



## **Terms and Conditions**

### **1. Introduction**

Thanks for using Proactive, please read these Terms and Conditions carefully as this is a legal agreement.

By using Proactive in any way, you are agreeing to these Terms and Conditions, and our Privacy Policy.

We will start with the basics, including a few definitions that should help you understand this agreement. Proactive is a risk management and operational management support tool offered through the main URL of [app.proactivereporting.com](http://app.proactivereporting.com) and supplied by Activate Management Ltd.

In addition, Proactive may use additional URLs for individual organisations who require a branded or bespoke version of the system. Whilst URL content may be slightly different, the principles of this policy apply to all URLs and variations of Proactive.

We will refer to ourselves as "Proactive", "We", "Us", "The System", "Our System", "The Service". Once registered, you can be added to a current site or to a new site created specifically for your organisation. "Sites" are how Proactive divides its system into corporations, companies, or groups, so that organisations, clubs, groups, or individuals have their own working space.

You warrant that you are over the age of eighteen and have the power and authority to enter into and perform your obligations under this Agreement. If you enter this Agreement on behalf of your organisation, then "you" in the remainder of this Agreement means your company, and you warrant that you are properly authorised to bind your company to this Agreement.

You agree to the terms of this Agreement when you submit an Order, create an account on the Site or Proactive Platform or clicking on the "I agree" button that is presented to you at the time of submitting your Order. If you do not agree with this Agreement, do not click the "I agree" button and stop using and uninstall the Services. The Agreement becomes binding on the date that Proactive accepts your Order or first makes the Services available to you, whichever is earlier.

Proactive is always being developed and improved based on user feedback. While every effort is made to ensure Proactive is reliable and secure it should not solely be relied on

and we recommend you have backup systems in place and regularly check the system is functioning correctly and do not use it to store any sensitive data.

If you do experience any problems, please let us know as soon as possible by emailing us at [proactive@we-activate.co.uk](mailto:proactive@we-activate.co.uk)

## **2. Eligibility**

In order to use Proactive, you must:

- Complete our registration process. Normally through an automated sign-up form or email form
- Agree to these Terms and Conditions and our Privacy Policy
- Provide true, complete, and up-to-date contact information.

By using Proactive, you represent and warrant that you meet all the requirements listed above, and that you will not use Proactive in a way that violates any laws or regulations. We may refuse service, close user accounts, disable sites, and change eligibility requirements at any time.

## **3. Changes**

We may change these terms and conditions at any time by amending this page. Please check this page from time to time and take notice of any changes made.

## **4. User Accounts, Passwords & Sites**

You must register an account in order to access or receive services and to receive notices/notifications and information from the Proactive sites.

You are responsible for keeping your account information confidential. You will immediately notify us of any unauthorised use of your account or sites. We are not responsible for any losses due to stolen or hacked passwords.

This responsibility applies to all users you add to the system who have the ability to access your company/group data and information. You must:

- Maintain the confidentiality of the passwords associated with each of Your Accounts.
- Ensure that only those individuals authorised by you have access to Your Accounts; and
- Ensure that all activities that occur in connection with Your Accounts comply with this Agreement.

We do not have access to your current password, and for security reasons, we may only reset your password.

As an administrator of a company, group, or site, you will control who is given access and admin privileges. You will have the right to remove a user at any time. Access to the information in your site remains your sole responsibility. It is your responsibility to ensure the content added to the site(s) meets these terms and conditions, is your own property, and if it is sensitive data is collected in a manner that reflects the sensitivity and complies with the data protection laws associated with your country or region.

## **5. License to use the website**

Subject to the license, all these intellectual property rights are reserved by Proactive, managed by Activate Management Ltd.

You must not:

- Re-publish material or modules on our system, on to another system (including re-publication on another system).
- Sell, rent or sub-license material from the system.
- Reproduce, duplicate, copy or otherwise exploit material on this system for a commercial purpose.
- Edit or otherwise modify any material on the website or redistribute material from this website/URLs associated with delivery of the service [except for content specifically and expressly made available for redistribution e.g., through download and share options].

## **6. Downloading and sharing information**

If you download shared materials, to the extent permitted by law:

- Your use of shared materials is at your own risk
- Proactive excludes all liability to you and any third party in respect of your use of shared materials; and
- It is your responsibility to assess (and if necessary, obtain professional advice on) the suitability of shared and sharing of materials for your purposes and any modifications required to meet those purposes.

In the event that information is downloaded or shared via our encrypted email links, it is your sole responsibility to ensure that the distribution and use of that information is in line with the legal data processing requirements of your country or region. In the UK all shared materials must be shared in accordance with the General Data Protection Regulations (GDPR).

## **7. Acceptable use**

You must not use Proactive in any way that causes or may cause damage to the system or impairment of the availability or accessibility of the system; or in any way which is unlawful, illegal, fraudulent, or harmful, or in connection with any unlawful, illegal,

fraudulent, or harmful purpose or activity. You must not use this system to copy, store, host, transmit, send, use, publish or distribute any material which consists of computer virus, Trojan horse, worm, keystroke logger, or other malicious computer software. You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to this system without our express consent. You must not use our system to transmit or send unsolicited commercial communications.

## **8. Privacy**

Proactive will take reasonable steps to ensure that personal information within your data is secure from unauthorised access, use or disclosure and will treat any personal information collected from you in accordance with the Proactive Privacy Policy.

You are responsible for ensuring that you have obtained all individual consents required for Proactive to provide the services in respect of any personal information contained within your data, including from your end users and participants.

It is your responsibility to satisfy yourself that your use of the services will allow you to meet any legal obligations applicable to you in respect of your data, and Proactive disclaims all liability for your non-compliance with any such laws or standards arising from your use of the Services.

## **9. Technical Support**

If you are experiencing any technical issues, please report them to us at [proactive@we-activate.co.uk](mailto:proactive@we-activate.co.uk). We will use reasonable endeavour to respond to all contact queries within a reasonable time frame, but we make no guarantees or warranties of any kind that any contact will be responded to within any particular time frame or that we will be able to satisfactorily answer any such queries. In some cases, we will agree to bespoke support which will incur extra cost.

## **10. Term and Renewal**

This agreement commences on the commencement date when Proactive services are first provided and expires when all subscription terms have expired or after 12 months, and all other orders have been completed, unless otherwise terminated in accordance with this agreement.

Unless otherwise set out in the relevant order, each subscription term will automatically renew for periods equal to the initial subscription term at the then-current rates unless:

- You elect not to renew your subscription term by providing written notice to Proactive at least 30 days prior to the expiry of the then-current subscription term, in which case your subscription will expire at the end of the then-current subscription term: or

- Proactive provides you notice that the subscription term will not renew at any time prior to the expiry of the then-current subscription term, in which case your subscription will expire at the end of the then-current subscription term.

## **11. Payments**

All services are billed in total upfront, with annually renewable license costs on the 12-month anniversary thereafter.

You will be notified of all charges in advance of them being due and will be given suitable amounts of time to complete payment.

## **12. Payment and Account Cancellation**

You are free to cancel a site-paid license at any time by contacting us. We will then continue to offer the service until the agreed terms end date. No refunds are offered for the remaining license time unless the service has been permanently changed or removed.

If an annual or monthly licence fee is due, we will notify you in advance and identify the required timeframe for payment.

Failure to pay fees due may result in your service being suspended or cancelled until payment is made.

Either party may terminate this Agreement in whole or part, including any particular order(s), immediately upon providing notice to the other party if:

- The other party is in material breach of this agreement and does not cure the breach within thirty (30) days after written notice of the breach; or
- If the other party ceases to operate, has an administrator appointed, enters a deed of company arrangement or other form of administration involving one or more of its creditors, is subject to an order that it be wound up, declared bankrupt, or that a liquidator or receiver be appointed, or otherwise becomes insolvent or is unable to meet its financial obligations.

Proactive may suspend the services (including any of your accounts) immediately without providing you notice, or terminate this agreement in whole or part, including any particular order(s), immediately upon notice to you, if:

- You are in material breach of this agreement during the term notwithstanding any cure of such breaches.
- You have failed to pay any fees within thirty (30) days after the relevant due date.

- You infringe Proactive’s Intellectual Property Rights; or
- Your use of the services breaches any applicable law or any of the Proactive Policies.

### **13. Service limitations and modifications**

We will make reasonable efforts to keep Proactive operational. However, certain technical difficulties or maintenance may, from time to time, result in temporary interruptions.

To the extent permissible under applicable law, Proactive reserves the right, periodically and at any time, to modify or discontinue, temporarily or permanently, functions and features of the service, with or without notice, all without liability to you, except where prohibited by law, for any interruption, modification, or discontinuation of the Proactive Service or any function or feature thereof.

Notwithstanding the foregoing, if you have pre-paid fees for paid licenses that Proactive permanently discontinued prior to the end of the Pre-Paid Period, Proactive will refund you the fees for the Pre-Paid Period after such discontinuation we will also transfer back your site data via a suitable file format. This will only be done on request from the organisation.

You understand, agree, and accept that Proactive has no obligation to maintain, support, upgrade, or update the service, or to provide all or any specific content through the service unless otherwise stated in a bespoke agreement. This section will be enforced to the extent permissible by applicable law. Proactive and/or the owners of any content may, from time to time, remove any such content without notice to the extent permitted by applicable law.

### **14. Limitations of liability**

Your data:

You must indemnify, defend and hold Proactive and its affiliates, service providers, officers, employees, contractors and customers (**those indemnified**) harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees) arising out of or in connection with any claim brought against those indemnified by a third party relating to Your Data and data you add to your account on the Proactive system. This includes data added in the submission of reports to the system e.g. completion of incident reports containing personal health related data.

Information provided:

The information and any commentary on the law contained on our system is provided free of charge for information purposes only. No responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by any user.

The information and commentary do not, and is not intended to, amount to legal advice to any person on a matter. You are strongly advised to obtain specific, legal advice about this system and its suitability for use and not to rely on the information on this system or given by us.

- to the extent that our system is provided free-of-charge, for any direct loss.
- for any indirect, special, or consequential loss; or
- for any business losses, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, or loss or corruption of information or data.

You acknowledge that complex software is never wholly free from defects, errors, and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the services will be wholly free from defects, errors and bugs and that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this agreement, we give no warranty or representation that the services will be entirely reliable or secure.

You are responsible for making all arrangements necessary for you to have access to our service. We do not commit to ensuring that our system remains available or that the material on the system is kept up-to-date and the way that you use it is suitable for you. These limitations of liability apply even if you have been expressly advised of the potential loss.

## **15. General**

- This agreement is governed by UK Law
- If any provision of this agreement is held to be invalid, illegal, or unenforceable that provision shall be deemed omitted to the extent that it is invalid, illegal, or unenforceable and the remainder of this agreement will be construed in a manner as to give greatest effect to the original intention of this agreement.
- Except where an exclusive remedy is specified in this agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this agreement, by law, or otherwise.
- Other than in respect of an obligation to pay any fee or other amount, neither party will be liable for non-performance or inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, pandemic,

riot, labour condition, governmental action, power interruption, telecommunication, data and internet disturbance) that was beyond the party's reasonable control (**Force Majeure Event**).

## 16. Contact Us

If you have any questions regarding Proactive or its agreements, please contact us at [proactive@we-activate.co.uk](mailto:proactive@we-activate.co.uk)

### How to make a complaint

To exercise all relevant rights, queries, or complaints please in the first instance please contact us at [proactive@we-activate.co.uk](mailto:proactive@we-activate.co.uk)

## APPENDIX 1 – GDPR Data Protection Compliance

In this Appendix:

- **Customer Personal Data** means any personal data which Proactive (or its sub-processors) processes on your behalf as a processor in the course of providing Services.
- **Data Protection Laws** means the EU Data Protection Laws and the laws of other states and territories that create and regulate substantially similar concepts and legal principles as are contained in the EU Data Protection Laws in relation to the processing of personal data.
- **EU Data Protection Laws** means, the GDPR and any national laws which implement or supplement or replace the same from time to time.
- **Security Incident** means a breach of Proactive's security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data.
- **personal data, consent, controller, processor, data subject and processing** mean those concepts, roles and activities as defined in the applicable EU Data Protection Laws.

Proactive is the controller in respect of personal data, such as account registration details, that we collect directly from users of the Services, and which we use for the purposes of our business.

You are the controller, and we are the processor in respect of any other personal data (including within your report and form generation and activities) that is uploaded/completed by end users and/or users of report templates/questionnaires

including data, templates, information, content, code, video, images or other material of any type (Materials), or which is provided by your administrators.

To the extent that the services comprise the processing of personal data where we are the processor, and you are the controller:

- You will comply with the requirements of the Data Protection Laws as the same apply to you as controller of the personal data; and

Proactive will make available our Privacy Policy at our website and where you provide us with personal data in connection with the agreement where we will act as the controller (for example where you provide contact details for use in administering the agreement), you agree to ensure that these individuals are provided with a copy of our Privacy Policy. Where we are a processor and not a controller, it is your responsibility to ensure that in accordance with relevant Data Protection Laws:

- There is a lawful basis for the collection and processing of personal data; and
- You have provided an appropriate privacy policy to the End Users and other data subjects.

## **APPENDIX 2 – GDPR – Data Processing Agreement**

### **Details of Data Processing**

- Subject matter: The subject matter of the data processing under this Data Processing Agreement is the processing of Customer Personal Data in connection with the performance of the agreement
- Purpose: The purpose of the data processing under this Data Processing Agreement is the provision of the Services under the agreement.
- Nature of the processing: data hosting, storage and such other services as are described in the agreement.
- Type of Data: Customer Personal Data uploaded to the Services under your accounts.
- Categories of data subjects: The data subjects may include your customers, employees, suppliers and end-users.

### **Terms of Data Processing**

- Where Proactive acts as processor of personal data on your behalf, Proactive shall:
- Process personal data only on your reasonable documented instructions unless required to do so by law; in such a case, Proactive shall inform you of that legal

requirement before processing, unless that law prohibits such information on important grounds of public interest. You acknowledge and agree that your final and completion instructions regarding the processing of Customer Personal Data are set out in this Agreement. Any additional or alternate instructions must be agreed in writing by the parties (and Proactive will be entitled to charge a reasonable fee to cover any costs incurred in complying with them).

- Ensure that persons authorised to process the personal data on our behalf have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality.
- Implement appropriate organisational and technical measures to ensure a level of security for the personal data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the personal data. The measures that we consider appropriate take account of:
  - Our architecture and infrastructure through which Services are provided.
  - Security controls employed by us and our service providers in protecting personal data; and
  - Security controls employed by our support channels which handle personal data.
- We shall impose obligations on any processor that we appoint on your behalf that are equivalent to the terms set out in this Appendix 2. We shall remain liable for the performance of these processors.
- Taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the EU General Data Protection Regulation 2016/679, provided that this assistance will be provided by us at your cost on a time and materials basis.
- Proactive will (a) notify you of a Security Incident without undue delay after becoming aware of the Security Incident, and b) take reasonable steps to mitigate the effects and to minimise any damage resulting from the Security Incident. To reasonably assist you in relation to any personal data breach notifications you are required to make under the GDPR, Proactive will include in the notification such information about the Security Incident as Proactive is reasonably able to disclose to you, taking into account the nature of the Services, the information available to Proactive, and any restrictions on disclosing the information, such as confidentiality.

- At the choice of the controller, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies save that Proactive shall be entitled to retain Customer Personal Data where required by EU law or the national law of an EU member state or another applicable law, or where such data is required for Proactive's internal record keeping or where it is necessary for use in any legal proceedings or the deletion could cause any liability to Proactive; You must notify us of Personal Data that you wish to have returned or deleted within 30 days following the effective date of termination; and
- For the avoidance of doubt, Proactive shall also be entitled to process data (including personal data) obtained in the course of the Services to carry out statistical analysis, manage its business (including its staff and contractors), develop and improve its services, comply with its own legal obligations and deal with legal claims. Proactive shall act as the controller for the purposes of these data processing activities.
- Proactive must:
  - Ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
  - Implement appropriate organisational and technical measures as required pursuant to Article 32 (security of processing) of the EU General Data Protection Regulation 2016/679. These measure take into account:
    - Our architecture and infrastructure through which Services are provided.
    - Security controls employed by Proactive and its service providers in protecting personal and/or sensitive personal data; and
    - Security controls employed by Proactive's support channels which handle personal data or sensitive personal data.
  - At the choice of the controller, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies unless EU law or the national law of an EU member state or another applicable law, to which the processor is subject requires storage of the personal data; and
  - Make available to the controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 (processor) of the EU General Data Protection Regulation 2016/679 and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller (in each case at the controller's cost).