caused by:

- malicious attack on the computer infrastructure
- modification or corruption of the system by the Customer
- any fatal applications error which corrupts the system or its data, unless this is covered by PROVENTEQ's Applications Support Service
- a major disaster, unless this is covered by other services being supplied by PROVENTEQ
- invalid operator or user action (such as data deletion), to the extent that it exceeds any thresholds set in the Call-Off Agreement

3.8.4.5. Additional work requested by the Customer over and above PROVENTEQ's standard processes and procedures required to conform with the Customer's internal procedures.

3.8.4.6. However, PROVENTEQ will optionally perform excluded tasks on customer request, as Change Requests.

3.8.5. **Variations to Costs.** The following processes are used to obtain authorization to carry out work not covered by any fixed cost element of the contract, to agree variations or additions to the services being supplied, or to process change requests, for example for software enhancements or the supply of additional equipment.

## 3.9. Insurance

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The Customer confirms that it has or shall obtain appropriate insurance to cover PROVENTEQ employees against loss or injury whilst performing the CLOUD SUPPORT at the Customer's premises or elsewhere (other than PROVENTEQ premises) on its behalf.

### 3.10. Cancellation

When an end date has not been specified in the case of CLOUD SUPPORT involving the supply of staff on a time and materials basis, should either the Customer or PROVENTEQ wish to terminate such provision prematurely, the terminating party shall give thirty (30) days written notice to the other.

## 4. SPECIFIC TERMS RELATING TO FIXED PRICE APPLICATIONS SOFTWARE DELIVERY UNDER CLOUD SUPPORT

### 4.1. Supplementary Documentation

During the course of supply, PROVENTEQ's obligations in respect of service provision may be further detailed in documents such as a Proposal, Project Plan or Specification ("Additional Documents"), which when referenced in the Call-Off Agreement will form part of the agreement between PROVENTEQ and the Customer.

### 4.2. Invoicing

Invoicing will be according to the payment schedule in the Call-Off Agreement, or Additional Documents. If no payment schedule is given, invoices will be issued monthly in arrears based on work in progress.

### 4.3. Change Control

- 4.3.1. If additional work or expense is incurred by PROVENTEQ as a result of a change in the Specification or Project Plan being made by the Customer, or by a failure or delay by the Customer in meeting his obligations in connection with the delivery of the Services, then such additional work or expense will be reasonably charged to the Customer over and above the price set in the Call-Off Agreement.
- 4.3.2. Any change proposed by either PROVENTEQ or the Customer will be negotiated and agreed before the change is implemented. Changes involving additional consultancy, design and software programming will be priced using the standard or overtime consultancy rates as set out in the Call-Off-Agreement or Service Description. PROVENTEQ will be entitled to charge for the work involved in preparing and responding to Customer change requests, whether or not the Customer agrees to go ahead with them.

### 4.4. Acceptance

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- 4.4.1. In this Clause 5, “Applications Software” means software systems authored by Supplier. It excludes any other software.
- 4.4.2. After the Applications Software has been delivered, PROVENTEQ shall, if so specified in the Project Plan, submit it to tests to ensure that the Applications Software created is in accordance with the Specification. If required by PROVENTEQ, such tests shall be carried out in the presence of the Customer's representative and for this purpose the Customer shall provide its representative when required so to do by PROVENTEQ.
- 4.4.3. Once the System has successfully passed the tests, they shall be accepted by the Customer ("Acceptance") and the Customer shall, if requested to do so, provide an Acceptance Certificate. Where no acceptance tests have been specified then Acceptance will be on delivery. Should the Customer fail to carry out the Acceptance tests specified set out in the Additional Documentation, then Acceptance will take place 14 days after the scheduled date of the tests, or on live usage of the system, whichever is the sooner.

#### 4.5. Applications Software Warranty

- 4.5.1. PROVENTEQ warrants that the Applications Software will provide in all material respects the facilities and functions set out in the Additional Documentation for a period of three months from Acceptance or (if there is no acceptance schedule in the Project Plan) from the date of delivery.
- 4.5.2. If PROVENTEQ receives written notice from the Customer of any non-conformance with the foregoing warranty, PROVENTEQ shall (subject to paragraph (iii) below) at its own expense and within a reasonable time after receiving such
- 4.5.3. Notice remedy the defect or error in question, but shall not be under any other liability in respect of such non-conformance whatsoever.
- 4.5.4. PROVENTEQ shall have no liability or obligation under the warranty:
  - 4.5.4.1. Unless PROVENTEQ receives written notice of the defect or error in question not later than the expiry of the three months referred to in paragraph (i) of this clause;
  - 4.5.4.2. In respect of the defects or errors resulting from any modification of the Applications Software made by any person other than PROVENTEQ;
  - 4.5.4.3. In respect of defects or errors caused by the use of the Applications Software on Customer's hardware other than that specified in the Additional Documentation, or other computer programs not supplied by or approved in writing by PROVENTEQ;
  - 4.5.4.4. If the Customer shall not have in place the software Licenses or other third party agreements required for use of the Applications Software or the Customer's hardware in the manner intended by the Customer; or
  - 4.5.4.5. If the terms of payment set out in clause 1.3 have not been complied with.

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- 4.5.5. PROVENTEQ may charge for any false call-outs or for modifications or enhancements to the Applications Software which are outside the Specification at the rates set out in the Call-Off Agreement, or if absent, the Service Description.

#### 4.6. Software, Graphical Design and Documentation Intellectual Property Rights

- 4.6.1. The Customer shall not acquire title to the Intellectual Property Rights in the Applications Software, graphical design used therein, documentation or the other deliverables (excluding Customer Data) which are developed and/or supplied hereunder.
- 4.6.2. PROVENTEQ hereby grants, or shall procure that the owner of the Intellectual Property Rights in the Applications Software, graphical design, documentation and the other deliverables (excluding Customer Data) grants, to the Customer, a non-exclusive License to use, reproduce, modify, adapt and enhance the Applications Software and to reproduce, modify, adapt and enhance documentation and the other deliverables (excluding Customer Data). Such License shall be transferable, perpetual and irrevocable.
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