ProQure PLATFORM – TERMS OF USE AND LICENSE AGREEMENT (TULA)

1. OBJECT OF TULA

- 1.1 This Terms of Use and License Agreement ("TULA") applies to each registered user ("Licensee") of the cloud based platform PROQURE PLATFORM ("InSight") provided by ProQ Australia Pty. Ltd., located at L2, 456 Fitzgerald St. North Perth WA 6006, and/or ProQure Inc., located at 349 MAIN STREET (SUITE 201), PLEASANTON, CA 94566, USA (individually and/or together referred to as "ProQure").
- 1.2 By using InSight Licensee is able to manage a group of physical or digital Enablers linked to a digital experience through NFC, QR, URL, WiFi, Bluetooth or any other connectivity protocol ("Enablers"), and to manage the content associated with those Enablers ("Enabler-Data") and use further functionalities of InSight.
- 1.3 This TULA sets out the terms applicable for the use of InSight by Licensee and the rights and obligations of ProQure and Licensee (ProQure and Licensee together as "Parties" or individually as "Party").
- 1.4 In this TULA, ("**Order Form**") indicates an ordering document or online order specifying the Services to be provided hereunder that is entered into between Licensee and ProQure, including any addenda and supplements thereto. Purchased Services indicates Services that Licensee purchases under an Order Form, as distinguished from those provided pursuant to a free trial ("**Purchased Services**").

1.5 In this TULA, ("Interaction Data") indicates data generated as a result of an interaction by a networked device with an Enabler.

2. CHANGES TO TULA

2.1 These Terms are a binding agreement between Licensee and ProQure. ProQure reserves the right to modify this TULA at any time and without prior notice by publishing the most current version of the TULA on the following website:

http://www.proqure.io. Licensee's use of InSight and related services is governed by the version of the TULA in effect on the date InSight is accessed by Licensee.

3. USER ACCOUNT

- 3.1 Use of InSight requires the registration of a user account. There is no right to registration. ProQure reserves the right to reject applications for registration without giving any reason.
- 3.2 InSight is a business platform for business customers of ProQure. Therefore, consumers as well as minors and persons with limited legal capacity are not permitted to register.
- 3.3 Licensee may apply for several user accounts for named employees of Licensee ("Named Users"). These Named User accounts shall be deemed user accounts of Licensee and Licensee shall be fully liable for all Named User accounts.
- 3.4 ProQure will grant the access to and use of InSight to registered users.

4. REGISTRATION PROCESS

- 4.1 During the registration process Licensee applies for access to InSight by issuing a respective request to ProQure (by e-mail or telephone) containing a valid e-mail address of Licensee and all Named Users ("Licensee Data").
- 4.2 Upon acceptance of Licensee's registration request ProQure will provide Licensee with passwords linked to the email addresses of Licensee and the Named Users.

5. RESPONSIBILITY FOR LOGIN DATA

- 5.1 Licensee is obliged:
- 5.1.1 to keep all registration data according to section 4.2 ("Login Data") confidential, not to communicate or disclose the Login Data to third parties (including without limitation other individuals within its organization, company or legal entity) and to protect the Login Data against intentional or accidental notice by third parties. No third party must be enabled to use the Login Data;
- 5.1.2 to inform ProQure immediately if Licensee has reason to assume that third parties have become aware of the Login Data or has indications of any form of unauthorized use of the Login Data;
- 5.1.3 not to provide access to InSight to third parties.
- 5.2 Licensee shall ensure that Named Users also comply with the obligations according to section 5.1.
- 5.3 ProQure shall not be liable for any damages resulting from any unauthorized use of InSight by third parties.

5.4 Licensee shall be fully liable for each and every use or abuse of InSight and related software, computer systems and services which may be executed using Licensee's or a Named User's Login Data, unless Licensee can prove that such unauthorized use was not caused by actual fault of Licensee.

6. UPDATE OF DATA

Licensee shall keep updated the Licensee Data at all times and shall inform

ProQure about any change of the Licensee Data by amending the Licensee Data in
the personal settings of InSight or, in case this is not possible, by sending the
amended Licensee Data to ProQure.

7. FEES AND PAYMENT FOR PURCHASED SERVICES

- 7.1 **Use.** Access to the InSight and access to Enabler-Data shall be purchased from ProQure according to ProQure's respective current pricing list.
- 7.2 **Fees.** Licensee will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on the number of Licensee Enablers and/or actual usage, as described in the Order Forms, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 7.3 **Invoicing and Payment.** Licensee will provide ProQure with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to ProQure. If Licensee provides credit card information to ProQure, Licensee authorizes ProQure to charge such credit card for all Purchased Services. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, ProQure will invoice Licensee in advance and otherwise in accordance with the relevant

Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. Licensee is responsible for providing complete and accurate billing and contact information to ProQure and notifying ProQure of any changes to such information.

- 7.4 **Overdue Charges.** If any invoiced amount is not received by ProQure by the due date, then without limiting ProQure rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) ProQure may condition future subscription renewals and Order Forms on payment terms shorter.
- 7.5 **Suspension of Service and Acceleration.** If any amount owing by Licensee under this or any other agreement for ProQure services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized ProQure to charge to Licensee credit card), ProQure may, without limiting ProQure other rights and remedies, accelerate Licensee unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend ProQure services to Licensee until such amounts are paid in full. Other than for customers paying by credit card or direct debit whose payment has been declined, ProQure will give Licensee at least 10 days prior notice that Licensee account is overdue, before suspending services to Licensee.
- 7.6 **Payment Disputes.** ProQure will not exercise ProQure rights under Section 7.4 (Overdue Charges) or 7.5 (Suspension of Service and Acceleration) above if Licensee is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 7.7 **Taxes.** ProQure fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessed by any jurisdiction whatsoever (collectively, "Taxes"). Licensee is responsible for paying all Taxes associated with

Licensee purchases hereunder. If ProQure has the legal obligation to pay or collect Taxes for which Licensee is responsible under this Section 7.7, ProQure will invoice Licensee and Licensee will pay that amount unless Licensee provides ProQure with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, ProQure is solely responsible for taxes assessable against ProQure based on ProQure income, property and employees.

7.8 **Future Functionality.** Licensee agrees that Licensee purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by ProQure regarding future functionality or features.

8. WITHDRAWAL OF ACCESS RIGHTS

- 8.1 ProQure is entitled to temporarily or permanently withdraw or limit Licensee's or a Named User's access rights to InSight, related services, and/or content provided via InSight, in particular Enabler-Data which were previously granted to Licensee by deactivating Licensee's or the respective Named User's Login Data if ProQure has reason to assume that Licensee itself or a Named User violates or has violated any provision of this TULA or applicable statutory provisions.
- 8.2 ProQure will inform Licensee via e-mail about a withdrawal of Licensee's or a Named User's access rights.
- 8.3 In case of a temporary withdrawal ProQure will reactivate Licensee's or the Named User's Login Data after expiration of an adequate time period corresponding to the respective (assumed) violation of the TULA or statutory provisions. ProQure will inform Licensee about the re-activation of the Login Data via email.

- 8.4 In case of a permanent withdrawal Licensee's or the Named User's Login Data cannot be re-activated and Licensee or the respective Named User shall be permanently excluded from the use of InSight.
- 8.5 Licensee's obligation to pay the agreed royalty, if any, shall remain unaffected by a withdrawal of Licensee's or a Named User's access rights. In case of a permanent withdrawal Licensee's payment obligation shall remain unaffected until this TULA has been validly terminated by either Party.

9. TERMINATION OF USE

- 9.1 This TULA is concluded for an indefinite term. ProQure may terminate this TULA for any reason upon ninety (90) days advance notice to the other Party. The notice may be issued by email. Licensee may terminate this TULA for any reason upon 4 weeks advance written notice, however, at the earliest sixty (60) days prior to the expiration of the Subscription Term agreed upon in the Order Form.
- 9.2 The Parties' right of termination for cause shall remain unaffected.
- 9.3 Upon the termination becoming effective ProQure is entitled to block Licensee's user account and disable Licensee's and the Named Users' Login Data.
- 9.4 ProQure is entitled to delete all of Licensee's data upon expiration of 90 days after the termination becomes effective and after the expiration of legal obligations to keep data records.

10. SERVICES AND AVAILABILITY

10.1 InSight services consist of making available Enabler-Data to Licensee via a web user interface accessible through the InSight website and providing query and reporting capabilities as well as tag license management services.

- 10.2 ProQure will use its best endeavors to provide access to InSight and all or certain parts of the Enabler-Data and related services subject to this TULA and applicable special terms. ProQure reserves the right to improve, expand, change or delete Enabler-Data in whole or in part (e.g. in relation to functionalities).
- 10.3 ProQure will use reasonable endeavors to hold access to InSight available to Licensee at any time. However, there may occur service interruptions or performance problems due to technical reasons, e.g. electricity shortfalls, emergency repairs, failure of telecommunication systems, maintenance, or network problems. ProQure will make reasonable efforts to minimize such disruptions where it is within ProQure's reasonable control.

11. RIGHTS OF USE

- 11.1 InSight and Enabler-Data are protected under copyright law and other statutory provisions. ProQure grants to Licensee the revocable, non-exclusive, non-transferable, worldwide right to access InSight and use the InSight functionalities provided by ProQure, including access to Enabler-Data, for its own internal business purposes provided that this use complies with the provisions of these TULA and applicable special terms of use as well as with applicable statutory provisions.
- 11.2 In case of a withdrawal of the registration or the termination of this TULA regardless of the reason the right of use set forth above will lapse, in case of a temporary withdrawal limited to the period of such withdrawal according to section 8.3.
- 11.3 Except as expressly permitted in this TULA, Licensee shall not (and shall not allow any third party to):

- 11.3.1 reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of any of the InSight or any part thereof; or
- 11.3.2 copy, modify, adapt, translate, enhance or otherwise create any derivative works or improvements of the InSight; or
- 11.3.3 bypass, breach, or disable any security device, copy control, or digital rights management tool, or other protection used by any of the InSight; or
- 11.3.4 develop, produce, market, distribute, license, sell, or otherwise make available any products or services, or any product or service components, that may or do compete with the InSight including any API's or development kits that are based upon or otherwise a modification to the InSight; or
- 11.3.5 provide, lease, lend, use for time sharing or otherwise use or allow others to use InSight, related services and/or content provided via InSight, in particular Enabler-Data, to or for the benefit of third parties.

12. NO ILLEGAL, HARMFUL OR OFFENSIVE USE

12.1 Licensee shall

12.1.1 refrain from any form of unauthorized use of InSight, related services, or content provided via InSight, in particular Enabler-Data, including but not limited to attempts made to overcome or circumvent the security mechanisms of InSight or to otherwise incapacitate them, using computer programs enabling automatic data readouts, as well as using and/or circulating viruses, worms, Trojans, brute force attacks, spam or using other links, programs or procedures that are suited to damage ProQure, InSight, content provided via InSight, in particular Enabler-Data, or other users; and

- 12.1.2 take all necessary and reasonable steps to prevent or limit damage caused by the use of InSight, related services, or content provided via InSight, in particular Enabler-Data, in particular to arrange for the regular backup of its own data outside InSight.
- 12.1.3 not use or cause or encourage others to use InSight for any illegal, harmful or offensive purposes. This includes transmitting, storing, displaying, distributing or otherwise making available content that is illegal, harmful or offensive, such as: (i) content that infringes or misappropriates any third party or third party rights, in particular intellectual property rights; (ii)content that is defamatory, obscene, abusive, invasive of privacy, racist, sexually explicit, liable to have an undesirable influence on the moral development of young people or otherwise objectionable.
- 12.1.4 perform or cause or encourage others to perform any activity that may impair frictionless operation of InSight, including but not limited to (a) Denial of Service (DoS) attacks, (b) overloading the system by mail bombing, news bombing, broadcast attacks, or flooding techniques; or (c) monitoring or crawling techniques.

13. DATA PROTECTION

- 13.1 All data provided by ProQure via InSight are non-personal data.
- 13.2 Licensee may collect, process or use personal data in the context of using InSight. Personal data shall have the meaning provided in Data Protection Directive 95/46/EC.

Any Licensee that collects personal data shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to (a) the size, scope and type of business of the Licensee obligated to safeguard the personal data under such comprehensive information security

program; (b) the amount of resources available to such Licensee; (c) the amount of stored data; and (d) the need for security and confidentiality of both consumer and employee information. The safeguards contained in such a program must be consistent with the safeguards for protection of personal data and information of a similar character set forth in any state or federal regulations by which the Licensee who collects such information may be regulated.

13.3 ProQure may retain and use Interaction Data, subject to the terms of its privacy policy (located at https://www.proqure.io/). ProQure will not share Interaction Data with any third parties unless ProQure: (i) has Licensee's consent for any Interaction Data; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of Interaction Data is reasonably necessary to protect the rights, property or safety of ProQure, its users or the public.

14. NO WARRANTIES, INDEMNITIES OR LIABILITIES

14.1 ProQure shall neither be held liable for third party content, nor shall it be liable for any damages or other failures resulting from any defects of Licensee's software or hardware or their incompatibility with InSight. ProQure shall also not be liable for any damages or other failures resulting from the fact that the Internet was not available or malfunctioning.

14.2 The use of InSight and the respective services requires the use of special technical systems such as end user devices, software programs, transmission networks, telecommunications and other services provided by third parties, all of which may entail further costs. ProQure does not provide such end user devices, software programs, communication channels, telecommunications services or other services and therefore will not assume any liability for such services provided by third parties

14.3 INSIGHT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

14.4 NOTWITHSTANDING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROQUED OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES, WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, THE CLAIMS OF THIRD PARTIES, OR OTHER PECUNIARY LOSS, ARISING OUT OF THE USE OF OR INABILITY TO USE INSIGHT, OR ARISING OUT OF THIS AGREEMENT, EVEN IF PROQUED OR ITS REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. NO ASSIGNMENT

Licensee shall not be entitled to assign any rights or claims under this TULA without the prior written consent of ProQure.

16. NO REPRESENTATION

The registration does not authorize either of the Parties to make any legally binding declarations on behalf of both Parties together, or on behalf of the respective other

Party, nor does it authorize them to place the respective other Party under any obligation or to represent it in any other way.

17. NO SET-OFF

Except as otherwise provided in this TULA, no Party shall be entitled to set-off any claims it may have under this TULA against any claims any other Party may have under this TULA unless the rights or claims of the Party claiming a right of set-off are not disputed or have been confirmed by final decision of a competent court or arbitral tribunal or – if claimed in legal proceedings – a decision on the rights and claims of the Party can be taken in the last oral hearing.

18. CHOICE OF LAW AND JURISDICTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of Western Australia, without regard to its conflict of laws rules. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Exclusive place of jurisdiction for all disputes regarding rights and duties under this TULA, including its validity, shall be the City of Perth, Western Australia.

19. SEVERABILITY

Should one or more provisions of this TULA be or become invalid or unenforceable, this shall not affect the validity and enforceability of the remaining provisions of this TULA. The same shall apply if the TULA does not contain an essential provision. In lieu of the invalid or unenforceable provision, or to fill a contractual lacuna, such valid and enforceable provision shall apply which reflects as closely as possible the commercial intention of the Parties as regards the invalid, unenforceable or missing provision.