

# Software Supply Statement of Work

(for the licencing of ProPM only)

**Remove following before final issue**

**Notes :**

- 1. Search for '[' for optional text/clauses or text review. Optional/review text in italics. Remove Italics and square brackets prior to issue**
- 2. Tracking is switched on – Leave on until reviewed by Management, so that changes can easily be seen**
- 3. All Agreements must be approved by management prior to issue**

**Issued by:**

## ProStrategy

**Cork Office:**

Cork Road, Fermoy, Co. Cork

**Dublin Office:**

5 Orchard Business Centre, 2009 Orchard Avenue,  
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**Date:**

DD/MM/YYYY

**Contact**

Click or tap here to enter text.

**Phone**

+353 8x xxxxxxxxxx

**Email**

xxxxxxxxxx@prostrategy.ie

This Agreement is dated: [DD/MM/YYYY]

## **PARTIES**

**PROSTRATEGY-COLMAN LIMITED** an Irish registered company (CRO. No. 106508) whose registered office is at The Monastery, Cork Road, Fermoy, County Cork (“PSC”).

AND

[**Customer name**] an Irish registered COMPANY (CRO. No. [xxxxx]) of [Customer registered address] (“Customer” or “You”).

## **BACKGROUND**

- A. PSC is providing You with a Subscription to ProPM, which incorporates an IBM Embedded Solution, on the terms of this document and the General Terms.
- B. PSC is duly authorised by IBM to grant a licence to use the IBM Embedded Solution on the terms of this ProPM Subscription Agreement.

### **1. THE GENERAL TERMS**

The General Terms consist of the Customer Agreement signed between the Parties.

For Customers who have signed contracts prior to the 1<sup>st</sup> of September 2022, The General Terms consist of the Customer Agreement and the Supply Agreement for Software signed between the Parties.

In the absence of one or more of the appropriate signed agreements then the General Terms are set out in the ProStrategy General Terms of Business available here (<https://www.prostrategy.ie/terms-and-conditions/>).

This Software Supply Statement of Work and the incorporated Maintenance Plan Statement of Work and Customer Success and Support Statement of Work (“The SOWS”) describe Software that is being licenced by the Customer and/or a service that is being provided by a third party and details of the Maintenance Plan and Support Plan (where applicable) and is subject to the General Terms.

Furthermore, unless otherwise stated herein, any terms and/or conditions contained in this document are in addition to the clauses in the General Terms which shall also apply to this document mutatis mutandis. Acceptance of The SOWS (“This Agreement”) constitutes acceptance of the General Terms.

## 2. DEFINITIONS

**IBM:** third party provider of the IBM embedded solution.

**IBM Cloud Service:** the IBM cloud service is an IBM offering made available via a network licenced to the customer by PSC when licencing ProPM. IBM cloud services are designed to be available 24/7, subject to maintenance.

**IBM Cloud Service Description:** the IBM cloud service is provided by IBM on the terms described in this IBM cloud service description link that follows (find IBM Planning Analytics with Watson on the linked page -- <https://www-03.ibm.com/software/sla/sladb.nsf/sla/sd>)

**IBM Embedded Solution:** IBM embedded software or IBM cloud service that ProPM requires to operate.

**IBM Embedded Software:** the embedded software licensed to the customer by PSC when licencing ProPM.

**ProPM:** PSC provided solution as is more particularly described below.

**ProPM Subscription:** right to access and use ProPM for a period of time subject to the payment of a recurring fee

**ProPM Subscription Agreement:** This Agreement a) granting a licence to the Customer to use ProPM and b) providing a support service.

## 3. PROPM

3.1. ProPM is a PSC branded Analytics Software offering that a) is powered by an IBM Embedded Solution and b) incorporates Support Plan Services, all of which are more particularly described below.

3.2. The Customer accepts This Agreement by ordering, using, or making a payment for ProPM. When PSC accepts the Customer's order, PSC provides the Customer with the authorisations specified in This Agreement.

3.3. The Customer is not authorised to use the IBM Embedded Solution separately from ProPM. If separate access to the IBM Embedded Solution is required, then the Customer agrees to enter into an additional licence or subscription agreement.

3.4. Where ProPM is provided as an IBM Cloud Service

3.4.1. The IBM Cloud Service will be provided by IBM. PSC will manage the IBM Cloud Service and will be the single point of contact for all Customer requests.

3.4.2. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the IBM Cloud Service and generally available user guides and documentation to support the Customer's use of the IBM Cloud Service.

3.4.3. The Customer will provide hardware, software and connectivity to access and use the Cloud Service, including any required Customer-specific URL addresses and associated certificates.

- 3.4.4. The Customer may access the IBM Cloud Service only to the extent of authorisations acquired by the Customer for ProPM. The Customer is responsible for the use of IBM Cloud Services by any user who accesses the IBM Cloud Service with the Customer's account credentials.
- 3.4.5. The IBM Cloud Service is provided by IBM on the terms described in this IBM Cloud Service Description link that follows (Find IBM Planning Analytics on the linked page)

<https://www-03.ibm.com/software/sla/sladb.nsf/sla/sd>

#### **4. CONTENT AND DATA PROTECTION**

##### 4.1. In relation to where ProPM is provided as an IBM Cloud Service;

- 4.1.1. Use of ProPM will not affect the Customer's ownership or license rights in the Content. PSC, its suppliers and contractors, may access and use the Content solely for the purpose of providing and managing ProPM.
- 4.1.2. PSC will return or remove Content from the IBM computing resources upon the expiration or cancellation of the ProPM Subscription, or earlier upon the Customer's request. PSC may charge for certain activities performed at the Customer's request (such as delivering Content in a specific format). Content is not archived, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices as described in the IBM Cloud Service Description.
- 4.1.3. The Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, PSC, its suppliers and contractors, to use, provide, store and otherwise process Content in the Cloud Service. This includes the Customer making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated data in such Content.
- 4.1.4. Upon request by either party, PSC and the Customer, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree that such additional agreements will be subject to the terms of this ProPM Subscription Agreement.
- 4.1.5. The IBM Data Processing Addendum (DPA) terms apply to the processing of Customer personal data by IBM and prevails over any conflicting terms of this ProPM Subscription Agreement. The DPA can be viewed at the link that follows.

<https://www.ibm.com/support/customer/csol/terms/?cat=dpa>

## 5. PROPM SUBSCRIPTION

- 5.1. In consideration of the Fee paid by the Customer to PSC,
  - 5.1.1. PSC grants to the Customer a non-exclusive non-transferrable licence to use the ProPM subject to the terms and conditions of this ProPM Subscription Agreement up to the level of Authorised Use and for the Term specified below:
    - 5.1.1.1. in object code form or as a Cloud Service;
    - 5.1.1.2. in accordance with the other conditions of the General Terms;
    - 5.1.1.3. within the Customer's legal entity only and not to any Affiliate unless otherwise expressly agreed;
- 5.2. In relation to the scope of use of ProPM:
  - 5.2.1. for the purposes of clause 5.1.1, use of ProPM shall be restricted to use of ProPM in object code form or as an IBM Cloud Service for the purpose of processing the Customer's data for the normal business purposes of the Customer.
  - 5.2.2. the Customer may not use ProPM other than as specified in clause 5.2.1 without the prior written consent of PSC and the Customer acknowledges that additional fees may be payable on any change of use approved by PSC.
  - 5.2.3. the Customer has no right (and shall not permit any third party) to copy, adapt, reverse compile or engineer, decompile, disassemble, modify, adapt or make error corrections or translations of ProPM in whole or in part.
  - 5.2.4. the Customer may not use ProPM for a service bureau application.
  - 5.2.5. The Customer is responsible for complying with all applicable export and import laws and regulations.
- 5.3. In relation to assignment and sub-licensing:
  - 5.3.1. the Customer has no right to sub-license or to assign the benefit or burden of this ProPM Subscription Agreement in whole or in part, or to distribute, rent, lease, license, transfer or sell ProPM to any other party or allow ProPM to become the subject of any charge, lien or encumbrance without the prior written consent of PSC and any attempt to do any of the foregoing without such consent is void.
  - 5.3.2. PSC may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this ProPM Subscription Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer.
- 5.4. The Customer shall permit PSC or its auditor to inspect and have access to any premises, and to the computer equipment located there, at or on which ProPM is being kept or used, and any records kept pursuant to this ProPM Subscription Agreement, for the purposes of ensuring that the Customer is complying with the terms of this ProPM Subscription Agreement, provided that PSC provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## 6. LICENCES & COSTS:

### **SCHEDULE 1 SETS OUT DETAILS OF THE LICENCES BEING GRANTED AND ASSOCIATED COSTS IN RELATION TO THIS AGREEMENT**

- All costs are exclusive of VAT which shall be applied at time of invoicing.
- All annual subscriptions will be automatically extended unless written notice of the Customer's intention to cancel is received by PSC forty-five days prior to the renewal date.
- By signing This Agreement, you are placing an order with PSC to provide the software licences set out in Schedule 1.

### **THE SIGNATORIES TO THIS AGREEMENT**

Signed for and on behalf of PSC

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Signed for and on behalf of Customer:

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## Schedule 1 - Details of the Licences Being Granted and Associated Costs

### 1 ProPM Overview

ProPM is ProStrategy's Business Performance Management Application. Powered by IBM Planning Analytics, it delivers Integrated Financial Planning and Reporting for Profit & Loss, Balance Sheet and Cashflow

### 2 Licences / Authorised Use

IBM Planning Analytics Digital Pack IBM Planning Analytics Digital Pack offers a scaled-down entry point containing the core components of the IBM Planning Analytics Cloud Service. This Cloud Service includes

- a. One (1) IBM Planning Analytics Digital Pack Production Instance, including:
  - i. Up to thirty-two gigabytes (32GB) of memory (RAM) for the TM1 database tier
  - ii. Up to four (4) core processors
  - iii. Two hundred gigabytes (200GB) of shared folder space for the TM1 database tier
- b. Five (5) IBM Planning Analytics Digital Users
- c. Three (3) of the five (5) IBM Planning Analytics Digital Users permitted access to Remote Desktop Protocol functionality on which the Cloud Service is deployed. Remote Desktop Protocol functionality includes:
  - i. Create, modify, and/or delete TM1 database objects
  - ii. Manage security (users/groups/privileges) i126-6398-09 (06-2020) Page 2 of 8
  - iii. Execute processes and schedule chores
  - iv. Access server performance information (metrics cubes and server logs)
  - v. Create and manage workflow

### 3 Term and Renewal

#### a. Initial Term

12 months starting on the date of This Agreement.

#### b. Renewal of Term

Automatic renewal at the end of the Initial Term for a further 12 months and annually thereafter.

### 4 Commencement Date (the date that This Agreement becomes effective):

The date of This Agreement set on page 2 above.

### 5 Fees

**Standard Annual Fees for ProPM Subscription:** [€xxxxxxx]

Note: the fees specified are for the initial term and may increase from time to time as per the terms of This Agreement.