

PROBAX GENERAL TERMS AND CONDITIONS

Probax Pty Ltd ABN 82 114 360 388 (hereinafter referred to as "Probax", "us", "our" and/or "we") and the Customer (being an entity subscribing to Probax for the provision of Cloud services) agree that by accessing Probax cloud services, you (hereinafter referred to as "the Customer", "you" and/or "your") accept, without limitation or qualification, the terms and conditions contained within this Agreement.

1 Framework

- 1.1 An agreement between us is formed when you create an account in our Portal, agree to these General Terms and Conditions (**Agreement**), any Special Terms and Conditions, and begin accessing Probax cloud services.
- 1.2 For the purpose of resolving any inconsistency specified in clause 1.1, the order of precedence is the:
- (a) Signed Application;
 - (b) Special Terms and Conditions; and
 - (c) General Terms and Conditions.

2 Term and Services

- 2.1 This agreement commences upon the later of:
- (a) the date you subscribe to Goods and/or Services in our Portal;
 - (b) the date specified in the signed Application; or
 - (c) the date the Application is accepted by us.
- Our acceptance is shown by our acceptance in writing or by issuing an invoice; or, by providing the Goods and/or Services, and continues for the minimum term set out in the Application (**Minimum Term**) unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 We will provide you with the Goods and/or Service(s) on the terms and conditions of this Agreement.
- 2.3 Unless otherwise agreed by us in writing, sale of additional Goods and/or Services to you are subject to our standard terms and conditions for that Good and/or Service, which is identified on the Application or our Portal.
- 2.4 We will provide the Goods and/or Services to you professionally and with appropriate due care and skill and in compliance with applicable laws, applicable third-party licenses and regulations.
- 2.5 Except for any payment by you of the fees, rates and charges for the Goods and/or Services, but notwithstanding any other clause under this Agreement, if a party is unable to perform any obligation under this Agreement because of a Force Majeure Event, that party will have no liability to the other party.

3 Seed Drives and Loan Equipment

- 3.1 From time to time, at your request, we may loan you equipment (including but not limited to seed drives) provided you pay us the fees for rental, postage and/or shipping and handling of such equipment for the duration of the loan. Unless otherwise specified, the duration of the loan will be:
- (a) 30 days for all seed drives; and
 - (b) as determined by mutual agreement between the parties for all other loan equipment.
- 3.2 You will be charged a reasonable replacement fee if a seed drive or loan equipment is not returned within the timeframes outlined in clause 3.1(a), or if the seed drive or loan equipment has been damaged while in your possession or during transit (where reasonable effort has not been made to package and protect the device during transit).
- 3.3 We make no representations or warranties as to the quality of the equipment loaned to you under clause 3, or its suitability for your intended use.
- 3.4 Nothing in this clause 3 or in this Agreement obliges us to loan our equipment to you (whether available for loan or not). We shall not be liable in any circumstance if we do not have any equipment available for loan.

4 Payment

- 4.1 Unless otherwise specified:
- (a) you must pay the invoiced fees, rates and charges associated with the Goods and/or Services, invoice or order, within 7 days from the invoice issue date; and
 - (b) we will invoice you for ongoing Services monthly in advance.
- 4.2 We may vary the terms of this Agreement, including any fees, rates and charges:
- (a) without notice to you if the variation arises due to a change in taxation law or other government action; and
 - (b) by providing notice to you of any other variation after completion of the Minimum Term.
- 4.3 If you fail to pay any payments under this Agreement by the due date, we may:
- (a) charge interest at the rate of 20% per annum, calculated on a daily basis on overdue payments; and
 - (b) charge you for all costs incurred by any third parties involved in collecting the debt from you.
- 4.4 If your invoice is paid by direct debit from:
- (a) an account held by you at an approved financial institution; or
 - (b) a valid credit card nominated by you; and a direct debit is dishonoured or cancelled, you agree to pay our administration fee set out in our invoice plus any dishonour fees.

- 4.5 Payment by bank transfer is only available to Customers on Platinum or Black partners plans.
- 4.6 If you dispute an invoice you must:
- (a) raise that dispute with us as soon as reasonably possible and in any event within 7 days of the date of invoice; and
 - (b) pay any undisputed amount included in the invoice in accordance with clause 4.1(a).
- 4.7 If you raise a dispute under clause 4.6, we will conduct prompt investigations and advise you of our findings.
- 4.8 If paying by credit card, you will be charged a reasonable credit card surcharge fee as defined in the Competition and Consumer Amendment (Payment Surcharges) Act 2016.
- 4.9 All amounts payable under this Agreement are exclusive of GST.

5 Service Renewal

- 5.1 If you do not renew your bronze, silver, gold, platinum or black partner plan before the expiry of the Minimum Term, you will be automatically moved onto our flex (month-to-month) partner plan. You agree that all existing bronze, silver, gold, platinum and black partner benefits will be revoked, including, but not limited to, free licensing, not-for-resale storage, access to marketing development funds and/or discounts on Goods and/or Services. A complete list of partner benefits can be found on our Website or Portal.
- 5.2 Probax will provide you with a minimum 14 days' notice prior to expiry of the Minimum Term.

6 Service Cancellation

- 6.1 After the Minimum Term, Services can be cancelled by providing 30 days notice, effective 30 days from the date that the notice is delivered to Probax. Notice can be given by cancelling the Service via our Portal or by emailing accounts@probax.io.
- 6.2 If the 30 day notice period expires in the middle of a billing period, a pro-rata invoice will be generated. No refund will be given for any payments made in advance.
- 6.3 Pro-rate billing does not apply to software licensing.
- 6.4 When Services are cancelled via our Portal, your access is immediately disabled.

7 Service Termination

- 7.1 Without prejudice to any right or remedy available, either party may at any time terminate this Agreement immediately by providing written notice to the other party if, the other party becomes insolvent, is subject of a bankruptcy order, or makes any arrangement or composition with

or assignment for the benefit of its creditors or goes into voluntary (other than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over any of its assets, or in the case of partnership or a corporation, on dissolution or on filing of an application to dissolve or in the case of a person that person dies.

7.2 Without prejudice to any right or remedy available to us we may terminate this Agreement immediately:

(a) without notice if you use the Goods and/or Services unlawfully; or

(b) by written notice if:

(i) you commit a material breach of this Agreement, which is capable of remedy and you fail to remedy the breach within 7 days of a written notice to do so;

(ii) you commit a material breach of this Agreement which cannot be remedied; or

(iii) any agreement between us and a supplier terminates or expires for any reason, such that we are unable in our reasonable opinion to continue to provide you the Services. In such case, we will endeavour to provide you with as much written notice as is reasonably possible

7.3 Excluding clause 6.1, if you terminate this Agreement prior to the end of the Minimum Term you must pay all fees, rates and charges applicable for the Minimum Term and any other monies owing by you to us, within 7 days of the date of termination or within 7 days of receipt of an invoice for that amount, whichever is the earlier. You agree this payment is a genuine pre-estimate of our loss and damage to your cancellation.

7.4 Upon the termination or expiry of this Agreement:

(a) you must pay all outstanding invoice and amounts within 7 days of the date of termination;

(b) no refund may be given for any payments made in advance;

8 Your Duties

8.1 You must:

(a) use the Goods and/or Services, equipment, software or other item used in the Services lawfully and in accordance with our reasonable directions;

(b) take ownership for, and be ultimately responsible for monitoring, maintaining and managing your client's backups disaster recovery services and/or BDR appliances;

(b) promptly provide all decisions, materials, support staff and any information reasonably required by us to assist us in providing and/or troubleshooting the Goods and/or

Services, including providing detailed specifications of the requirements in writing, responding to questions without delay and performing tests as required by us.

(c) If we need to attend site, ensure a safe working environment for our Personnel and inform us of any special safety and factory regulations and particular sources of danger at your site.

8.2 You must not:

(a) remove, obscure or alter any notice of patent, copyright, trade secret, trademark, or other proprietary right of Probax;

(b) translate, adapt, modify, alter, decompile, disassemble, or reverse engineer (or attempt to) Probax Goods, Services and/or software.

9 Maintenance and Redundancy

9.1 Our aim is to provide a fault free service however we cannot guarantee this. We will endeavour to conduct all scheduled maintenance outside of business hours. However, we may be required to suspend supply of our Goods and/or Services during business hours in order to carry out emergency repairs.

9.2 We have employed enhanced methods of redundancy and fail safety in our data centres, infrastructure and our software however we cannot guarantee data integrity.

10 Liability

10.1 Probax, its parents, subsidiaries, representatives and employees will not be liable for indirect, special or consequential damages (or any loss of revenue, profits or data) arising in connection with this Agreement or any Goods and/or Services used by you or your staff, even if we, or any of our parents, subsidiaries, representatives and employees, have been advised of the possibility of such damages. Further, to the fullest extent permitted by law, our parents, subsidiaries, representatives and employees' collective aggregated liability arising with respect to this Agreement and Goods and/or Services used by you or your staff, will not exceed the fees, rates and charges received from you under this Agreement for the Goods and/or Services in the 6 months preceding the event giving rise to the cause of the action.

10.2 Notwithstanding any other clause in this Agreement, in no circumstances will we be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, productivity, or anticipated savings, corruption, loss or destruction of data, failure of a backup to run correctly or for any indirect, special or consequential loss whatsoever.

10.3 If there is a programming error by

us in relation to the Goods and/or Services, our liability and costs will be limited as follows:

(a) we will rectify the error if the error can be reversed in our reasonable opinion; or

(b) we will use all reasonable endeavours to restore the most recent and appropriate backup.

11 Warranty

11.1 Probax make no warranties that Goods and/or Services will meet the Customer's requirements, or that Goods and/or Services will be uninterrupted, secure, or error free, or the results that may be obtained from the use of the Goods and/or Services, or to the accuracy or reliability of any communication or transmission of data, or the accuracy of any information obtained through Goods and/or Services or that defects in the software used to provide the Goods and/or Services will be corrected.

11.2 Probax make no warranty regarding any Goods and/or Services or any transactions entered into through Goods and/or Services. We take no responsibility for the deletion or failure to backup customer data. No advice or information, whether oral or written, obtained by you from Probax or through our Services shall create any warranty by Probax.

11.3 Access to the Internet and your wide area network (WAN), or your client's WAN, if applicable, cannot be guaranteed where it is outside our direct control. We shall have no responsibility for any inability of you or your clients to access the Internet and/or WAN for any reason, and no such inability shall relieve you from any of your payment obligations under this Agreement.

12 Intellectual Property and Licence

12.1 Unless otherwise agreed in writing, all equipment, software, documentation or other items used by us to provide the Services to you, whether situated on our or your premises, remain our property.

12.2 You acknowledge and agree that we remain the owner of all Probax IP, we acknowledge and agree that you remain the owner of all Background IP.

12.3 You grant to us and our Related Parties a non-exclusive, irrevocable, royalty free licence to use all Background IP for the sole purpose of providing the Services.

12.4 You acknowledge and agree that all Delivery IP vests in us and is our property as and when created, and you assign all right title and interest in and to the Delivery IP to us (including: (i) Moral Rights which are waived; and (ii) and Delivery IP created prior to or after the date of this Agreement).

12.5 During the Term, we may grant you from time to time, a non-exclusive, revocable, non-transferable right to use the Delivery IP for the sole

12.6 purposes of you receiving the Services.
Where you use software and documentation supplied by us (whether it is software owned by us or by a third party), you shall ensure that the terms of the licence as notified to you by us covering such software and documentation shall be complied with by you, your Personnel and you shall, provided you have been notified of the terms indemnify us against any loss, damages, costs (including legal costs on a solicitor client basis), compensation or expenses whatsoever arising out of the failure by you, or your Personnel to comply with the terms of such license.

12.7 You warrant that any software, Background IP or services you use, propose to use, or have us use, or have in your possession that is relevant to this Agreement, other than software and documentation supplied by us, does not and will not infringe the IPR of any third party.

13 Indemnities

13.1 You indemnify us, hold us harmless and defend us at your own expense, from and against any and all claims, damages, liabilities, losses, expenses, compensation and costs (including reasonable legal fees and expenses on a solicitor/client basis) arising out of liability for:

- (a) the infringement or alleged infringement of any IPR owned by a person other than us, which subsist within or outside Australia in any information, Background IP, documents, equipment, software or articles which are:
 - (i) provided by you to us or our Personnel in connection with this Agreement; or
 - (ii) which you use or propose to use or have in your possession or control;
- (b) your breach of this Agreement;
- (c) your use of the Goods and/or Services, equipment, software or any other item provided to you by us;
- (d) any Demand against us or our Personnel (including negligence) by any person other than you, which arises in connection with this Agreement;
- (e) any damage which you or your Personnel cause to us or our service providers network, equipment, software, infrastructure or other property or to the property of our other customers; and
- (f) any losses associated with the breach of your privacy information or a party's Confidential Information as a result of theft or hacking of any Goods and/or Services, to the extent caused or contributed to by you, or by any criminal or negligent act or omission by you.

13.2 You must immediately notify us in writing of any Demand made, or threatened or brought, against you. Where the Demand arises from an infringement or alleged infringement referred to in clause 13.1(a), we may require you in such an event to cease use of the infringing or alleged infringing material in connection with this Agreement or may only permit you to continue such use upon such terms and conditions as notified to you by us in writing. For the purpose of this clause, "infringement" includes unauthorised acts which would, but for the operation of section 163 of the Patent Act 1990 (Cth) and section 183 of the Copyright Act 1968 (Cth) (or any sections that replace those sections from time to time), constitute an infringement.

14 Insurance First Claim

14.1 Notwithstanding any other clause in the Agreement, you covenant and agree that if you make a claim or Demand against us pursuant to clause 11 and 13 you will adhere and comply with the following procedure:

- (a) you must first claim or make a Demand against your own insurer; and;
- (b) you must provide, if requested by us evidence of your claim or demand to your insurer;
- (c) if:
 - (i) your insurer refuses to process the claim or Demand; or
 - (ii) the claim or Demand is outside the scope of your insurance; or
 - (iii) the insurance fails to adequately cover your loss or damage;you must provide written notice to us setting out the facts and basis of the claim or Demand.

15 Dispute and Mediation

15.1 If a dispute arises out of or relates to this Agreement, neither party may commence any court proceeding relating to the dispute unless it has complied with this clause 15, except where that party seeks urgent interlocutory relief.

15.2 If the parties are unable to resolve a dispute either party may give notice to the other party specifying the nature of the dispute and requiring its resolution under this clause 15 (**Notice of Dispute**).

15.3 If the parties cannot resolve the dispute within 7 days of service of the Notice of Dispute, the dispute is to be submitted to mediation and the Institute of Arbitrators & Mediators Australia Rules for Mediation and Conciliation shall apply to the mediation to the extent that they are consistent with this clause 15.

15.4 If the parties have not agreed on

the mediator and the mediator's remuneration within 7 days of service of the Notice of Dispute, the mediator will be appointed by, and the mediator's remuneration will be determined by, the Present for the time being of The Institute of Arbitrators and Mediators Australia, at the request of either party and the parties will pay the mediator's remuneration in equal shares except that each party shall bear their own costs of and in relation to the mediation.

16 Confidentiality

16.1 Except as required by law, each party must not, during the Term or at any time thereafter, disclose to any person any Confidential Information of the other party nor make use of any of the other party's Confidential Information whether directly or indirectly:

- (a) without the other party's prior written consent, unless such disclosure is made in the proper course of our duties under this Agreement, or, where the disclosures are:
 - (i) of information in the public domain;
 - (ii) in respect of your information, of information typically disclosed in information sharing meetings;
 - (iii) made by us to suppliers in the process of soliciting tenders, quotes or supplies;
 - (iv) made by us as reasonably expected to occur in the provision of the Services; or
 - (v) is required to be disclosed by law or by us to a governmental body or authority or by us under the rules of any stock exchange where our or our Related Party's shares are listed.

16.2 A party (first party) on the other party's request, must deliver up to the other party all material comprising or containing any of the Confidential Information of the other party and all other property of the other party which may then be in the first party's possession, custody or control, except for, where required for the first party's corporate records, one copy of such.

16.3 You acknowledge and agree that our Personnel will from time to time make copies of your current data to facilitate delivery and support of the Service.

16.4 Each party acknowledges that a breach of clause 16.1 would be harmful to the other party's business; and money damages will not be, by itself, an adequate remedy for breach of this Agreement, and that the other party is entitled to equitable relief which may include the grant of an injunction.

16.5 Notwithstanding clause 16, and except to the extent this Agreement is available on our Website or Portal,

you agree that all the terms of this Agreement, including but not limited to, all fees, rates and charges, the manner by which fees, rates, and charges are charged, payment terms and, all quotes, details of the method of operation of us, are strictly confidential. You must not under any circumstances provide to any other person a copy of this Agreement for any purpose whatsoever, including to obtain comparative rates.

17 General

- 17.1 You must not assign or transfer or in any other way dispose of to any third party the benefit or burden of this Agreement without our written consent.
- 17.2 We may, assign, transfer or novate this Agreement to a Related Party, and upon request you will do all things reasonably required by us to effect this.
- 17.3 This Agreement and all related matters are governed by and construed in accordance with the laws of Western Australia, Australia and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Western Australia, Australia.
- 17.4 If any part of this Agreement is, or becomes void or unenforceable, that part is or will be, severed from this Agreement to the extent that all parts that are not, or do not become, void or unenforceable these remain in full force and effect and are unaffected by that severance.
- 17.5 Each party shall bear their own costs of and incidental to the preparation, negotiation and execution of this Agreement and any variation or amendment of this Agreement.
- 17.6 Each party must at its own cost execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purposes of this Agreement.
- 17.7 Terms expressed by their sense or context intended to survive the expiration or termination of this Agreement do so, including clause 16.

18 Definitions

- 18.1 In this document, unless the context requires otherwise:
- Agreement** means the documents specified in clause 1.1 together with any other attachment, schedule or appended document;
- Application** means the application or Quotation under which you request us to supply specified Goods and/or Services to you;
- Background IP** mean your IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement;
- Business Day** means any day not being a Saturday, Sunday or State

public holiday at your first address set out in the Application;

Business Hours means in respect of Service delivery the operating hours of the relevant Service as set out in the Application and being Monday to Friday other than a day that is not a Business Day;

Confidential Information mean, in any form whatsoever:

- (a) all trade and business secrets and other confidential information relating to the operations, dealings, pricing, transactions, financial arrangements, internal structures, clients, personnel, assets, liabilities, strategies, prices, businesses and affairs of a party or which come into a party's possession in the course of this Agreement or by reason of the provision of the Services; and
- (b) any of Probax IPR;
- (c) and for the avoidance of doubt includes our information where disclosed by any existing or potential customer, supplier, contractor, agent, licensor or licensee;

Demand means any action, claim or demand made for loss, damage, compensation, costs or expenses or any other relief, whether arising under statute or common law;

Force Majeure Event means any act of God (including lightning, flood, severe weather, explosion, fire), war, civil disorder, acts of Government or other authorities, embargo, strike or other labour dispute or (without limitation) any other event or occurrence that is beyond our reasonable control.

GST means the tax imposed by A New Tax System (Goods and Services Tax) Act 1999 and A New Tax System (Goods and Services Tax) Transition Act 1999 and related tax imposition Acts of the Commonwealth of Australia.

Goods means items of hardware, software, or other items that you have ordered from us as set out in the Application, or may order from us from time to time;

IPR means all present and future registered and unregistered rights in respect of copyright, design, trademarks, circuit layouts, know how, trade secrets, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 and all Moral Rights;

Minimum Term means:

- (a) 30 days from the date of execution of this Agreement for Flex partners;
- (b) 12 months from the date of execution of this Agreement for Bronze, Silver and Gold partners; or
- (c) 24 months from the date of execution of this Agreement for Platinum and Black partners.

Moral Rights means any of the rights described in Article BIS of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time), being "droit moral" or other analogous rights arising under any statute, that exist or than may come to exist, anywhere in the world;

Personnel means any of the following persons in relation to a party:

- (a) that party's officers, employees, agents, consultants, contractors and subcontractors;
- (b) officers, employees, agents, consultants and contractors of the that party's subcontractors; or
- (c) other persons engaged by that party, under their direction and control, or for whom that part is responsible;

Notice of Dispute is defined in clause 15.2;

Portal means our online portal (Control) located at <https://control.probax.io>;

Probax IP mean our and our Related Parties IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement;

Quotation means the quotation, proposal or other similar document under which you request us to supply specified Goods and/or Services to you;

Services means the services to be provided by us to you set out in the Application or may order from us from time to time;

Special Terms and Conditions means the special terms and conditions applicable to a particular Good or Service provided by us;

Term is defined in clause 2.1;

Website means our website located at www.probax.io