

**BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT, YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR SUCH ENTITY DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE THE SERVICES.**

## **APROOVE WORK MANAGEMENT CLOUD SERVICES AGREEMENT**

This Aproove Work Management Cloud Services Agreement is between APROOVE TECHNOLOGIES, INC., an Illinois corporation, with offices located at 132 N. York Street, Suite 1A, Elmhurst, IL 60120 ("Aproove") and the individual or entity that has executed the Agreement ("You" and/or "Client"). This Agreement sets forth the terms and conditions that govern orders placed by You for Services under the Agreement.

### **1. AGREEMENT DEFINITIONS**

- 1.1.** "Agreement" means the agreement between Aproove and You, which comprises the contractual documents listed in the Order Form.
- 1.2.** "Ancillary Program" means any software agent or tool owned or licensed by Aproove that Aproove makes available to You for download as part of the Cloud Services for purposes of facilitating Your access to, operation of, and/or use with, the Services Environment. The term "Ancillary Program" does not include Separately Licensed Third Party Technology.
- 1.3.** "Aproove Programs" refers to the software products owned or licensed by Aproove to which Aproove grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term "Aproove Programs" does not include Separately Licensed Third Party Technology.
- 1.4.** "Auto Renew" or "Auto Renewal" is the process by which the Services Period of certain Cloud Services under an Order Form is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the Order Form or the Agreement. The Service Specifications incorporated into the Order Form define which Cloud Services are eligible for Auto Renewal as well as any terms applicable to any such renewal.
- 1.5.** "Cloud Services" means, collectively, the Aproove cloud services (e.g., Aproove software as a service offerings and related Aproove Programs) listed in the Order Form and defined in the Service Specifications. The term "Cloud Services" does not include Professional Services.
- 1.6.** "Data Center Region" refers to the geographic region in which the Services Environment is physically located. The Data Center Region applicable to the Cloud Services is set forth in the Order Form.
- 1.7.** "Device" means a device, usually electronic, that processes data according to a set of instructions, which may include, without limitation, workstations, personal computers, laptops, netbooks, PDAs, tablets and smartphones.
- 1.8.** "Order Form", the order form executed by You in order to enter into the Agreement with Aproove.
- 1.9.** "Professional Services" means, collectively, the consulting and other professional services which You have ordered. Professional Services include any deliverables described in the Order Form and

delivered by Aproove to You under the Order Form. The term “Professional Services” does not include Cloud Services.

- 1.10. **“Program Documentation”** refers to the user manuals referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for the Aproove Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Aproove Programs. You may access the documentation online at <https://aproove.com/en-us/aproove-work-management-resources> or such other address specified by Aproove.
- 1.11. **“Separate Terms”** refers to separate license terms between You and a third party licensor that are specified in the Program Documentation, Service Specifications, readme or notice files and that apply to Separately Licensed Third Party Technology.
- 1.12. **“Separately Licensed Third Party Technology”** refers to third party technology that is licensed under Separate Terms and not under the terms of the Agreement.
- 1.13. **“Services”** means, collectively, both the Cloud Services and Professional Services that You have ordered.
- 1.14. **“Services Environment”** refers to the combination of hardware and software components owned, licensed or managed by Aproove to which Aproove grants You and Your Users access as part of the Cloud Services which You have ordered. As applicable and subject to the terms of the Agreement, Aproove Programs, Your Content may be hosted in the Services Environment.
- 1.15. **“Service Specifications”** means the descriptions accessible online at <https://www.aproove.com>, or such other address specified by Aproove, that are applicable to the Services under the Agreement, including any Program Documentation, hosting, support and security policies (for example, Aproove Cloud Hosting and Delivery Policies), and other descriptions referenced or incorporated in such descriptions or in the Order Form.
- 1.16. **“Services Period”** refers to the period of time for which You ordered Cloud Services as specified in the Order Form.
- 1.17. **“Users”** means those employees, contractors and end users, as applicable, authorized by You or on Your behalf to use the Cloud Services in accordance with the Agreement. For Cloud Services that are specifically designed to allow Your customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered “Users” subject to the terms of the Agreement.
- 1.18. **“You”** and **“Your”** refers to the individual or entity that has executed the Agreement.
- 1.19. **“Your Content”** means all text, files, images, graphics, illustrations, information, audio, video, photographs, data (including Personal Data as that term is defined in the Data Processing Agreement for Aproove Work Cloud Services described in ‘Data Protection’ Section below) and other content and material in any format, provided by You or Your Users that reside in, or run on or through, the Services Environment.

## 2. TERM OF AGREEMENT

This Agreement is valid for the Order Form which the Agreement accompanies. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered (e.g., additional Users), for any Cloud Services options offered by Aproove for the original Services ordered, and for any renewal or Auto Renewal of the Services Period of the original order.

### 3. RIGHTS GRANTED

- 3.1. For the duration of the Services Period and subject to Your payment obligations, and except as otherwise set forth in the Agreement, You have the worldwide, non-exclusive, non-assignable, and non-transferable limited right to access and use the Services that You ordered, including anything developed by Aproove and delivered to You as part of the Services, solely for Your internal business operations and subject to the terms of the Agreement, including the Service Specifications. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users' compliance with the Agreement.
- 3.2. You do not acquire under the Agreement any right or license to use the Services, including the Aproove Programs and Services Environment, in excess of the scope and/or duration of the Services stated in Form Order. Upon the end of the Services ordered, Your right to access and use the Services will terminate.
- 3.3. To enable Aproove to provide You and Your Users with the Services, You grant Aproove the right to use, process and transmit, in accordance with the Agreement, Your Content for the duration of the Services Period plus any additional post-termination period during which Aproove provides You with access to retrieve an export file of Your Content.
- 3.4. Except as otherwise expressly set forth in the Order Form for certain Cloud Services offerings (e.g., a private cloud hosted at Your facility), You acknowledge that Aproove has no delivery obligation for Aproove Programs and will not ship copies of such programs to You as part of the Services.
- 3.5. The Services may contain or require the use of Separately Licensed Third Party Technology. You are responsible for complying with the Separate Terms specified by Aproove that govern Your use of Separately Licensed Third Party Technology. Aproove may provide certain notices to You in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.

### 4. OWNERSHIP AND RESTRICTIONS

- 4.1. You retain all ownership and intellectual property rights in and to Your Content. Aproove or its licensors retain all ownership and intellectual property rights to the Services, including Aproove Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Aproove under the Agreement.
- 4.2. You may not, and may not cause or permit others to:
  - a) remove or modify any program markings or any notice of Aproove's or its licensors' proprietary rights;
  - b) make the programs or materials resulting from the Services (excluding Your Content ) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services You have acquired);
  - c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs) unless required to be permitted by law for interoperability, or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Aproove;
  - d) perform or disclose any benchmark or performance tests of the Services, including the Aproove Programs;

- e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- f) license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Aproove Programs, Ancillary Programs, Services Environments or Aproove materials to any third party, other than as expressly permitted under the terms of the applicable order.

**4.3.** The rights granted to You under this Agreement are also conditioned on the following:

- a) except as expressly provided herein or in the Order Form, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- b) You make every reasonable effort to prevent unauthorized third parties from accessing the Services.

## **5. SERVICE SPECIFICATIONS**

**5.1.** The Services are subject to and governed by Service Specifications applicable to Your order. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments), functional and technical aspects of the Aproove Programs, as well as any Services deliverables. You acknowledge that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit You to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then You are responsible for promptly purchasing additional quantity to account for Your excess usage. For any month that You do not promptly purchase such additional quantity, Aproove may require You to pay, in addition to the fees for the additional quantity, an excess usage fee for those Services equivalent to 10% of the fees for the additional quantity in the month in which such excess usage occurred.

**5.2.** Aproove may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use. The Service Specifications are subject to change at Aproove's discretion; however, Aproove changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to You for the duration of the Services Period as defined in the Order Form.

**5.3.** The Order Form will specify the Data Center Region in which Your Services Environment will reside. As described in the Service Specifications and to the extent applicable to the Cloud Services that You have ordered, Aproove will provide backup environments in the Data Center Region stated in the Order Form. Aproove and its affiliates may perform certain aspects of Cloud Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide.

## **6. USE OF THE SERVICES**

**6.1.** You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Aproove, You accept responsibility for the confidentiality and timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local Device. Aproove is not responsible for any harm

caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local Device. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Aproove immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

- 6.2.** You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Aproove under the Agreement, Aproove reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence, including the removal or disablement of access to such material. Aproove shall have no liability to You in the event that Aproove takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content. You agree to defend and indemnify Aproove against any claim arising out of a violation of Your obligations under this Section.
- 6.3.** You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Aproove Programs, as such Patches are generally released by Aproove as described in the Service Specifications. Aproove is not responsible for performance or security issues encountered with the Cloud Services that result from Your failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Aproove will coordinate with You the scheduling of application of Patches, where possible, based on Aproove's next available standard maintenance window, according to Aproove Work Maintenance and Technical Support Services.

## **7. FEES AND TAXES**

- 7.1.** Unless otherwise specifically agreed to in the Order Form, all fees payable to Aproove are due within 30 calendar days from the invoice date or immediately if payment by credit card. Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as provided in the Agreement or in the Order Form. You will pay any sales, value-added or other similar taxes imposed by applicable law that Aproove must pay based on the Services You ordered, except for taxes based on Aproove's income. Also, You will reimburse Aproove for reasonable expenses related to providing any Professional Services. Fees for Services listed in an order are exclusive of taxes and expenses.
- 7.2.** You agree and acknowledge that You have not relied on the future availability of any Services, programs or updates in entering into the payment obligations in Your order; however, the preceding does not relieve Aproove of its obligation during the Services Period to deliver Services that You have ordered per the terms of the Agreement.

## **8. SERVICES PERIOD; SUSPENSION AND END OF SERVICES**

- 8.1.** Services provided under the Agreement shall be provided for the Services Period defined in the Order Form, unless earlier suspended or terminated in accordance with the Agreement or the Order Form. If stated in the Service Specifications or the Order Form, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) You provide Aproove with written notice no later than sixty (60) calendar days prior to the end of the applicable Services Period of Your

intention not to renew such Cloud Services, or (ii) Aproove provides You with written notice no later than ninety (90) calendar days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.

- 8.2.** Upon the end of the Services, You no longer have rights to access or use the Services, including the associated Aproove Programs and Services Environments; however, at Your request, and for a period of up to 10 calendar days after the end of the applicable Services Period, Aproove will make available Your Content then in the Services Environment for the purpose of retrieval by You. At the end of such 10 calendar day period, and except as may be required by law, Aproove will delete or otherwise render inaccessible any of Your Content that remain in the Services Environment.
- 8.3.** Upon Your request sent before the end of the Services, Aproove may provide reversibility services as Professional Services in order to migrate Your Content. The reversibility services will be invoiced on a man-hour basis according to Aproove's pricing in force at the time of Your request, with a minimum of EUR 1,000. Aproove may request advanced payment for its services and full payment of its outstanding invoices before starting the migration procedure. You shall actively collaborate with Aproove to facilitate the migration of Your Content. When migration is complete, Aproove shall notify You by email. You shall have 5 calendar days from the date of that notification to express any comments concerning the correct execution of the migration of Your Content. In the absence of comments after this period, migration shall be deemed as performed properly. In order to be taken into consideration, the comments must clearly identify the discrepancies. After the migration of Your Content, Aproove will delete or otherwise render inaccessible any of Your Content that remain in the Services Environment.
- 8.4.** Aproove may temporarily suspend Your password, account, and access to or use of the Services if You or Your Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' Sections of the Agreement, or if in Aproove's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Aproove will provide advance notice to You of any such suspension in Aproove's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Aproove will use reasonable efforts to re-establish the affected Services promptly after Aproove determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Aproove will make available to You Your Content as existing in the Services Environment on the date of suspension. Aproove may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 calendar days after Aproove's initial notice thereof. Any suspension or termination by Aproove under this paragraph shall not excuse You from Your obligation to make payment(s) under the Agreement.
- 8.5.** If either of us breaches a material term of the Agreement (including but not limited to nonpayment of fees) and fails to correct the breach within 30 calendar days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred. If Aproove terminates the order as specified in the preceding sentence, You must pay within 30 calendar days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 calendar day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under the Agreement, You may not use those Services ordered.
- 8.6.** Provisions that survive termination or expiration of the Agreement are those relating to limitation of liability, indemnification, confidentiality, payment and others which by their nature are intended to survive.

## **9. CONFIDENTIALITY**



- 9.1.** By virtue of the Agreement, the parties may have access to information that is confidential to one another (“Confidential Information”). We each agree to disclose only information that is required for the performance of obligations under the Agreement. Confidential information shall be limited to the terms and pricing under the Agreement, Your Content residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.
- 9.2.** A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- 9.3.** We each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of five (5) years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party; however, Aproove will hold Your Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. We each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under the Agreement. Aproove will protect the confidentiality of Your Content residing in the Services Environment in accordance with the Aproove security practices defined in the Order Form. In addition, Your Personal Data will be treated in accordance with the terms of the ‘Data Protection’ Section. Nothing shall prevent either party from disclosing the terms or pricing under the Agreement or orders placed under the Agreement in any legal proceeding arising from or in connection with the Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## **10. DATA PROTECTION**

- 10.1.** In performing the Services, Aproove will comply with the Aproove Privacy Policy, which is available at <https://www.aproove.com/legals> and incorporated herein by reference. The Aproove Privacy Policy is subject to change at Aproove’s discretion; however, Aproove policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period.
- 10.2.** Aproove’s Data Processing Agreement for Aproove Work Cloud Services (the “Data Processing Agreement”), which is available at <https://www.aproove.com/legals> and incorporated herein by reference, describes the parties’ respective roles for the processing and control of Personal Data that You provide to Aproove as part of the Cloud Services. Aproove will act as a data processor, and will act on Your instruction concerning the treatment of Your Personal Data residing in the Services Environment, as specified in the Agreement, the Data Processing Agreement and the applicable order. You agree to provide any notices and obtain any consents related to Your use of the Services and Aproove’s provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.
- 10.3.** The Service Specifications applicable in the Order Form define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content , including any viruses, Trojan horses, worms or other programming routines contained in Your Content that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.
- 10.4.** You may not provide Aproove access to health, political opinions, racial or ethnic, religious or philosophical beliefs, financials or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in the Order Payment and Data

Processing Agreement.

## **11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

- 11.1.** Aproove warrants that it will perform (i) Cloud Services in all material respects as described in the Service Specifications and/or in the Order Form, and (ii) Professional Services in a professional manner in accordance with the Service Specifications and/or the Order Form,. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Aproove that describes the deficiency in the Services (including, as applicable, the service request number notifying Aproove of the deficiency in the Services).
- 11.2.** APROOVE DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT APROOVE WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY APROOVE, AND (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT APROOVE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. APROOVE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. APROOVE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT. APROOVE DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT OR SERVICES, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT OR SERVICES.
- 11.3.** FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND APROOVE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF APROOVE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND APROOVE WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO APROOVE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.
- 11.4.** TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY EXCLUDED, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **12. LIMITATION OF LIABILITY**

NOTHING IN THIS AGREEMENT SHALL LIMIT APROOVE'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF APROOVE, OR APROOVE'S LIABILITY IN THE TORT OF DECEIT. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. APROOVE'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO APROOVE FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM APROOVE UNDER SUCH ORDER.

## **13. INDEMNIFICATION**

- 13.1.** Subject to the terms of this 'Indemnification' Section , if a third party makes a claim against either You or Aproove ("Recipient" which may refer to You or Aproove depending upon which party



received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Aproove ("Provider" which may refer to You or Aproove depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 calendar days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

**13.2.** If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Aproove's ability to meet its obligations under the relevant order, then Aproove may, at its option and upon 30 calendar days prior written notice, terminate the order.

**13.3.** The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. Aproove will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Aproove. Aproove will not indemnify You to the extent that an infringement claim is based on any Material from a third party portal or other external source that is accessible to You within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Aproove will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of the Agreement would not otherwise infringe any third party intellectual property rights. Aproove will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

**13.4.** The term "Material" defined above does not include Separately Licensed Third Party Technology. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of the Agreement, Aproove will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Aproove is required to provide infringement indemnification for Materials under the terms of the Agreement.

**13.5.** This 'Indemnification' Section provides the parties' exclusive remedy for any infringement claims or damages.

#### **14. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES**

The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content,

products, services, and information of third parties. Aproove does not control and is not responsible for such Web sites or any such content , products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

## **15. SERVICES TOOLS AND ANCILLARY PROGRAMS**

- 15.1.** Aproove may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Your Aproove service requests. The Tools will not collect or store any of Your Content residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content ) may also be used to assist in managing Aproove’s product and service portfolio, to help Aproove address deficiencies in its product and service offerings, and for license and Services management.
- 15.2.** As part of the Cloud Services, Aproove may provide You with on-line access to download certain Ancillary Programs for use with the Services. If Aproove does not specify separate terms for such Ancillary Programs, then, subject to Your payment obligations, You have the non-exclusive, non-assignable, royalty free, worldwide limited right to use such Ancillary Programs solely to facilitate Your access to, operation of, and/or use of the Services Environment, subject to the terms of the Agreement, including the Services Specifications. Your right to use such Ancillary Programs will terminate upon the earlier of Aproove’s notice, the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

## **16. SERVICE ANALYSES**

Aproove may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as “Service Analyses”). Aproove may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Aproove retains all intellectual property rights in Service Analyses.

## **17. EXPORT**

- 17.1.** Local Export laws and regulations may apply to the Services. You agree that such export laws may govern Your use of the Services (including technical data) and any Services deliverables provided under the Agreement, and You agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
- 17.2.** You acknowledge that the Cloud Services are designed with capabilities for You and Your Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Your Content between the Services Environment and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts, as well as export control and geographic transfer of Your Content .

**18. FORCE MAJEURE**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 calendar days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

**19. NOTICE**

- 19.1.** Any notice required under the Agreement shall be provided to the other party in writing. If You have a dispute with Aproove or if You wish to provide a notice under the 'Indemnification' Section of the Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written postal notice to Aproove 1 Boulevard Initialis, 7000 Mons, Belgium marked for the attention of the Managing Director with a copy by e-mail at [legal@aproove.com](mailto:legal@aproove.com).
- 19.2.** To request a termination of Services in accordance with the Agreement, You must submit a service request to Aproove at the address specified in the Order Form.
- 19.3.** Aproove may give notices applicable to Aproove's Cloud Services customer base by means of a general notice on the Aproove portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Aproove's account information or by written communication sent by first class mail or pre-paid post to Your address on record in Aproove's account information.

**20. ASSIGNMENT**

You may not assign the Agreement or give or transfer the Services (including the Aproove Programs) or an interest in them to another individual or entity. If You grant a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables. The foregoing shall not be construed to limit the rights You may otherwise have with respect to Separately Licensed Third Party Technology licensed under open source or similar license terms.

**21. OTHER**

- 21.1.** Aproove is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. You shall defend and indemnify Aproove against liability arising under any applicable laws, ordinances or regulations related to Your termination or modification of the employment of any of Your employees in connection with any Services under the Agreement. You understand that Aproove's business partners and other third parties, including any third party firms retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Aproove and are not Aproove's agents. Aproove is not liable for, bound by, or responsible for any problems with the Services arising due to, any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Aproove subcontractor on an engagement ordered under the Agreement and, if so, then only to the same extent as Aproove would be responsible for Aproove resources under the Agreement.
- 21.2.** If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of the Agreement.

- 21.3.** Except for actions for nonpayment or breach of Aproove's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.
- 21.4.** You shall obtain at Your sole expense any rights and consents from third parties necessary for Your Content, as well as other vendor's products provided by You that You use with the Services, including such rights and consents as necessary for Aproove to perform the Services under the Agreement.
- 21.5.** You agree to provide Aproove with all information, access and full good faith cooperation reasonably necessary to enable Aproove to provide the Services and You will perform the actions identified in the Order Form as Your responsibilities.
- 21.6.** You remain solely responsible for Your regulatory compliance in connection with Your use of the Services. You are responsible for making Aproove aware of any technical requirements that result from Your regulatory obligations prior to entering into an order governed by the Agreement. Aproove will cooperate with Your efforts to determine whether use of the standard Aproove Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Aproove or changes to the Services.
- 21.7.** Aproove may audit Your use of the Services (e.g., through use of software tools) to assess whether Your use of the Services is in accordance with the Order Form and the terms of the Agreement. You agree to cooperate with Aproove's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 calendar days of written notification any fees applicable to Your use of the Services in excess of Your rights. If You do not pay, Aproove can end Your Services and/or the Agreement. You agree that Aproove shall not be responsible for any of Your costs incurred in cooperating with the audit.
- 21.8.** The purchase of Cloud Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other order. You understand that You may purchase Cloud Services, Professional Services, or other service offerings, programs or products independently of any other order. Your obligation to pay under any order is not contingent on performance of any other service offerings or delivery of programs or products.
- 21.9.** A failure by either Party at any time to require the performance of any obligation hereunder or enforce any provision hereof shall neither be construed as a waiver of any right or remedy hereunder nor in any way affect the validity of this Agreement or any part hereof. No waiver shall be effective unless given in writing, and no waiver of a breach of this Agreement shall constitute a waiver of any preceding or subsequent breach.
- 21.10.** The Agreement may be executed in counterparts each of which shall be deemed an original Agreement for all purposes, including the judicial proof of any of the terms hereof; provided, however that all such counterparts shall constitute one and the same Agreement. The Agreement may be transmitted by facsimile, email or other electronic means and it is the intent of You and Aproove for the facsimile, scan, electronic or photocopy thereof of any signature to be an original signature and for the facsimile, scan, electronic or a photocopy thereof and any complete facsimile, scan, electronic photocopy of the Agreement to be deemed an original agreement for all legal purposes.
- 21.11.** Electronic Signatures. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether

mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

- 21.12.** Either Party shall not hire or solicit for employment any employee or personnel of the other Party during the Duration hereof and for one (1) year thereafter.

## **22. ENTIRE AGREEMENT**

- 22.1.** You agree that the Agreement and the information which is incorporated into the Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Order Form, is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services. Nothing in the Agreement excludes or limits Aproove’s liability for deceit or fraudulent misrepresentation.
- 22.2.** It is expressly agreed that the terms of the Agreement and any Aproove order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Aproove document and no terms included in any such purchase order, portal, or other non-Aproove document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an Order Form and this Approve Work Management Cloud Services Agreement, the Order Form shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in the Order Form. Except as otherwise permitted in ‘Service Specifications’, ‘Data Protection’ and ‘Third Party Web Sites’ Sections with respect to the Services, the Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of You and of Aproove. No third party beneficiary relationships are created by the Agreement.

## **23. GOVERNING LAW AND JURISDICTION**

- 23.1.** The Agreement (including matters of construction, enforcement, and performance) and any claim, controversy or dispute arising under, related to or in connection with this Agreement, the relationship of the parties to this Agreement, and/or the interpretation and enforcement of the rights, duties and obligations of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regards to its choice of laws principles that would require the application of the laws of another jurisdiction).
- 23.2.** You and Aproove agree to the exclusive jurisdiction of the Federal and State courts located in New York, New York and agree to submit to the exercise of personal jurisdiction of such courts for the purposes of any applicable claim or action.

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