



## PROCORE SUBSCRIPTION TERMS

These terms, including the attached Exhibit(s) (collectively, "**Terms**") are entered into as of the effective date listed on the attached Order Form ("**Effective Date**") between **PROCORE TECHNOLOGIES, INC.**, a Delaware corporation, having its principal place of business at 6309 Carpinteria Avenue, Carpinteria, CA 93013 ("**Procure**" or "**Party**") and the customer identified on the attached Order Form ("**Customer**" or "**Party**") (collectively the "**Parties**").

In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

**1. BACKGROUND.** Procure has developed certain construction project management Software (defined below), to which it provides access as part of its Services (defined below). Customer wishes to enter into this Agreement for a subscription to the Services identified in an Order Form. Procure desires to make those Services available to Customer subject to the terms of the Agreement.

**2. DEFINITIONS.** The capitalized terms listed below shall have the following meanings:

**2.1 "Agreement"** shall mean, collectively, the terms of the attached Order Form and these Terms.

**2.2 "Authorized User"** shall mean any individual who is authorized by virtue of such individual's relationship to, or permissions from, Customer, to access and use the Services pursuant to Customer's rights under the Agreement.

**2.3 "Construction Volume"** shall mean the aggregate dollar value of the construction work performed, planned or put in place by Customer for all Customer Projects during a given time period, most often a one-year period.

**2.4 "Customer Content"** means any content created by or on behalf of Customer or an Authorized User in connection with the Services and Customer Projects.

**2.5 "Customer Data"** means the data provided by Customer to Procure regarding Authorized Users.

**2.6 "Customer Project"** means each distinct construction project constrained by a specific scope, budget and schedule, as specified in a construction project agreement. The Project life cycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, and closeout. Procure considers projects in the construction phase to be subject to restriction in number by "project caps" within an Order Form that specify how many simultaneous projects may be managed under the terms of a Procure subscription. The construction phase is considered to commence with the bid and award process, and is considered to be complete upon the project owner's written acknowledgement of substantial completion, or the award of a certificate of occupancy from the local regulatory or governmental authority responsible for determining substantial completion.

**2.7 "Documentation"** means the online screen-share demonstration materials, marketing collateral and other materials in written or electronic form provided to Customer by Procure in connection with Customer's subscription to the Service.

**2.8 "Enhancements"** shall mean the following: minor modifications, revisions and corresponding Documentation with respect to the Services, including the addition of enhancements or improved performance made available by Procure to the Services; however, Enhancements shall not include the addition of New Features not originally included as part of the Services described on a particular Order Form.

**2.9 "Maintenance Modifications"** means bug fixes, patches, modifications or revisions to the Services that correct errors therein and does not include New Features not originally included as part of the Services described on a particular Order Form.



**2.10** “**New Features**” means those significant technological or service features and/or tools which Procure develops over time which shall be offered to Customers as additional features for a fee and shall be distinct from included Enhancements and Maintenance Modifications.

**2.11** “**Order Form**” means the order form document signed by both Parties that is attached to these Terms, on which the Customer is identified and that specifies certain other agreed upon terms including Customer’s specific subscription information pertaining to the Services.

**2.12** “**Service(s)**” means Procure’s distinct services purchased by Customer as specified on the Order Form.

**2.13** “**Site**” means app.procure.com and all associated Procure mobile applications.

**2.14** “**Software**” means Procure’s software programs and any associated user interfaces and related technology that Procure uses to provide the Services and that Procure makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

**2.15** “**Subscription Fee**” means the agreed upon subscription fee for the Services as stated in the Order Form

### **3. PROVISION OF SERVICE/RESPONSIBILITIES.**

**3.1 Subscription Rights and Access.** Procure grants Customer the nonexclusive limited-time subscription and right to use the Services in accordance with the Agreement. Further, Procure agrees that Customer may access and use, and to permit each Authorized User to access and use, the Service for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Projects and/or other use restrictions specified on each Order Form. Subject to Customer’s payment of the fees set forth in the Order Form, Procure shall provide to Customer the necessary passwords, security protocols and policies and network links or connections to allow Customer and its Authorized Users to access the Services. Procure shall provide the Customer and Authorized Users with (a) support for the Service as outlined in Exhibit A, and (b) access to Enhancements and Maintenance Modifications as they become available. Customer and its Authorized Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment and Internet service necessary for the use of the Site and Services. ALL OTHER RIGHTS NOT EXPRESSLY GRANTED IN THIS AGREEMENT ARE RESERVED BY PROCURE.

**3.2 Site Updates.** Procure may, in its sole discretion, change, modify, upgrade or discontinue any aspect or feature of the Site in whole or in part. Such changes, upgrades, modifications, additions or deletions will be effective immediately upon notice thereof, which notice may be made by posting such changes to the Site. Notwithstanding the foregoing, in the event Procure modifies or discontinues any content or feature of the Site which results in reduction of functionality or degradation of the Site, Procure shall provide comparable functionality. Procure shall, from time to time develop New Features which shall be offered to Customers for additional fees.

**3.3 Limitations.** Customer shall not, and shall not authorize or permit any Authorized User to (a) rent, loan or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users or permit Customer’s account to be accessed by individuals who are not Authorized Users; (d) access, use, or permit a third party to access or use the Services or Software for purposes of competitive analysis, including the development, provision or use of a competing Software or Service or for any other purpose that may be to Procure’s detriment or commercial disadvantage; or (e) use the Services in any way not expressly provided for in this Agreement. Customer shall be responsible for all activities that occur under Customer’s account and for all actions of Customer or its Authorized Users and both Customer and Authorized Users shall agree to use the Services in accordance with the Website Terms of Service. Customer shall notify Procure of any unauthorized



use of Customer's passwords or account or any other breach of security that is known or suspected by Customer. Customer and its Authorized Users shall abide by all applicable local, state, national and foreign laws and regulations in connection with their use of the Services. Customer shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users which contain terms that impose no less restrictions in all material respects than those imposed on Customer herein, including without limitation the provisions regarding the use of the Services and protection of ProcCore's intellectual property, and that includes additional terms as reasonably requested by ProcCore.

**3.4 Customer Content.** ProcCore will process Customer Content as instructed by Customer in order to perform the Services. The Parties acknowledge and agree that the Customer is at all times the data controller and ProcCore is a data processor. Customer represents and warrants that it has all necessary rights in the Customer Content to grant ProcCore the right to use, and Customer hereby grants ProcCore a non-exclusive, worldwide, royalty-free and fully paid license to use, the Customer Content as necessary for ProcCore to provide the Services. All rights in and to the Customer Content not expressly granted to ProcCore in this Agreement are reserved by Customer. Customer represents and warrants that any Customer Content hosted by ProcCore as part of the Services shall not (a) infringe or violate the rights of any third party; (b) be deceptive, defamatory, obscene or unlawful; or (c) contain any viruses, worms or other malicious computer programming codes intended to damage ProcCore's system or data. Customer agrees that any use of the Services by Customer or Authorized Users contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. The Parties agree that ProcCore does not and cannot review all Customer Content and shall not be responsible for such content but that ProcCore shall have the right to delete, move or edit any Customer Content that ProcCore may determine, in its sole discretion, violates or may violate any applicable law or regulation, this Agreement or is otherwise unacceptable.

**3.5 Customer Data.** ProcCore will process Customer Data as instructed by Customer in order to perform the Services. The Parties acknowledge and agree that the Customer is at all times the data controller and ProcCore is a data processor. Customer represents and warrants that Customer shall only provide to ProcCore the minimum amount of personally identifiable information for each Authorized User to enable such Authorized User to enjoy the benefit of this Agreement. Customer represents and warrants that Customer is entitled to transfer relevant Customer Data to ProcCore so that ProcCore may lawfully use, process and transfer the Customer Data in accordance with this Agreement on the Customer's behalf and Customer shall ensure the same; Customer shall ensure that the relevant third parties including data subjects have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; Customer acknowledges that ProcCore is reliant on the Customer for direction as to the extent to which ProcCore is entitled to use and process the Customer Data. ProcCore shall process the Customer Data only in accordance with the terms of this Agreement and any written instructions given by the Customer from time to time. Customer acknowledges and agrees that the Customer Data may be transferred or stored in the United States of America in order to carry out the Services and ProcCore's other obligations under this Agreement. ProcCore will not be liable for any claim brought by an Authorized User arising from any action or omission by ProcCore, to the extent that such action or omission resulted from the Customer's instructions.

**3.6 Customer Acknowledgement.** As of the Effective Date, Customer acknowledges and agrees that an authorized representative of Customer has evaluated the features and functionality of the Services in a means satisfactory to Customer and accepts that the Services have been demonstrably shown to have all of the features and functionality that have been represented to Customer.

**3.7 Non-ProcCore Applications.** ProcCore or third parties may make available third-party products or services ("**Non-ProcCore Applications**"). Any use by Customer and any exchange of data between Customer and the provider of Non-ProcCore Applications is solely between Customer and the applicable provider. ProcCore does not warrant or support Non-ProcCore Applications or other non-ProcCore products or services. If Customer installs or enables a Non-ProcCore Application for use with the Services, Customer hereby grants ProcCore permission to allow the provider of that Non-ProcCore Application to access Customer's data as required for the interoperation of that Non-ProcCore Application with the Services. ProcCore is not responsible for any disclosure, modification or deletion of any of Customer's data resulting from access by a Non-ProcCore



Application. The Services may contain features designed to interoperate with Non-ProcCore Applications. To use such features, Customer may be required to obtain access to Non-ProcCore Applications from their providers, and may be required to grant ProcCore access to Customer's account(s) on the Non-ProcCore Applications. If the provider of a Non-ProcCore Application ceases to make the Non-ProcCore Application available for interoperation with the corresponding Service features on reasonable terms, ProcCore may cease providing those Service features without entitling Customer to any refund, credit, or other compensation.

**3.8 Beta Services.** From time to time, ProcCore may invite Customer to try certain beta services, including pilot, limited release, developer preview, non-production or evaluation services ("**Beta Services**") at no charge. Customer, in its sole discretion, may accept or decline any such trial. Beta Services will be clearly designated as such by ProcCore. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. ProcCore may discontinue Beta Services at any time in ProcCore's sole discretion and may never make them generally available. ProcCore will have no liability for, and Customer hereby releases ProcCore from, any liability or damage arising out of or in connection with any Beta Service.

#### **4. PAYMENT.**

**4.1** Customer shall pay ProcCore the amounts specified on the Order Form. Unless otherwise specified, all payments shall be due thirty (30) days from the date of invoice. Overdue payments shall be subject to a late fee of one and one-half percent (1.5%) for each month or fraction thereof that the payment is overdue, or the highest interest rate permitted by applicable law, whichever is lower. In addition to any other remedies available to ProcCore, ProcCore shall be entitled to discontinue provision of the Services until all overdue amounts due are paid in full. Except for any failure to provide the Services as provided herein, all payments to ProcCore are non-refundable. Specifically, Customer's loss of construction business or Customer's failure to use the Services shall not be cause for any refund to Customer from ProcCore. ProcCore shall be entitled to be reimbursed by Customer for its collection costs incurred in attempting to collect any late payments, including reasonable attorney's fees.

**4.2** The prices stated in ProcCore's quotations are exclusive of any federal, state, or other governmental taxes, duties, fees, or tariffs now or hereafter imposed on the Services. Customer shall be responsible for, and if necessary reimburse, ProcCore for all such taxes, duties, fees, excises, or tariffs on any amounts payable by Customer hereunder, except for taxes imposed on ProcCore's net income.

**4.3** ProcCore shall have the right to audit Customer's Construction Volume (as specified in the Order Form) to ensure compliance with agreed upon terms and pricing. ProcCore will give Customer at least ten (10) days advance notice of any such audit and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations. Such audit shall be at ProcCore's expense, provided however that if any such audit should disclose any underpayment by Customer, Customer shall immediately pay ProcCore such underpaid amount, together with interest thereon at the rate specified in Section 4.1, and Customer shall also pay ProcCore for ProcCore's expenses associated with such audit.

#### **5. TERM/TERMINATION.**

**5.1 Term.** This Agreement shall commence on the Effective Date and shall remain in effect for the initial term specified in the Order Form ("**Initial Term**"), unless earlier terminated as provided herein. Upon the expiration of the Initial Term, this Agreement shall automatically be renewed for the same period (each a "**Renewal Term**") at a price to be agreed upon billed thirty (30) days in advance of the renewal date unless otherwise elected by either Party by providing written notice to the other received at least sixty (60) days prior to the expiration of the Term as then in effect. The Initial Term and any Renewal Terms are collectively referred to as the "Term".



**5.2 Termination.** Either Party may terminate this Agreement upon (1) any material breach of this Agreement by the other Party that is not cured within thirty (30) days (ten (10) days in case of failure to pay) following written notice thereof; (2) the other Party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business; or (3) in the event of a breach of Section 12.3. Upon expiration or termination of the Agreement or Services authorized in an Order Form, Customer will immediately discontinue all access and use of the Services. In the event Customer terminates the Agreement for a material and uncured breach by Procure, Procure shall, as Customer's sole and exclusive remedy, refund to Customer any prepaid but unused Subscription Fees calculated on a straight-line prorated basis for the remainder of the then current Term. Those Sections of the Agreement, which by their nature should survive, shall survive, including but not limited to a Party's obligations governing indemnification, Confidentiality, Privacy and Customer's obligation to pay outstanding Subscription Fees. In addition to any other remedies available to Procure, Procure may suspend Customer's or any Authorized Users' access to the Services, at Procure's sole option, in the event of any violation of this Agreement. Upon termination of this Agreement, Procure shall follow the data return procedures outlined in Exhibit A.

## **6. Proprietary Rights.**

Procure shall retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site and all copyrights in and to its content. The Site is copyrighted, trademarked or otherwise protected, and owned or licensed by Procure. Nothing in this Agreement grants Customer or any Authorized User an express or implied right to use any Procure intellectual property except as set forth in Section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procure in connection with use of the Service, will remain in and be the sole and exclusive property of Procure. Procure shall have the royalty-free right to use any suggestions, ideas, feedback or other recommendations provided by Customer or Authorized Users relating to the Service. Procure may use Customer's name and/or its logo on Procure's website and in its marketing materials to indicate that Customer is a client of Procure. Customer hereby grants Procure the right to contact Customer and Authorized Users in connection with their use of the Services unless otherwise stated in the Order Form.

## **7. WARRANTIES AND LIABILITY**

**7.1 Limited Warranty.** Each Party warrants to the other Party that it has all necessary authority to enter into and perform its obligations under this Agreement. Procure represents and warrants that (1) the Services will perform in accordance with the Documentation under normal circumstances, and (2) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry Standards. Provided that Customer notifies Procure of any breach of the foregoing warranty during the Term, Procure shall, as Customer's sole and exclusive remedy, provide the support services set forth in Exhibit A to this Agreement. The Services may contain links to sites on the Internet that are owned and operated by third parties. Customer acknowledges and agrees that Procure is not responsible for the availability of, or the content located on or through, any such external site.

**7.2 DISCLAIMER.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, PROCURE DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED. PROCURE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. PROCURE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE.

**7.3 LIABILITY.** PROCURE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. IN ANY EVENT, ASIDE FROM ITS OBLIGATIONS IN SECTION 8, PROCURE'S TOTAL MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID TO PROCURE BY CUSTOMER DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHICH MEANS THAT SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY. IN THESE JURISDICTIONS, PROCURE'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. THE LIMITATIONS SET FORTH IN THIS SECTION 7 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN



THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE AND UNDERSTAND THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT ABSENT SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY, THE TERMS AND CONDITIONS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

## **8. INDEMNITY.**

**8.1** During the Term, ProcCore will defend, indemnify and hold harmless Customer against any action claiming that the Services infringe any duly issued patent, copyright or trademark or misappropriate any trade secret. In addition, if the use of the Services infringes or is enjoined, or ProcCore believes it is likely to infringe or be enjoined, ProcCore may, at its sole option, (a) procure for Customer the right to continue use of the Services as furnished; (b) modify the Services to make them non-infringing, provided that they still substantially conform to the applicable Documentation; or (c) if ProcCore, after using all commercially reasonable efforts, is unable to accomplish the foregoing remedies, terminate the Agreement and refund to Customer any prepaid but unused Subscription Fees calculated on a straight-line prorated basis for the remainder of the then current Term. The intellectual property indemnity provided herein shall not apply to the extent the alleged infringement arises from any use of the Services not in accordance with this Agreement or as specified in the Documentation or any unauthorized modification of the Services. This section states ProcCore's sole and exclusive liability and Customer's sole remedies for any threatened or actual infringement of proprietary rights.

**8.2** During the Term, Customer will defend, indemnify and hold harmless ProcCore and its officers, directors, employees, agents, successors and assigns from and against any claims, damages, liabilities, judgments, settlements, losses, costs, or expenses of any kind, including reasonable attorneys' fees, arising out of (a) Customer Data, including any processing of Customer Data by ProcCore in accordance with this Agreement; (b) Customer's misuse of the intellectual property rights of any third party; and (c) any Customer Content that may violate section 3.4 of this Agreement.

## **9. CONFIDENTIALITY.**

Each Party agrees that during and after the existence of this Agreement it will hold in strictest confidence, and will not use for any purpose unrelated to its performance of this Agreement or disclose to any third party, any Confidential Information of the other Party. The term "**Confidential Information**" shall mean all non-public information, whether business or technical in nature, that the other Party designates as being confidential, or which under the circumstances of disclosure ought to be treated as confidential and shall include (but is not limited to) information concerning business methods, pricing, business plans, new product launches, customer and vendor information, internal policies and procedures and other financial information. Neither Party shall disclose the terms or conditions of this Agreement without the prior written consent of the other Party, except (i) as may be required by law or (ii) to its employees, contractors or agents who have a specific need to know such information and are under a written obligation of confidentiality at least as restrictive as that contained in this Section. Notwithstanding the foregoing, information will not be deemed confidential if it (i) was known to the receiving Party, and such information was acquired through proper methods, prior to its receipt from the disclosing Party, as evidenced by written records of the receiving Party; (ii) is now or (through no act or failure on the part of the receiving Party) later becomes generally known through no breach of this Agreement by the receiving Party; (iii) is supplied to the receiving Party by a third party that is free to make that disclosure without restriction; or (iv) is independently developed by the receiving Party without use of or reference to any Confidential Information provided by the disclosing Party. The restrictions on disclosure imposed by this Section shall not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party, provided that in each such case the receiving Party provides the disclosing Party with prompt written notice of such order or requirement and reasonably assists the disclosing Party, at the disclosing Party's expense, in seeking a protective order or other appropriate relief. Upon termination of the Agreement, each Party will promptly cease all further use of Confidential Information, return to the other Party all physical materials containing Confidential Information, whether the materials were originally provided by the disclosing Party or copied or otherwise prepared by the receiving Party, and erase or otherwise destroy any Confidential Information kept by either Party in electronic or other non-physical form. The Parties acknowledge that the receiving Party shall not be required to return to



disclosing Party or destroy those copies of Confidential Information residing on receiving Party's backup or disaster recovery systems or which must be maintained for regulatory or policy purposes. Such termination by either Party will not affect each Party's continuing obligations under this Section.

#### **10. Litigation Support.**

Procore shall not disclose Confidential Information, Customer Content, or Customer Data to third parties, but the restrictions on disclosure imposed by this Section shall not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party, provided that in each such case the receiving Party provides the disclosing Party with prompt written notice of such order or requirement and reasonably assists the disclosing Party, at the disclosing Party's expense, in seeking a protective order or other appropriate relief. In the event of any litigation or preparation for litigation related to Customer's use of the Services or related projects, if Customer or any agent or representative of Customer requires Procore to provide expert testimony on behalf of Customer or to gather data, research information, attend meetings, or perform other related services of any kind in support of Customer, Procore shall provide such services and Customer agrees to compensate Procore at the rate of \$300 per hour per individual providing the services, plus all reasonable out of pocket expenses, including but not limited to travel, lodging and meals where necessary

#### **11. Privacy.**

The Procore Privacy Policy is located at <http://www.procore.com/fine-print/privacy-policy.php> and may be amended from time to time. Any updates to the Privacy Policy will be posted to the Site and will be effective immediately upon posting on the Site. It is Customer's responsibility to review the Privacy Policy from time to time on the Site to ensure that Customer continues to agree with all of its terms. Customer's continued use of the Site following the posting of changes to the Privacy Policy will mean Customer accepts those changes.

#### **12. GENERAL.**

**12.1 Waiver/Amendment.** This Agreement may not be modified except by a written instrument signed by both Parties. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

**12.2 Assignment.** Neither Party may assign, delegate or otherwise transfer this Agreement, in whole or in part, voluntarily, involuntarily, by operation of law or otherwise without the other Party's prior written consent; provided, however, that: (a) Procore may assign, delegate or otherwise transfer this Agreement without such consent in connection with any merger, consolidation, reorganization, or any sale of all or substantially all of such Party's assets or any other transaction in which more than fifty percent (50%) of its voting securities are transferred ("**Change in Control**"); and (b) Customer may assign, delegate or otherwise transfer this Agreement upon any Change in Control with Procore's prior written consent and subject to all of the terms of this Agreement. Any attempt to assign, delegate or otherwise transfer this Agreement other than in accordance with this provision shall be null and void

**12.3 Compliance with Laws.** Both Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations including all applicable export and import laws and regulation in connection with their performance, access and/or use of the Services under this Agreement. Customer shall comply with all legal duties applicable to Customer including obligations as data controller by virtue of Customer's role in determining Authorized Users. Specifically, Customer must provide relevant persons and/or participants with all information Customer is required by law to provide, and, if necessary, must obtain the consent of these persons. Notwithstanding any other provision in this Agreement, Procore shall have the right to terminate this Agreement upon its reasonable determination that Customer is not in compliance with any laws.

**12.4 Governing Law/Attorneys' Fees.** The rights of the Parties hereunder shall be governed by the laws of the State of California, without giving effect to principles of conflicts of laws. Any suits brought



hereunder shall be brought in the federal or state courts serving Santa Barbara County. In the event of any claim, action or judicial proceeding arising under this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and expenses incurred in resolving such claim, action or judicial proceeding.

**12.5 Severability/Notice.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect. Any notice, consent, or other communication hereunder shall be in writing, and shall be given personally, sent via overnight delivery or sent via email with confirmation of receipt to either Party at their respective addresses set forth in the Order Form (or such other address as provided by that Party). Notices shall be deemed given when delivered.

**12.6 Independent Contractors.** The relationship of the Parties is that of independent contractors and nothing contained in this Agreement shall be construed to make either Party an agent, partner, joint venturer, or representative of the other for any purpose. This agreement is for the sole benefit of the parties hereto and their respective permitted successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**12.7 Force Majeure.** Nonperformance of either Party shall be excused to the extent that performance is rendered impossible by any reason where failure to perform is beyond the reasonable control of the non-performing Party.

**12.8 Entire Agreement/Survival.** This Agreement and any URLs contained herein, Exhibit(s) to the Agreement, and the Order Form(s) constitutes the entire agreement between the Parties with respect to the subject matter hereof and replaces any prior understandings, written or oral. Further, under no circumstances will the provisions of any document issued by Customer (including without limitation, any request for quotes or proposals, purchase orders, non-disclosure agreements, or Customer exhibits to the Agreement and/or vendor forms or registrations with terms that conflict with this Agreement) be deemed to modify, alter or expand the rights, duties or obligations of the Parties under this Agreement, regardless of any failure of Procure to object to such terms, provisions or conditions. If there is any conflict between the terms of this Agreement and the Order Form, the Order Form shall prevail. In addition to any rights that accrued prior to termination, the provisions of Sections 6-12 shall survive any termination of this Agreement.



## EXHIBIT A

### SUPPORT AND MAINTENANCE

#### 1. SERVICE LEVEL AGREEMENT

Procore has a service level objective for the Services of 99.9% availability, twenty four hours a day, seven days a week, 365 days a year. Downtime does not include (i) problems caused by factors outside of Procore's reasonable control, and (ii) unavailability of the Services during scheduled maintenance.

#### 2. SUPPORT

During the Term, Customer and Authorized Users shall have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours will be 8:00 a.m. to 8:00 p.m. Eastern Time (ET), Monday through Friday, excluding holidays. Support does not include training sessions on the features and functionality of the Services or training in computer skills considered prerequisite to an individual's ability to use personal computers, the Internet/World Wide Web and online software.

Upon Procore's receipt of a support request, Procore will use commercially reasonable efforts to answer questions and provide standard error corrections to known problems. In the event of any problems or errors involving the Services that Procore cannot immediately resolve, Procore will begin working on a resolution to the problem and will work diligently and in a commercially reasonable manner on the problem until it is resolved.

#### 3. DATA BACKUP AND RETURN

During the Term, Procore shall make commercially reasonable efforts to protect the security of Customer's data, and shall complete daily data backups of Customer's data to an archive format that shall be kept physically separate from the Procore database and web server hardware. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Procore has no obligation or liability for any loss, alteration, destruction, damage, corruption or recovery of Customer Content or Customer Data.

Procore contracts with a third-party data center provider to provide essential technology services such as network connectivity to the Internet for the servers running the Services. Personnel access to the data center used by Procore for these Services is restricted, and all entrances and common areas are monitored 24x7 via closed-circuit cameras. Public access to the data center is forbidden. Fire-suppression systems are located in the data center, and power systems in the data center are designed to run uninterrupted even in the event of a total power outage. All servers are supplied with Uninterruptible Power Supply ("UPS") power sources that will continue to run if utility power fails. The UPS power subsystem is fully redundant, with instantaneous fail over in case the primary UPS fails. In the event of an extended power outage, on-site diesel generators can run indefinitely. Generators are regularly tested to ensure functionality in the event of an emergency.

All Customer Content is the property of the Customer. Upon restriction, suspension or termination of a Customer account, and assuming there has been no material breach of this Agreement by Customer, Procore will allow Customer, at no additional cost, to export all of Customer Content as well any additional data which may be readily exported from the Services to a standard electronic file format. At Procore's sole discretion, a Customer's area within the Services may be kept active as long as the Customer is provided with "read-only" access. This access shall be accepted by Customer as a full substitute for a complete file export of Customer's project data.

#### 4. MAINTENANCE

**4.1 Unplanned Outages.** If a system failure should occur that creates an outage of the Services, Procore will utilize all reasonable means to end the outage as soon as possible. Outages due to the Internet, hosting providers and/or



Customer or Authorized User systems are outside the control of Procore and, in such event, Procore will assist the Customer or Authorized User in the diagnosis but may not be able to resolve the problem.

**4.2 Preventative Maintenance.** From time to time, Procore or its hosting providers will perform preventative maintenance, such as updating servers and routers with security patches, and software upgrades. Procore will provide notice prior to any interruption in the Services and will keep any resulting downtime reasonable. Procore shall use all reasonable efforts to perform such maintenance at hours convenient for the Customer and Authorized Users.