



## TermScout Certified Contract



Procore: Subscription and Services Agreement

This contract has been carefully reviewed and certified **Customer FAVORABLE** by TermScout, an independent contract rating company.

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### PROCORE SUBSCRIPTION AND SERVICES AGREEMENT

This Subscription and Services Agreement, including any Orders and SOWs, ("**Agreement**") is entered into as of the date of the last signature below ("**Effective Date**") between the applicable Procore contracting entity set forth in Section 11.5 ("**Procore**") and the customer identified on the Order ("**Customer**"). Procore and Customer may also be referred to herein individually as "**Party**" or together as the "**Parties**." Capitalized terms used but not otherwise defined herein have the respective meanings designated in Section 12. The Parties hereby agree as follows:

#### 1. PROVISION OF SERVICES

- 1.1. Access to Subscription Services. Subject to Customer's compliance with this Agreement, Procore shall make the Subscription Services available to Customer during the Subscription Term for Customer's internal business use (including, for example, to coordinate vendors on Customer's projects) in accordance with the Usage Metric on the applicable Order.
- 1.2. Evolving Procore Technology. Subject to Section 7.2(b), Procore may issue Updates for the Services during the Subscription Term. Customer agrees, however, that its purchase and use of the Subscription Services are not contingent on any future functionality or features, or dependent on any oral or written statements made by Procore or any of its Affiliates regarding future functionality or features.
- 1.3. Protection of Customer Data. Procore shall maintain the administrative, technical, and physical safeguards set out in Appendix B of the Data Processing Addendum ("**DPA**"). Where Customer's use of the Services includes the processing of Customer Personal Data, such use will be governed by the DPA. Customer shall only provide to Procore the minimum amount of personal data necessary to enable Customer to use the Services in accordance with this Agreement.
- 1.4. Beta Services. Procore may make certain Beta Services available to Customer at no charge. Customer may elect, at its option, to participate in any Beta Service. Customer's use of any Beta Service is subject to additional restrictions Procore specifies. If Customer participates in a Beta Service, it agrees to test and provide ongoing feedback about the Beta Service. Beta Services are solely for Customer's evaluation purposes and are subject to the use restrictions in Section 2.2. Unless otherwise stated, Customer's use of any Beta Service will end on the earlier of the date of such Beta Service's commercial release or the date Procore discontinues the Beta Service. Procore may change or discontinue Beta Services at any time without notice or liability. Procore may choose not to make Beta Services generally available. **Beta Services are not "Services" and are provided "as is." Any warranties or contractual commitments Procore makes for other Services do not apply to Beta Services. Procore and its Affiliates will have no liability or obligation for any damage or harm arising from or in connection with any Beta Service.**

#### 2. USE OF SERVICES

- 2.1. Customer's Responsibilities. Only Authorized Users are permitted to access and use the Services. Customer shall be solely responsible for (a) Authorized Users' compliance with this Agreement, any Order(s) issued hereunder, and any activities that occur as a result of Authorized Users' access to the Services; (b) the accuracy and quality of Customer Data, the means by which Customer acquired Customer Data, and obtaining appropriate usage rights with respect to Customer Data; (c) maintaining the confidentiality of Customer usernames, passwords, and other account information or access credentials (as applicable); and (d) ensuring Authorized Users use the Services only in accordance with the Documentation. Customer shall follow all requirements under applicable law, which may include providing notice and disclosures to Authorized Users and/or Data Subjects that Customer Personal Data (as defined in the DPA) is subject to Customer's own privacy policy and other terms regarding the use or handling of Customer Personal Data as required by applicable Data Protection Law. Customer acknowledges that Procore does not assess the type or substance of Customer Data to identify whether it is Customer Personal Data and/or subject to any specific legal requirements. Customer shall notify Procore promptly upon learning of any unauthorized use of or access to the Services.

- 2.2. **Restrictions.** Customer shall not and shall not permit others to (a) make any Services available to any third party other than Customer or Authorized Users; (b) sell, resell, license, sublicense, distribute, rent, or lease any Services, or include any Services in a service bureau or outsourcing offering; (c) use the Services to store or transmit infringing, tortious, libelous, or otherwise unlawful material that violates the rights of any third party, or Harmful Code; (d) use the Services in a way that seeks to interfere with or disrupt the integrity or performance of the Services or any third-party data contained therein; (e) use, or permit access to, the Services in a way that seeks to circumvent the Usage Metrics; (f) use the Services to exploit any Procore Intellectual Property Rights except as otherwise expressly permitted under this Agreement, an Order, or the Documentation; (g) frame or mirror any part of the Services, except as permitted by and in accordance with the Documentation; (h) access the Services in order to develop a competitive product or service, to benchmark with a non-Procore product or service, or to otherwise exploit for competitive purposes; (i) reverse engineer, copy, or modify any software included as part of the Services; (j) use the Services to store or transmit harmful, abusive, threatening, obscene, defamatory, bigoted, or otherwise objectionable material; (k) use the Services to send unsolicited communications, promotions, or advertisements in violation of any applicable anti-spam or e-privacy law, rule, or regulation; or (l) use any automated device or process, such as a robot, spider, datamining, web-scraping, or other means to circumvent, access, use, or integrate with the Services or its contents, including but not limited to other user account information.
- 2.3. **Affiliates.** Customer may designate its Affiliates as Authorized Users. Additionally, Customer's Affiliates may purchase Services by entering into a separate Order with Procore or Procore's applicable Affiliate, in which case "Customer" as is defined herein will mean that Affiliate. Each Affiliate's Order(s), and the corresponding Usage Metrics, are separate and distinct from Customer's and its other Affiliates' respective Orders and Usage Metrics, unless otherwise set forth on an applicable Order.

### 3. **THIRD-PARTY APPLICATIONS**

Customer may choose to use the Services with third-party platforms, products, or services, including offerings made available through Procore's API or App Marketplace ("**Third-Party Applications**"). Third Party Applications are not Procore Services. Customer's use of Third-Party Applications is subject to the third-party provider's terms of use. Use of Third-Party Applications with the Services may require the Third-Party Application to access Customer Data. If Customer chooses to use Third-Party Applications with the Services, Customer permits Procore to provide such access on Customer's behalf. Procore makes no warranty or guarantee with regard to any Third-Party Applications, any interoperation between the Services and Third-Party Applications, or the continued availability of Third-Party Applications.

### 4. **FEES AND PAYMENT**

- 4.1. **Fees.** Customer shall pay Procore all fees as set forth in the applicable Order or SOW, as well as any Overages ("**Fees**"). Except as set forth herein, all payment obligations are non-cancelable and Fees paid are non-refundable. Customer is responsible for providing complete and accurate billing and contact information to Procore and promptly notifying Procore of any changes to such information.
- 4.2. **Non-Payment Suspension.** Customer may dispute in good faith the amount on an invoice in writing before the due date of such invoice, and shall work diligently with Procore to promptly resolve the dispute. If Customer fails to pay any undisputed portion of a past due invoice within ten (10) calendar days after receiving notice that its account is overdue, Procore may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full ("**Non-Payment Suspension**"). Procore is not obligated to continue to provide Services without payment of applicable Fees.
- 4.3. **Use of Purchase Orders.** No terms of any purchase order or other form or agreement provided by Customer will modify or supplement this Agreement, regardless of any failure of Procore to object to such terms, and any such terms will have no force or effect.
- 4.4. **Taxes.** Fees and Overages do not include any taxes, tariffs, levies, duties, or similar governmental charges or assessments of any nature, including, value-added, sales, use, or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Unless Customer provides Procore with a valid tax-exemption certificate, Customer is responsible for paying all Taxes associated with its purchases under this Agreement. If Procore is legally required to pay or collect Taxes for which Customer is responsible under this Section, Procore shall invoice Customer and Customer shall pay such amounts, unless Customer provides Procore with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Procore is solely responsible for taxes assessable against it based on its own income, property, and employees. Unless prohibited by the applicable taxing jurisdiction, the tax situs will be Customer's ship-to address as set forth in the applicable Order.
- 4.5. **Usage Verification & Subscription Review.** No more than once annually, Procore's subscription management team may initiate a subscription review, which requires Customer to provide written supplemental information to verify Customer's Usage Metric. Customer shall provide such records within fifteen (15) business days, or such other

mutually agreeable time frame, of Procore's written request. Customer shall reasonably cooperate with and assist Procore or its Affiliates, as applicable, in such review and verification of Customer's Usage Metric. If Customer exceeds the Usage Metrics, Customer shall pay for any usage of the Services that exceeds the Usage Metric ("**Overages**"). Overages will be invoiced at Procore's standard rates (without discount) at the time of invoicing and are payable within the timeframe set forth in the applicable Order.

- 4.6. Purchases Through a Reseller. If Customer purchases Services through a Reseller, the pricing and payment terms for such Services are between Customer and Reseller ("**Reseller Terms**"). Customer acknowledges that (a) all payments for Services procured via a Reseller will be made directly to the Reseller and in accordance with the Reseller Terms; and (b) if a Reseller notifies Procore of its right to terminate or suspend any Services, Procore may terminate or suspend such Services. Procore will not be liable to Customer or any third party for any liabilities, claims, or expenses arising from or relating to any applicable Reseller Terms, or Customer's relationship with any Reseller.

## 5. PROPRIETARY RIGHTS AND LICENSES

- 5.1. Customer Data. As between the Parties, Customer Data and Customer's Confidential Information are and will remain owned exclusively by Customer. Customer hereby grants Procore, its Affiliates, and its subprocessors a worldwide right and license to process and use Customer Data for the purposes of: (a) providing, maintaining, securing, analyzing, and updating the Services; (b) collecting and compiling data, insights, and information in an aggregated and/or de-identified manner that does not identify Customer, Customer Confidential Information, Authorized Users, or any individual ("**Aggregated Data**")"; and (c) complying with legal or regulatory obligations, enforcements, investigations, or similar proceedings. Customer acknowledges that Procore or its Affiliates may review Customer's use of the Subscription Services for the purpose of providing Services and verifying Customer's compliance with this Agreement. Procore's use of Customer Data will comply with Section 1.3 ("Protection of Customer Data") and Section 6.2 ("Protection of Confidential Information").
- 5.2. Ownership; Reservation of Rights. As between the Parties, all Intellectual Property Rights, including Intellectual Property Rights in the Services, Updates, Beta Services, Documentation, Aggregated Data, and Procore's Confidential Information, are and will remain owned exclusively by Procore and its Affiliates, as applicable. Procore may freely use and incorporate into Procore's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any Authorized Users relating to Procore's products or services. Feedback and any other suggestions are provided by Customer exclusively "as is," in Customer's sole discretion, and will not be used in Procore in any way that identifies Customer or Authorized Users. Unless otherwise specified in an applicable SOW, all deliverables (excluding any Customer Data contained within a given deliverable), provided in the performance of Professional Services are owned by Procore and will be made available as part of the Subscription Services provided under this Agreement. Nothing in this Agreement will preclude or limit Procore from using or exploiting any concepts, ideas, techniques, or know-how of or related to the Services. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services or other Procore Intellectual Property Rights are granted to Customer, and all such rights are expressly reserved to Procore and its Affiliates.

## 6. CONFIDENTIALITY

- 6.1. Definition of Confidential Information. "**Confidential Information**" means all information or data disclosed by a Party or any of its Affiliates (as applicable, the "**Disclosing Party**") to the other Party or any of its Affiliates (as applicable, the "**Receiving Party**") that is confidential, proprietary, or otherwise not publicly available, or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, whether oral or in writing, and disclosed during the Term in connection with the Services. Confidential Information includes (a) with respect to Customer, Customer Data; (b) with respect to Procore, the Services, pricing, and the Beta Services, including any discussions or information related to Beta Services; and (c) with respect to a Party, any technical, financial, economic, marketing, strategic, business, product, design, or operational information of such Party, including the terms of this Agreement and all Orders and SOWs. Confidential Information does not include any information that the Receiving Party can demonstrate (w) is or becomes generally known to the public without breach of this Agreement or any other agreement by the Receiving Party; (x) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (y) is received from a third party without restriction on disclosure and without breach of any obligation owed to the Disclosing Party; or (z) was independently developed by the Receiving Party without use of or reference to any Confidential Information, as demonstrated by contemporaneous written documentation.
- 6.2. Protection of Confidential Information. The Receiving Party shall (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (b) not use any Confidential Information for any purpose outside the scope of this Agreement; and (c) except as

otherwise expressly consented to by an authorized representative of the Disclosing Party, limit access to Confidential Information to its legal counsel, accountants, and those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who are under obligations to maintain confidentiality no less restrictive than those herein ("**Authorized Recipients**"). Each Party shall remain responsible for such Authorized Recipients' compliance with this "Confidentiality" Section.

- 6.3. **Compelled Disclosure.** To the extent compelled by law or legal process, the Receiving Party may disclose Confidential Information under the following conditions: (a) the Receiving Party shall give prior notice of the compelled disclosure to the Disclosing Party (to the extent legally permitted); (b) (i) if the Disclosing Party wishes to contest the compelled disclosure, the Receiving Party shall provide reasonable assistance to the Disclosing Party, at the Disclosing Party's cost, or (ii) if the Disclosing Party does not contest the disclosure, or its attempts to contest the disclosure have failed, and the Receiving Party is compelled to disclose the Disclosing Party's Confidential Information, then the Receiving Party shall disclose only the minimum information that is required to be disclosed; and (c) any Confidential Information so disclosed shall retain its confidentiality protections for all other purposes. Disclosing Party shall reimburse the Receiving Party for the reasonable costs and expenses related to the production of the Disclosing Party's Confidential Information

## **7. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES, DISCLAIMERS**

- 7.1. **General Warranty.** Each Party represents and warrants that it has the necessary rights to enter into this Agreement and has the legal power to do so.
- 7.2. **Procore Limited Warranties.** Procore warrants that (a) the Subscription Services will perform materially in accordance with the applicable Documentation; (b) Procore will not materially reduce the core functionality of the Subscription Services during the current Subscription Term; and (c) Procore will perform the Professional Services in a diligent and professional manner. Customer's exclusive remedy and Procore's entire liability for a breach of the above warranties will be, at Procore's option, (x) the correction of the deficient Service that caused the breach of warranty, or (y) provision of comparable functionality. If Procore, as determined in its reasonable discretion, cannot accomplish (x) or (y), then Procore shall terminate the deficient Service and refund to Customer any prepaid Fees for the terminated Service, prorated to cover the remaining portion of the Subscription Term following notice of the breach of warranty.
- 7.3. **Disclaimers.** **Except as expressly provided herein, neither Party nor its licensors or subprocessors makes any warranty of any kind, whether express, implied, statutory, or otherwise, and each Party and its licensors and subprocessors specifically disclaim all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose, title, or non-infringement, to the maximum extent permitted by applicable law. Procore does not warrant that Services will be error-free or uninterrupted, or will meet Customer's requirements or expectations.**

## **8. INDEMNIFICATION**

- 8.1. **Indemnification by Procore.**
- (a) Procore shall defend any claim brought against Customer by a third party to the extent such claim alleges that Customer's use of the Subscription Services (as authorized in this Agreement, and as provided by Procore to Customer) (1) infringes any valid and enforceable third-party patent, copyright, or trademark, or (2) misappropriates a third-party trade secret (a "**Claim**"). If a third party makes a Claim against Customer, Procore shall pay all damages (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction, or the settlement agreed to by Procore with respect to such Claim.
  - (b) If any Claim is brought or threatened, or if Procore reasonably believes that the Subscription Services may become the subject of a Claim, Procore may, at its sole option and expense (1) procure for Customer the right to continue to use the applicable Subscription Service; (2) modify the Subscription Service to make it non-infringing; (3) replace the affected aspect of the Subscription Service with non-infringing technology having substantially similar capabilities; or (4) if Procore determines none of the foregoing is commercially practicable, terminate the affected Subscription Service and refund Customer any prepaid Fees related to the applicable Subscription Services prorated for the remainder of the Subscription Term.
  - (c) Procore's defense and indemnity obligations do not apply to, and Procore will have no liability with respect to, any Claim arising in whole or part due to (1) any modification of the Subscription Services made by anyone other than Procore; (2) any use of the Subscription Services in combination with software, products, or services not provided by Procore; (3) any Third-Party Applications; (4) Beta Services or Services under an Order for which there is no charge (other than discounted Services); (5) Customer's use of the Subscription Services

not in compliance with this Agreement; or (6) Customer's failure to use any Update provided by Procore, to the extent such Update would make the Services non-infringing.

**This indemnity states Procore's entire liability, and Customer's exclusive remedy, for any Claims as described in Section 8.1.**

- 8.2. Indemnification by Customer. Customer shall defend any claim or regulatory action brought against Procore by a third party to the extent such claim relates to the Customer Data (if used by Procore in accordance with this Agreement), use of the Services under this Agreement, or Third-Party Applications built by or on behalf of Customer. If a third party makes such a claim against Procore, Customer shall pay all damages (including reasonable attorneys' fees) finally awarded against Procore by a court of competent jurisdiction or the settlement agreed to by Customer with respect to such claim. **This indemnity states Customer's entire liability, and Procore's exclusive remedy, for any third-party claims as described in this Section 8.2.**
- 8.3. Procedure. The defense and indemnity obligations above are conditioned upon the indemnified Party providing the indemnifying Party with (a) prompt notice; (b) sole control over the defense and any settlement negotiations; and (c) all information and assistance reasonably requested by the indemnifying Party in connection with the defense or settlement of the indemnifiable claim. The indemnifying Party shall not agree to a settlement that imposes any obligation or liability on the indemnified Party without the indemnified Party's prior written consent, which will not be unreasonably withheld, conditioned, or delayed. The indemnified Party may appear in connection with such claims, at its own expense, through counsel reasonably acceptable to the indemnifying Party.

## 9. LIMITATION OF LIABILITY

- 9.1. Exclusion of Damages. Except with regard to a Party's indemnification obligations under Section 8 ("Indemnification"), neither Party nor its respective Affiliates will be liable for any loss of profits, revenues, goodwill, anticipated savings, or use, costs of substitute goods or services, business interruption, or work stoppage, or any indirect, special, incidental, exemplary, punitive, or consequential damages, however caused, and based on any theory of liability, arising out of or relating to this Agreement, whether for breach of contract, breach of warranty, tort (including negligence), product liability, or otherwise, even if such Party is advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by applicable law.
- 9.2. Limitation of Liability. A Party's and its respective Affiliates' aggregate cumulative liability for all damages arising out of or related to this Agreement will not exceed the applicable Fees paid or payable to Procore in an Order or SOW for the applicable Services and attributable to the twelve (12) month period immediately preceding the event giving rise to the liability. The existence of more than one claim will not expand this limit. The liability limitations under this Section 9.2 will not apply to (a) Customer's obligations to pay Fees due under this Agreement; (b) either Party's indemnity obligation amounts under Section 8; (c) either Party's gross negligence, willful misconduct, or fraud; or (d) either Party's negligence on-site during the performance of Professional Services that results in death or personal injury. Nothing in this Agreement excludes or limits any liability that cannot be excluded or limited under applicable law.

## 10. TERM AND TERMINATION

- 10.1. Term of Agreement. This Agreement will begin on the Effective Date and continue until terminated as permitted herein (the "Term"). If there are no active Orders, this Agreement will automatically terminate after ninety (90) days.
- 10.2. Subscription Term. The initial Subscription Term and any applicable renewal Subscription Term will begin and end in accordance with the start date and end date set forth in the Order.
- 10.3. Suspension. In the event of Customer's or an Authorized User's breach of this Agreement, including without limitation for Non-Payment Suspension or violation of the restrictions in Section 2.2, Procore may, in its reasonable discretion, suspend Customer's or an Authorized User's access to or use of the Subscription Services. Notwithstanding the foregoing, unless the circumstances dictate otherwise, Procore shall reasonably notify Customer and the Authorized User via email before taking the foregoing actions, and shall restore access once the breach has been remedied.
- 10.4. Termination. Either Party may terminate this Agreement or any Order or SOW upon notice if the other Party is in material breach of this Agreement, where such material breach is not cured (to the extent capable of being cured) within thirty (30) days after receiving notice of breach from the non-breaching Party, or with immediate effect where such material breach cannot be cured. For the avoidance of doubt and without limiting Procore's rights, Customer's noncompliance with Section 2.2 or Section 4.1 will be deemed a material breach of this Agreement. Either Party may terminate this Agreement with immediate effect if the other Party becomes the subject of a

petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors, and such petition or proceeding is not dismissed within forty-five (45) days.

- 10.5. Effect of Termination. Upon the termination of this Agreement for any reason (a) unless otherwise agreed by the Parties in writing, all outstanding Orders, SOWs, and access to the Subscription Services will automatically terminate; (b) Customer and its Authorized Users shall immediately cease access and use of the Subscription Services, other than for retrieval purposes provided in (d) below; (c) all Customer's outstanding payment obligations will become due and payable immediately; and (d) for thirty (30) days following the end of the final Subscription Term, Procore shall make Customer Data available to Customer, at Customer's request, via the Subscription Services, solely for purpose of allowing Customer to retrieve Customer Data. After thirty (30) days, Procore will have no obligation to maintain or provide any Customer Data, and thereafter may delete or destroy all copies of Customer Data. If Procore is required to retain a copy of Customer Data for legal purposes, such copy will remain subject to the confidentiality provisions of this Agreement.
- 10.6. Refund or Payment upon Termination. If Customer terminates this Agreement due to Procore's material breach, Procore shall refund Customer the prorated portion of prepaid Fees for the remaining Subscription Term. If Procore terminates this Agreement due to Customer's material breach, Customer shall promptly pay any unpaid Fees. Termination will not relieve Customer of its obligation to pay any Fees for the period prior to the effective date of termination.
- 10.7. Surviving Provisions. The Sections titled "Fees and Payment" (Section 4), "Proprietary Rights and Licenses" (Section 5), "Confidentiality" (Section 6), "Representations, Warranties, Exclusive Remedies, Disclaimers" (Section 7), "Indemnification" (Section 8), "Limitation of Liability" (Section 9), "Term and Termination" (Section 10), and "General Provisions" (Section 11) will survive any termination of this Agreement.

## 11. GENERAL PROVISIONS

- 11.1. Trademarks and Logo Usage. Each Party shall not use the logos, trademarks, service marks, product names, or trade names of the other party without the prior written consent of the other Party. If Customer uses Procore's logos, trademarks, service marks, product names, or trade names, such use will be subject to the Procore trademark usage guidelines at [www.procore.com/legal/trademark](http://www.procore.com/legal/trademark).
- 11.2. Export Control and Sanctions. Each Party shall comply with all applicable Export Control and Sanctions Laws and Regulations in connection with providing and using the Services. Without limiting the foregoing, (a) each Party represents that it is not listed on any list of entities or individuals who are restricted from receiving U.S. services or items subject to jurisdiction of U.S. Export Controls or U.S. persons transacting with it (including but not limited to the Specially Designated Nationals and Blocked Persons List and the Entity List) nor is it owned or controlled by any such listed entity or individual; (b) Customer shall not, and shall ensure that Authorized Users do not, violate any Export Control and Sanctions Laws and Regulations, or cause any such violation to occur; and (c) Customer shall not use or cause any person to use the Services to store, retrieve, or transmit technical data controlled under the U.S. International Traffic in Arms Regulations.
- 11.3. Applicable Law & Anti-Corruption. Each Party shall comply with applicable laws in performance of this Agreement. Neither Party has promised, made, or received any bribe, kickback, or other similar payment or transfer of value from or to any director, officer, employee, agent, or other representative of the other Party in connection with this Agreement. Reasonable and lawful gifts, entertainment, sponsorships, and donations do not violate the above restriction.
- 11.4. U.S. Government Rights. If Customer, or any Authorized User, is a branch, agency, or instrumentality of the United States Government, the following provision applies: The Services and Documentation comprise "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies in 48 C.F.R. 227.7202-1 and 22.7202-3. The rights of the U.S. Government to use, commercial computer software, commercial computer software documentation, and technical data furnished in connection with this Agreement are solely as provided in this Agreement. No additional rights are provided to the Government unless set forth in a separate written addendum.
- 11.5. Contracting Entity, Governing Law & Venue. The Procore contracting entity, law that will apply to a dispute arising out of or relating to this Agreement, and jurisdiction for dispute resolution depend on where Customer is domiciled, in all cases without reference to conflict of law rules of any jurisdiction.

|                              |                                    |                           |                                      |
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| If Customer is domiciled in: | The Procore contracting entity is: | Governing law is that of: | The venue for dispute resolution is: |
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|--|--|-----------------|-----------------------------------|
| California   | Procore Technologies, Inc.<br>6309 Carpinteria Ave.<br>Carpinteria, CA 93013 USA   | California      | Los Angeles County,<br>California |
| Any U.S. state other than California; Mexico; or a country in Central America, South America, or the Caribbean | Procore Technologies, Inc.<br>6309 Carpinteria Ave.<br>Carpinteria, CA 93013 USA   | Delaware        | New Castle County,<br>Delaware    |
| Canada   | Procore Technologies, Inc.<br>6309 Carpinteria Ave.<br>Carpinteria, CA 93013 USA   | Ontario         | Ontario, Canada                   |
| A country in the U.K., Europe, Africa, or the Middle East  | Procore UK Ltd<br>3rd Floor 1 Ashley Road<br>Altrincham, Cheshire<br>U.K. WA14 2DT | England         | London, England                   |
| Australia or New Zealand   | Procore Technologies, Inc.<br>6309 Carpinteria Ave.<br>Carpinteria, CA 93013 USA   | New South Wales | Sydney, New South Wales           |
| A country in Asia or the Pacific region other than Australia or New Zealand                                    | Procore Technologies, Inc.<br>6309 Carpinteria Ave.<br>Carpinteria, CA 93013 USA   | Singapore       | Singapore                         |

The provisions of the United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Acts will not apply to this Agreement in any manner whatsoever.

- 11.6. **Dispute Resolution.** The Parties shall attempt in good faith to promptly resolve any disputes arising out of or relating to this Agreement by negotiation between representatives of each Party with the authority to resolve such dispute. If the Parties are unsuccessful in reaching resolution after a reasonable time, such dispute will be submitted to final and binding arbitration. Notwithstanding the foregoing, neither Party is required to arbitrate claims (a) where all named parties seek monetary relief which, in the aggregate, qualifies as a claim that meets the requirements of an applicable small claims court; or (b) seeking injunctive relief. However, if a small claim is transferred, removed, or appealed to a different court, either Party may require that the claim be submitted to final binding arbitration. Any arbitration will take place on an individual basis. If the Parties participate in arbitration, the Parties waive the right to participate in a class, consolidated, or representative action or arbitration, and the right to a trial by jury. If this class action waiver is deemed unenforceable, the class claim will be brought in a court of competent jurisdiction.

Arbitration will be conducted in English and administered in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution at the location set forth in Section 11.5. Except as required by law, each Party, and its representatives, shall not disclose the existence, content, or results of any arbitration without the other Party's prior written consent.

The arbitrator is not empowered to award damages in excess of compensatory damages and each Party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration. The decision of the arbitrator will be in accordance with this Agreement and will be binding upon the Parties. Each Party hereby waives any right it may otherwise have under the laws of any jurisdiction to any form of appeal. Judgment upon the award rendered may be entered in and enforced by any court of competent jurisdiction having jurisdiction over both Parties. This Agreement governs if there is a conflict with the International Arbitration Rules of the International Centre for Dispute Resolution.

- 11.7. **Notices.** Notices to Customer will be delivered via email or overnight delivery at the address associated with the Order. Notices to Procore will be delivered via email to legalnotice@procore.com or by overnight delivery to Procore Technologies, Inc., Attention Chief Legal Officer, 6309 Carpinteria Ave., Carpinteria, CA 93013 USA. All notices must be in writing and will be effective when received.
- 11.8. **Force Majeure.** Neither Party will be liable for any failure or delay in its performance under this Agreement to the extent due to any cause beyond its reasonable control (a **"Force Majeure Event"**). The Party suffering a Force

Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event and shall resume performance as soon as practicable following the Force Majeure Event.

- 11.9. Assignment. Each Party shall not assign this Agreement, in whole or part, or any right or interest herein, without the other Party's prior written consent, not to be unreasonably withheld, and any purported assignment without such consent will be void. However, either Party may assign this Agreement without consent to an Affiliate, or in connection with a merger, consolidation, corporate reorganization, sale of all or substantially all of its assets or business, or other change-of-control transaction. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Assignment will not relieve Customer of its obligation to pay Fees incurred before the assignment.
- 11.10. Relationship of the Parties. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 11.11. Entire Agreement; Order of Precedence. This Agreement (together with any Orders, SOWs, and linked terms) contains the entire understanding and agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous communications, representations, agreements, and understandings, either oral or written, between the Parties with respect to its subject matter. This Agreement will only be amended or waived by a writing signed by both Parties; however, the Parties may update and modify this Agreement upon renewal of the Subscription Term. In the event of any conflict or inconsistency between or among the following documents, the order of precedence will be: (1) the DPA, (2) the Order, (3) SOW, (4) this Agreement, and (5) any links provided herein. Any amendment will take precedence over the document it amends.
- 11.12. Miscellaneous. If a provision of this Agreement is unenforceable or invalid, the provision will be revised so as to best accomplish the objectives of the Parties as evidenced by this Agreement, and the remainder of this Agreement will continue in full force. The English language version of this Agreement will be the version used when interpreting or construing this Agreement. Any notices in connection with this Agreement must be provided in English. Either Party's failure to enforce any right under this Agreement will not waive that right. There are no third-party beneficiaries to this Agreement, and Customer acknowledges that Procore will have no obligations or liability whatsoever to any third parties with which Customer does business.

## 12. DEFINITIONS

- 12.1. **"Affiliate"** means an entity that controls, is controlled by, or is under common control of a Party, where **"control"** means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interest of such entity or party (but only for so long as such control exists) or the right to otherwise control the decision making of the subject entity.
- 12.2. **"Authorized User"** means any individual or agent authorized by Customer to access or use the Services.
- 12.3. **"Beta Services"** means Procore services, features, or functionality that Procore may make available to Customer that have not been made generally available to customers and have been designated as beta, pilot, limited release, preview, non-production, pre-release, or a similar designation.
- 12.4. **"Customer Data"** means any content, data, information, Personal Data (as defined in the DPA), and other materials submitted by Customer or an Authorized User to the Services. Customer Data excludes Aggregated Data, any content from publicly available sources, and any suggestion, enhancement request, recommendation, correction, or other feedback relating to the Services.
- 12.5. **"Documentation"** means the official Procore-provided user guides applicable to the Services, whether in electronic, paper, or equivalent form, as updated from time to time, accessible at <https://support.procore.com/products/online/user-guide> or other websites designated by Procore.
- 12.6. **"Export Control and Sanctions Laws and Regulations"** means all applicable laws and regulations controlling or regulating the export, re-export, or in-country transfer of goods, technology, software, or services, or those that impose other trade or financial sanctions against targeted countries, territories, individuals, or entities, collectively including, but not limited to, all laws administered by the U.S. Department of State and its Directorate of Defense Trade Controls, the Office of Foreign Assets Control of the U.S. Department of the Treasury, and the U.S. Department of Commerce and its Bureau of Industry and Security.
- 12.7. **"Harmful Code"** means code, files, scripts, agents, malware, or programs intended to do harm, including but not limited to viruses, worms, time bombs, and Trojan horses.
- 12.8. **"Intellectual Property Rights"** means all rights, title, and interest in all intellectual property, including patents, copyrights, trade secrets, mask works, trademarks, and other intellectual property rights of any sort throughout the world.



- 12.9. **“Order”** means a written or electronic order form, executed by the Parties, identifying the Services, scope, quantity, charges, and other information relevant to a specific transaction between Customer and Procore, herein incorporated by reference.
- 12.10. **“Professional Services”** means the implementation, technical, consulting, training, and similar services provided by or through Procore or its Affiliates, as described in the relevant Order or SOW.
- 12.11. **“Reseller”** means a third party authorized by Procore or its Affiliates to promote, distribute, and/or resell the Services.
- 12.12. **“Services”** means collectively, as applicable, the Subscription Services, Support Services, and Professional Services Customer has ordered, and Procore has agreed to provide, as indicated on the applicable Order or SOW.
- 12.13. **“SOW”** means a statement of work executed by the Parties describing Professional Services purchased by Customer pursuant to an Order, herein incorporated by reference.
- 12.14. **“Subscription Services”** means the Procore software-as-a-service, and all associated Updates, offered on a subscription basis by Procore via an Order that provides the functionality described in the Documentation.
- 12.15. **“Subscription Term”** means the entire period during which Customer is entitled to use the Subscription Services, including the initial term and any applicable renewal terms.
- 12.16. **“Support Services”** means the type of Procore’s customer support for the Subscription Services described in Exhibit A, and as may be specified or purchased within an Order.
- 12.17. **“Updates”** means all updates, enhancements, and other modifications that Procore makes generally available, at no additional charge, to its customers of the Subscription Services identified in an Order.
- 12.18. **“Usage Metric”** means the unit of measure, multiplied by the associated quantity, as shown on the applicable Order, to determine the scope of Customer’s access and use of the Subscription Services and associated Fees, as set out in an Order.

**// Signature Page Follows //**

**PROCORE SUBSCRIPTION AND SERVICES AGREEMENT**

**Signature Page**

**Procore**

**By:**

*Authorized Signature*

**Name:**

**Title:**

**Date:**

**Customer**

**By:**

*Authorized Signature*

**Name:**

**Title:**

**Date:**

## PROCORE SUBSCRIPTION AND SERVICES AGREEMENT

### Exhibit A – Support Services and Service Levels

#### 1. OVERVIEW

This Support Services and Service Levels exhibit covers the Procore Subscription Services defined in this Agreement.

#### 2. DEFINITIONS

For purposes of this exhibit, “**Scheduled Downtime**” means the window during which scheduled maintenance of the Subscription Services is performed. Procore shall use commercially reasonable efforts to not provide more than 6 hours of Scheduled Downtime per calendar month.

#### 3. SERVICE AVAILABILITY

Procore’s availability objective for the Subscription Services is 99.9% of the time, 7 days a week, and 24 hours per day as calculated over a calendar month excluding Scheduled Downtime. This does not include Force Majeure Events or other factors outside of Procore’s reasonable control.

#### 4. SUPPORT

- 4.1 Access to Support. Customer and Authorized Users have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours can be found at <http://support.procore.com/references/contact-support>. Support does not include training sessions on the features and functionality of the Subscription Services (e.g., implementation) or training in relevant computer skills considered prerequisite to an individual’s ability to use personal computers, the Internet/World Wide Web, and online software in accordance with the requirements of the Agreement. Furthermore, only qualified, trained Customer support personnel or Authorized Users familiar with Subscription Services are authorized to contact Procore to obtain support.
- 4.2 Reporting and Status Updates. Before requesting support from Procore, Customer shall use reasonable efforts to comply with any applicable operating and troubleshooting procedures as set forth in the Documentation or as otherwise provided by Procore. If such efforts are unsuccessful, Customer should promptly notify Procore support via Procore’s Ticket Tracking System (“**System**”) of the issue including any supporting information Customer believes may assist Procore in both its diagnostic determination as well as the Severity/Priority classification. Upon Procore’s receipt of a support request via the System, Procore shall 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 Subscription Services that Procore cannot immediately resolve, Procore shall begin working on a resolution to the problem and shall work diligently and in a commercially reasonable manner on the problem until it is resolved. Once Procore receives an error ticket as reported from Customer, Procore shall provide Customer with timely status updates as reasonably determined by Procore until a workaround or other resolution is established by Procore.