

## Platform As a Service Terms of Use

*PLEASE READ THESE "PLATFORM AS A SERVICE TERMS OF USE" OF PRO ALLIANCE ("Terms of Use") CAREFULLY as these Terms of Use apply to the access to the Platform offered on an "as a service" basis to Pro Alliance's customers from the domain platform.proalliance.io. The provisions as stated in these Terms of Use apply to each use of the Platform to the fullest extent relevant.*

*By clicking on the below box ["I agree"] and/or by accessing or in any way using all or any part of the Platform, you expressly agree to be legally bound by these Terms of Use. You agree that the Agreement is enforceable to the same extent as any other written negotiated agreement accepted by you. If you do not agree to these Terms of Use, or you do not have full authority to bind Company do not purchase, access, or in any way use the Platform.*

### 1. Definitions

In these Terms of Use, the terms and expressions written with a capital letter shall have the meaning given to them below, unless the context necessarily requires otherwise:

- 1.1. **"Agreement"** means these Terms of Use, together with the Privacy Policy and any other relevant documentation provided by Pro Alliance to Company in relation to the Platform that govern the contractual relationship between the Parties with respect to the provision of the access to the Platform by Pro Alliance to Company;
- 1.2. **"Affiliate"** means, in relation to any company, any other person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with such company;
- 1.3. **"Business Day"** means every day except Saturdays, Sundays and official public holidays in Belgium;
- 1.4. **"Business Hour(s)"** means 9 AM to 5 PM CE(S)T on Business Days.
- 1.5. **"Charges"** means the amounts due by the Company to Pro Alliance for the provision of the access to the Platform and/or the Services;
- 1.6. **"Community"** means a level within the Platform where it is possible to connect with all relevant supply chain actors (receiver, its suppliers and carriers) and collect, visualise and discuss data and insights together;
- 1.7. **"Company"** or **"you"** means the legal person that expressly accepts these Terms of Use and/or purchases, accesses or in any way uses all or any portion of the Platform and/or the Services;
- 1.8. **"Company Account"** means the account that will be created if Company wants to activate the Platform. Company can choose between different Company Accounts that are described in detail in the relevant Documentation;
- 1.9. **"Company IP"** means all Company Data and information input into the Platform by Company and any other materials provided by Company hereunder;
- 1.10. **"Company Data"** means the set of data belonging to the Company (with the exclusion of Pro Alliance intellectual property and/or data owned by Pro Alliance) which is processed, stored and/or transported in or through the systems and infrastructure of the Company and/or Pro Alliance;
- 1.11. **"Company Personal Data"** means the Personal Data of Company and its Users Processed by Pro Alliance in the course of providing the Services;
- 1.12. **"Control"** means the ability to control or direct, directly or indirectly, the board, executive body, decision making process or management of an entity by virtue of ownership, right of appointment, right to control election or appointment, voting rights, the ability to control the exercise of voting rights, management agreement or any other agreement;
- 1.13. **"Damage"** means any costs, delays, damage, loss, expenses and other liabilities incurred by a Party;
- 1.14. **"Data Privacy Laws"** means all applicable data protection and privacy Laws that apply to Pro Alliance's performance hereunder or to Company's receipt and use of the Platform and/or the Services, including without being limited to the General Data Protection Legislation (2016/679) (the **"GDPR"**) and any laws and/or regulations implementing GDPR;
- 1.15. **"Documentation"** means the user guides and any other documents or information made available by Pro Alliance to Company in relation to the access to the Platform and/or available via the domain support.proalliance.io;
- 1.16. **"Error"** shall mean any material, verifiable and reproducible failure of the Platform to conform in all material respects to features and functions as described in the Documentation (specifically excluding any nonconformity resulting from Misuse).
- 1.17. **"Inappropriate Content"** means any content which is or may be construed as obscene, indecent, pornographic, seditious,

offensive, defamatory, libellous, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous, harmful to children, violating third party intellectual or industrial property rights or otherwise in breach of any Law;

- 1.18. "**Law(s)**" means all applicable local, state, national, and international laws, treaties and regulations, codes, ordinances, rules, restrictions, licenses, and judicial or administrative orders that are in effect at the moment of acceptance of these Terms of Use by Company or that may come into force thereafter;
- 1.19. "**Means of Access**" has the meaning as set out in clause 5.2;
- 1.20. "**Misuse**" shall mean any (i) use of the Platform otherwise than in accordance with these Terms of Use, the Documentation or any other written instructions provided by Pro Alliance, (ii) modification or change of the Platform without Pro Alliance's written consent, (iii) use of non-current releases and/or Updates of the Platform, (iv) problems caused to the Service by Company IP, combining or merging the Platform with any hardware or software not authorized in writing by Pro Alliance to be so combined or merged by Company, or any other use contrary to the terms of these Terms of Use;
- 1.21. "**Party/Parties**" means Pro Alliance and/or Company as applicable;
- 1.22. "**Personal Data**" has the meaning as specified in Data Privacy Laws;
- 1.23. "**Platform**" means the cloud-based software provided by Pro Alliance to Company from the domain platform.proalliance.io and accessible via the internet, including any modifications, enhancements, additions, extensions, translations and derivative works and programming code and other associated technologies related to the Platform. The Platform is described in the Documentation;
- 1.24. "**Privacy Policy**" means Pro Alliance privacy policy applicable to the provision of access to the Platform, and which forms an integral of the Agreement;
- 1.25. "**Process**" shall have the meaning attributed to it in applicable Data Privacy Laws (and "Processed" and "Processing" shall be construed accordingly);
- 1.26. "**Pro Alliance**" means Pro Alliance with registered office at Sint-Katelijnevest 63 Bus 3, 2000 Antwerp, Belgium and registered in the company register under the number BE0644761671;

- 1.27. "**Retention Period**" means a period of thirty (30) calendar days after the effective date of termination of the access to the Platform;
- 1.28. "**Service(s)**" means the services provided by Pro Alliance to Company under these Terms of Use;
- 1.29. "**Service Levels**" means the quality and availability standards applicable to the Platform, as set forth in clause 7;
- 1.30. "**Term**" means the subscription term purchased by Company and during which Company is granted the right to access and use the Platform as set forth hereunder;
- 1.31. "**Terms of Use**" means the present "Software As A Service Terms Of Use";
- 1.32. "**Updates**" means updates, enhancements, derivatives, improvements to and translations of the Platform;
- 1.33. "**User**" means a natural person permitted by Company to use the Platform by or on behalf of Company in accordance with the and within the limits of the Agreement;
- 1.34. "**Workaround**" means a suggested set of actions or recommendations intended, when properly implemented, to correct an Error in the Platform and/or to restore the functionality of the Platform or to provide equivalent or similar, but not inferior, functionality.

## 2. Platform

The Platform is a cloud platform for data visualisation, designed as a SAAS, that helps companies reduce inefficiencies in their supply chain.

The Platform enables a Company to establish Communities where relevant information can be collected, visualised and exchanged between its different supply chain actors.

## 3. Use of the Platform

- 3.1. Subject to full and timely payment of all applicable Charges, Pro Alliance hereby grants to Company a limited, non-transferable, non-exclusive right to access and use and allow access and use by the Users of the Platform and Documentation during the Term.
- 3.2. The right of use as set out in clause 3.1 is limited at all times to the internal business purposes of Company and subject to the terms of the Agreement.
- 3.3. The Platform may only be accessed and used:
  - (a) during the Term of the subscription to the Platform for which the Company has paid, without prejudice to Pro Alliance right to suspend or terminate the Agreement before the expiry of the Term;
  - (b) in conformity with the server capacity or any other parameter of

usage as indicated by Pro Alliance; and (c) in accordance with the instructions as issued by Pro Alliance to Company, including the Documentation.

- 3.4. Pro Alliance expressly has the right to monitor the use of the Platform and to verify whether the use is in compliance with the Agreement.
- 3.5. Company expressly agrees that for the provision of the Platform, Pro Alliance has the right to use any of its Affiliates or third-party subcontractors (including but not limited to hardware, software, networking, storage, and related technology required to run any part of the Platform).
- 3.6. The Company may solely use the Platform as and in a way as expressly agreed in writing by Pro Alliance. For example, but without limitation, the Company shall not (nor will allow or facilitate a third party to): (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party (except Users) the Platform or access to the Platform in any way; (b) modify, alter, tamper with or make derivative works based upon the Platform; (c) to the extent allowed under applicable law, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Platform or access the Platform in order to: (i) build a competitive product or service; (ii) build a product using similar ideas, features, functions or graphics of the Platform; or (iii) copy any ideas, features, functions or graphics of the Platform; (d) access or use the Platform in a way intended to avoid incurring Charges or exceeding usage limits or quotas; (e) copy or reproduce all or any part of the Platform; or (f) remove any titles or trademarks, copyrights or restricted rights notices in the Platform.
- 3.7. Company may order additional licenses of use and/or change subscription plan at the then-current conditions offered by Pro Alliance.
- 3.8. In case of a trial version or test version of the Service, Company may use the specified Service only, and restricted to the timeframe it was explicitly authorized to evaluate, use or test such Service. All other provisions of the Agreement, as far as relevant, will apply to such use.
- 3.9. The Customer acknowledges and agrees the use of third party hosting service providers by Pro Alliance (such as Amazon Web Services or any other third party offering such services). Pro Alliance cannot be held liable for any damage or data loss caused by (i) such third party hosting service providers or (ii) any

external cause or technical failures beyond the control of Pro Alliance (e.g. internet connection, domain name, email website).

- 3.10. The Platform contains and uses programs, libraries and software developed by third parties (“**Third Party Software**”). Pro Alliance is making use of such Third Party Software in order to speed up development, ensure security and increase the quality of service of the Platform. Pro Alliance however, cannot be held liable for any damage, loss of service or quality issue that is due to the usage of such Third Party Software.

#### **4. Subscription and Payment of Charges**

- 4.1. In order for Company to be granted access to and use of the Platform, a monthly subscription or any other type of subscription as indicated by Pro Alliance on its domain support.proalliance.io shall be purchased.
- 4.2. In case a Company wants to activate the Platform it has to create a Company Account.
- 4.3. The Charges for such subscription are indicated on the order page of Pro Alliance and exclude VAT and other applicable taxes. The Charges will vary on the type of account chosen by the Company.
- 4.4. The Charges shall be paid in the currency and payment methods (e.g. credit card) indicated by Pro Alliance on its website, in their entirety and in advance, at the moment of purchase, by Company.
- 4.5. The payment methods which are accepted for the payment of the Charges are indicated by Pro Alliance on the domain support.proalliance.io. Pro Alliance reserves the right to exclude some payment methods or to include additional ones, at its own discretion.
- 4.6. All payment obligations are non-cancellable and all Charges paid are non-refundable except as otherwise set forth in the Agreement.
- 4.7. An electronic invoice in relation to the purchased Services and access to the Platform will be provided to Company via the email address indicated by the Company.

#### **5. Company Obligations**

- 5.1. Company shall be solely responsible for (i) its actions and the actions of the Users while using the Platform, (ii) the correctness of the Company Data, and (iii) the contents of its transmissions through the Platform. Company shall ensure that all Users are provided with full information of and shall comply with Company's obligations under the Agreement. Company agrees, and agrees to have its Users agree:

- (a) to abide by all Laws applicable to Company's use of the Platform, including, without limitation, laws relating to intellectual and industrial property rights and laws on the protection of Personal Data and all standard policies regarding Internet regulations, policies and procedures then in effect of Pro Alliance (which can be delivered upon request);
  - (b) not to upload or distribute files that contain viruses, malicious files or other harmful code or any other similar software or programs that may access or damage the operation of the Platform or another's computer or other devices. In case of a breach against this clause, Company will fully assist Pro Alliance, at Company's own cost and expense, in mitigating the effects of the virus, without prejudice to Pro Alliance's other rights and remedies in accordance with applicable law and the Agreement;
  - (c) not to interfere with or disrupt the Platform, the data contained in the Platform or networks connected to the Platform;
  - (d) not to send or store any Inappropriate Content through the Platform;
  - (e) not to attempt to gain unauthorized access to the Platform or the related systems or networks;
  - (f) not to disclose screenshots or visualizations obtained through the Platform to third parties and keep such information confidential.
- 5.2. Access to and use of the Platform requires the creation of an account, by entering the requested information and choosing a login and a password. Such means of access (jointly referred to hereinafter as "**Means of Access**") are strictly personal to the User and cannot be shared with other Users and/or third parties. Company will maintain and promptly update the Means of Access in order to keep these Means of Access true, accurate, current and complete. Company is responsible for the safeguarding, confidentiality, security and appropriate use of the Means of Access by itself and its Users and undertakes to take all steps to prevent any unauthorized third party from gaining knowledge and making use thereof. Company will notify Pro Alliance immediately by using the chat function of the Platform of the loss, theft, breach of confidentiality or any risk of misuse of the Means of Access Company undertakes to comply strictly with and to ensure the compliance with the appropriate procedures regarding access to the Platform. Company guarantees to inform all of its Users of all

appropriate information. Company is liable for any claims, demands, actions and Damages (including reasonable attorneys' fees and court costs) arising from or created by any of its acts or omissions related to the access or use of the Platform (including any such acts or omissions from its Users).

- 5.3. Unless otherwise provided in writing, Company, and not Pro Alliance, is responsible for taking all appropriate steps to back-up or otherwise secure or protect the Company Data.
  - 5.4. Company agrees that Company is solely responsible for (and that Pro Alliance, acting as a mere service provider, has no responsibility to Company or to any third party for) any data, content and information that Company creates, transmits, displays or stores through the Platform and/or for Company IP, and for the consequences of Company's actions by doing so. Company has no obligation to monitor Company IP, but Company acknowledges that Pro Alliance has the right at all time, to remove Company IP which infringes applicable Laws and/or the Agreement.
  - 5.5. Company shall notify Pro Alliance, within the shortest term possible after becoming aware of it, of any infringement against the Company's obligations as set out in this clause 5 and Company shall, without prejudice to Pro Alliance's other rights and remedies under applicable law and the Agreement, assist Pro Alliance, at Company's own cost and expense, in any way Pro Alliance sees fit to remedy such breach and/or to limit its consequences.
  - 5.6. Company, and not Pro Alliance, is responsible for obtaining, maintaining and paying for all hardware, software and communications equipment necessary to access and use the Platform and comply with the requirements as set out in the Documentation.
  - 5.7. In its use of the Platform, Company shall be solely responsible for and at all times shall comply with all Laws applicable to it, including without limitation Laws governing anti-discrimination, privacy and data retention, direct marketing and publicity and intellectual and industrial property rights. It will not use Company Data within the Platform which is contrary to Laws or good practice, including but not limited to Company Data which is illegal, cruel, slanderous, unlawful, threatening, violating of third party rights or which may not be processed on the basis of Laws or contract.
- ## 6. Service Delivery
- 6.1. Pro Alliance will use commercially reasonable efforts to provide the Platform in material

conformity to what has been set out in the relevant Documentation.

- 6.2. The Platform shall be delivered during the Term, and in accordance with the provisions as set out in the Agreement, with the exclusion of any other commitment not expressly made by Pro Alliance in the Agreement.
- 6.3. In providing access to the Platform, Pro Alliance will use commercially reasonable efforts to comply with the Service Levels under the conditions set out in clause 7 of these Terms of Use.
- 6.4. Taking into account the nature of the Platform as a service model, Company understands and agrees that Pro Alliance has the right to suspend access to the Platform due to scheduled downtime for maintenance purposes, unscheduled maintenance, and system outages. Although Pro Alliance will use reasonable efforts to allow internet access to the Platform, Company agrees that since the internet is neither owned nor controlled by any particular entity, Pro Alliance can make no guarantee that a User will be able to access the Platform at any given time or that the Platform will never be interrupted or that the Platform (and any features thereof) will always be fully available and functional.
- 6.5. In its own full discretion and according to its own timetable (although preferably during planned maintenance), Pro Alliance may, but is under no obligation whatsoever to, issue Updates to the Platform. Company has only access to the latest version of the Platform subject to Company's timely payment of any and all Charges due under this Agreement. Company is not entitled to access components that are offered as add-ons or options in an Update or new version and that were not licensed to the Company. Pro Alliance reserves the right, when issuing an Update to the Platform, to remove any existing feature or functionality from the Platform and the Company has no right to demand those features or functionalities to be supported by Pro Alliance; where such removal would have a material impact on the Platform (in Pro Alliance' own discretion), Pro Alliance will inform the Company thereof reasonably in advance but no later than thirty (30) days prior to implementing the Update unless where such notice would be impossible or impractical due to legal or security requirements or performance related issues. Unless explicitly stated otherwise, any new feature that augments or enhances the current Service, including new releases, shall be subject to these Terms of Use.

6.6. Customized Services, if relevant, may not be compatible with Updates. Any requests for compatibility of a customized Service with an Update are subject to an express agreement between the Parties.

6.7. The Parties agree that Pro Alliance may in its sole discretion make changes to the Platform from time to time, or may suspend or terminate certain parts of the Platform. In the latter case, Pro Alliance will inform Company thereof via e-mail, via the Platform and/or via its website.

**7. Service Levels**

7.1. In case an Error or another incident/problem concerning the Platform is discovered or reported to Pro Alliance, Pro Alliance will prioritise and correct, to the extent possible, all such Error or other incidents/problems on the basis of its reasonable assessment of their severity level.

The four (4) possible severity levels are:

Service Level	Definition
[1] - Critical	Critical production issue affecting all Users, including system unavailability and data integrity issues with no available Workaround.
[2] - Urgent	Major functionality is impacted or performance is significantly degraded. Issue is persistent and affects many Users and/or a major functionality. No reasonable Workaround is available.
[3] - High	System performance issue or bug affecting some but not all Users. Short-term Workaround is available, but not scalable.

[4] - Medium	<p>Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of Users. Reasonable Workaround is available. Resolution required as soon as reasonably practicable.</p>
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7.2. With respect to each Error/incident/problem reported to it, Pro Alliance will use commercially reasonable efforts to provide an initial response within the applicable "Target Initial Response Time" described in the table below, depending on the severity level of the reported Error/incident/problem.

Severity Level	Target Initial Response Time
1	2 Business Hours
2	4 Business Hours <sup>(1)</sup>
3	8 Business Hours
4	16 Business Hours

*"Business Hours" means 9 AM to 5 PM CE(S)T on Business Days.*

7.3. Users may submit each Error/incident/problem in any of the following ways:

- (a) By emailing to support@proalliance.io;
- (b) By chat available via www.proalliance.io, support.proalliance.io and platform.proalliance.io.

Severity Level 1 and 2 Error/incident/problem must be submitted by chat.

For assistance with User password resets, Users need to use the "Forgot your password?" link on the login page or contact a Pro Alliance system administrator by chat.

7.4. Support by chat is available in Dutch, French and English during Belgian Business Hours.

7.5. Company and the Users shall provide all reasonable assistance and information that Pro Alliance may require in order to respond and/or resolve the incident, problem and/or Error

discovered or reported to Pro Alliance, including a provision by the Users of a remote access to their desktops.

7.6. Are excluded from the calculation of the availability of the Platform, the scheduled maintenance of the Platform as communicated in advance to Company, as well as the unavailability of the Platform due to a force majeure event, an unscheduled maintenance due to an emergency, outage and/or Misuse.

## 8. Intellectual Property Rights

8.1. Pro Alliance (and its licensors, where applicable) owns all right, title and interest, including all intellectual and industrial property rights, in and to the Services and the Platform. Without prejudice to the foregoing, Company expressly agrees that the Platform is or can be, partially or wholly based, on open-source software. In addition, Pro Alliance alone (and its licensors, where applicable) own all right, title and interest in and to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Company or any other party relating to the Platform.

8.2. The Agreement does not convey to Company any rights of ownership in or related to the Platform, the Platform or the intellectual and industrial property rights owned by Pro Alliance (or its licensors, where applicable) except as explicitly provided in the Agreement. Any trademarks used by Pro Alliance or its Affiliates/licensors within or associated with the Service, are trademarks of Pro Alliance or third parties, and no right or license is granted to Company to use them.

8.3. Company owns (and its licensors, where applicable, own) all right, title and interest, including all intellectual and industrial property rights, in and to the Company IP. Company grants to Pro Alliance a non-exclusive, worldwide, royalty-free right and license to use, adapt, display, process, perform and distribute all Company IP, in connection with the provision of access to the Services and/or the Platform by Pro Alliance to Company and Company's use thereof and this for the entire Term.

8.4. The Company acknowledges and accepts that Pro Alliance has the right to use Company Data for anonymized statistical purposes.

## 9. Warranties

9.1. Pro Alliance warrants that the Platform will perform substantially in accordance with the Documentation and will undertake reasonable efforts to provide support and maintenance services to this end as provided in these Terms of Use, it being understood that it is nearly

impossible (if not technically impossible or financially impractical) to develop software that will be bug free or that will perfectly conform to a user's purposes. Other than as provided in these Terms of Use, the Platform and the Services are provided "as is" and Pro Alliance makes no representations or warranties, express or implied, of any kind whatsoever (including, without limitation, satisfactory quality, fitness for a particular purpose, custom or usage in trade). Unless expressly otherwise stated in this Agreement, Pro Alliance further makes no representations or warranties regarding, without limitation, the security, integrity, efficiency or capabilities of the Platform. Pro Alliance may not be able to respond to or resolve all issues of Company, and makes no promises, guarantees or assurances to that extent.

9.2. Company's exclusive remedy for damage or loss arising from breach of the warranty as set out in clause 9.1 shall be, at Pro Alliance' option, (a) the replacement of the Services at no cost to Company; (b) a Workaround and/or Update to address the Error in a manner that provides Company with reasonably equivalent functionality as provided in the Documentation, at no cost to Company or (c) in the event, Pro Alliance is unable to replace or correct such failure by exercising commercially reasonable efforts for a reasonable period of time, either Party may terminate the Agreement and Company's sole additional remedy shall be for Pro Alliance to provide a *pro-rata* refund of any pre-paid Charges for periods after the effective date of termination.

9.3. Pro Alliance shall have no liability or responsibility for problems in the Platform caused by Misuse, the alteration or modification of the Platform by Company, for problems arising out of the malfunction of hardware, network services (whether or not internally with the Company), firewalls, or Errors caused by third party software or hardware or other infrastructure, or the configuration of such items.

9.4. Company warrants that:

- (a) Company has obtained any and all authorizations necessary for the Parties to fully perform the Agreement, and for the Parties to use the Company IP to be used in conjunction with the Platform; and
- (b) Company IP does not violate any Laws or another person's or persons' rights.

9.5. Each Party further warrants that: (a) the execution and performance of the Agreement are within its respective corporate powers, have

been duly authorized by all necessary corporate action, do not require any consent of or filing with any third party or governmental body or agency, and do not violate any Law, agreement, or the like or their respective charter or by-laws; and (b) the Agreement will constitute valid and binding obligations of that Party enforceable against it in accordance with its terms.

## 10. Indemnities

10.1. Pro Alliance shall indemnify, defend and hold harmless Company in accordance with the provisions of this clause 10.1 from and against any third-party claim asserted against Company that the Services and/or Platform (when used in accordance with its Documentation) directly infringe or misappropriate the intellectual property rights of such claimant registered in or valid in the jurisdiction to which the Agreement is subject (an "**IP Claim**"). Pro Alliance will pay those costs and damages finally awarded or settled (upon terms acceptable to Pro Alliance) against Company based on such IP Claim, within the limits set forth in clause 11 and provided that: (a) Company promptly notifies Pro Alliance in writing of such IP Claim; (b) Pro Alliance has sole control of and Company reasonably cooperates in all respects in the defence of each such IP Claim and all related settlement negotiations and Company does not make any admission or disclosure or otherwise take any action prejudicial to Pro Alliance; and (c) such IP Claim does not relate to any act of Company, including (without limitation) a change in the Platform, a combination of the Platform (and underlying Services) with or the addition of the Platform (and underlying Services) to products or other software which has not been developed and supplied by Pro Alliance, or failure to install an Update where installation would have removed the cause of the infringement, or any breach of these Terms of Use by Company.

10.2. If a final judgment is entered against Company on any such IP Claim, or if in Pro Alliance's reasonable opinion Company is likely to become subject to a successful IP Claim, then Company shall permit Pro Alliance, at Pro Alliance's option and expense, either: (a) to procure for Company the right to continue using the Platform; (b) to replace or modify the same so that it becomes non-infringing, with functionality essentially being equal; or (c) terminate the Agreement and provide a *pro-rata* refund of any pre-paid Charges for periods after the effective date of termination of the Agreement.

10.3. The foregoing provisions of this clause 10 set forth the entire and exclusive liability of Pro Alliance with respect to any IP Claim.

10.4. Without prejudice to Pro Alliance's other rights and remedies under applicable Law and the Agreement, Company will defend any third-party claim against Pro Alliance and pay any damages and costs finally awarded against Pro Alliance by a court of competent jurisdiction or that are included in a settlement approved by Company to the extent Company IP or Pro Alliance's access or use thereof is held to infringe intellectual or industrial property rights of any third party.

10.5. Without prejudice to Pro Alliance's other rights and remedies under applicable Law and the Agreement, Company shall indemnify Pro Alliance against any and all damages, losses, expenses arising as a result of any action or claim that Company IP constitutes Inappropriate Content.

## 11. Liability

11.1. Except in case of Pro Alliance's fraud or willful misconduct ("*opzet*"/"*do*"), the cumulative total aggregate liability of Pro Alliance for a failure to comply with an obligation under the Agreement or any applicable law which is imputable to Pro Alliance is limited to the Charges paid by Company to Pro Alliance in respect of the relevant Community during the twelve (12) calendar months preceding the moment the Damage occurred.

11.2. Without prejudice to clause 11.1, Pro Alliance is never liable for any indirect damage and/or consequential damage, such as but not limited to loss of profit, loss of income, loss of anticipated savings, loss of opportunity, loss of customers, claims of logistic service providers or other third parties, damage as a result of loss and/or corruption of data, loss of goodwill and reputational damage.

11.3. Pro Alliance can never be held liable for errors, mistakes, troubles resulting from the operation of the Platform or incorrect communications, availability, timeliness, deletion, failure to store any Company Data or communications/personalization settings, or changes on the Platform. Neither can Pro Alliance be held liable for wrongful information (e.g. locations, default time slots, default time windows, validations, orders, or notifications, etc.) or any other news on the Platform.

## 12. Term, Suspension and Termination of the Service

12.1. The Agreement is concluded for the Term.

12.2. In the event of a breach by Company of any of the terms of the Agreement which would be susceptible to cure, Pro Alliance shall have the right to (a) immediately suspend without prior notice a part or all access to the Platform, and/or (b) terminate the Agreement without court intervention upon five (5) days prior written notice specifying the breach to the other, provided that such breach has not been cured within said five (5) days' period. Without excluding any other events being considered a material breach of the Agreement, the Parties agree that the following examples of events shall be considered as a material breach by Company: (a) any form of Misuse of the Platform; (b) any non-compliance with limitations on the right of use granted under these Terms of Use; (c) any non-compliance with limitations on the use of the Platform as stated in these Terms of Use or under applicable Laws; (d) any infringements on Pro Alliance intellectual and/or industrial property rights; (e) any non-compliance with payment obligations. An unauthorized disclosure or distribution of the Platform by Company and/or User, and/or any repeated (whether consecutive or not) failure to pay Charges when due constitute material incurable breaches of the Agreement, entitling Pro Alliance (without prejudice to its other rights and remedies) to either suspend and (whether subsequently or not) terminate the Agreement with immediate effect without prior court intervention on providing written notice to Company. This clause is without prejudice to Pro Alliance's other rights and remedies under applicable Law and contract.

12.3. In the event of termination of the Agreement by Pro Alliance for Company's uncured material breach, the right of use granted to Company in respect of the Platform hereunder shall immediately cease and Company shall, upon the effective date of such termination, cease using the Platform and, at Pro Alliance discretion, immediately return to Pro Alliance or destroy all copies of the Documentation. In the event of destruction, Company shall provide Pro Alliance with an affidavit of destruction in a form acceptable to Pro Alliance certifying that it has destroyed all copies of the Documentation and related confidential information.

12.4. Company has the right to terminate its subscription to the Platform, and therefore the



Agreement, by notifying Pro Alliance in writing subject to a one (1) month notice period.

12.5. Subject to a request by Company during the Retention Period, Pro Alliance will provide Company with the Company Data held in the Platform. Company bears all risks for loss of data related to such export, and should keep back-up of the data at all times. Following the expiration of the Retention Period, Pro Alliance will disable the applicable Service account(s) and then return or delete the associated Company Data in its possession (or in the possession of any Pro Alliance's Affiliate or subcontractor), including any copy, save for archival copies, which will be erased/destroyed according to Pro Alliance's standard backup and retention process. Other than as described in this clause 12.5, Pro Alliance has no obligation to continue to hold, export or return the Company Data. Pro Alliance will have no liability for deletion of Company Data so long as it complies with this clause 12.5.

### 13. Processing of Personal Data

13.1. Company Personal Data will be Processed in accordance with the provisions stated in the Privacy Policy accessible on the [following link](#).

13.2. If Pro Alliance is required under this Agreement to process the Company Personal Data, then the Parties agree that Company is a Data Controller and Pro Alliance is a Data Processor for the purposes of this Agreement and each party will fully comply with all of its obligations under the Data Privacy Laws. In this clause, Data Controller, Data Processor, Data Subject, Personal Data, Process and Processing will have the meanings given to them in the GDPR.

13.3. When Processing Company's Personal Data, Pro Alliance will only act in accordance with the reasonable lawful instruction of the Company. Pro Alliance will have no liability to Data Subject arising from its compliance with the instructions from the Company.

13.4. Where acting as a Data Processor, Pro Alliance will:

- (a) take appropriate technical and organisational security measures that are reasonably required against the unauthorised or unlawful Processing of Company Personal Data and against the accidental loss, destruction of or damage to such data;
- (b) ensure the reliability of Company personnel having access to Company Personal Data and will ensure that such personnel are fully

aware of the measures to be taken when processing Company Personal Data;

- (c) only Process Company Personal Data as is necessary in the provision of any Services;
- (d) ensure that Company Personal Data is only accessed by authorised personnel of Pro Alliance;
- (e) provide Company with such co-operation, assistance and information as is reasonably required by Company to comply with its obligations under the Data Privacy Laws;
- (f) at any time at Company's reasonable request, submit to Company all reasonably required materials and/or technical documentation to demonstrate its compliance with this clause; and
- (g) not export Company Personal Data to any country outside the European Economic Area, without notification to Company.

### 14. Miscellaneous

#### 14.1. Subcontracting

Pro Alliance reserves the right to subcontract the execution of the Agreement to third parties, including its Affiliates.

#### 14.2. Severability

If any provision of the Agreement is or becomes illegal, invalid or unenforceable, in any respect it shall not affect or impair the legality, validity or enforceability of any other provision of the Agreement; and (ii) if such provision would be legal, valid or enforceable to the extent some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.

#### 14.3. Applicable law

The Agreement is governed by and will be interpreted in accordance with Belgian law, without applicability of its conflict of law rules.

#### 14.4. Competent jurisdiction

Any dispute with respect to the validity, interpretation or execution of the Agreement will be finally settled by the competent courts of Antwerp (Belgium).