



PROCURANT

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Master Services Agreement

This Master Services Agreement, including all exhibits, Orders, and SOWs, (this "Agreement") governs Subscriber's acquisition and use of the Procurant Service and related implementation and support services. It is effective between the signing company and its authorized affiliates ("Subscriber") and Procurant USA LLC ("Procurant") as of the date of Subscriber's execution of this Agreement.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, security screening, or for any other benchmarking or competitive purposes. Procurant's direct competitors are prohibited from accessing the Services, except with Procurant's prior written consent.

RECITALS

Procurant provides a hosted, Software as a Service (SaaS) based platform (the "Service") in conjunction with the Procurant Web Site located at www.Procurant.com (the "Website").

Subscriber is an organization with commercial facilities that desires to subscribe to the Procurant Service and for Procurant to perform related hosting, support and maintenance services for use by Subscriber.

DEFINITIONS

"Active Date" refers to the date Subscriber's account for the Service is activated for use as described in the applicable Order (as defined below in Section 4.1).

"Authorized Users" means any employees or agents authorized to access and use the Service. "Personal Data" means any information relating to an identified or identifiable natural person.

"Procurant Data" means any data Subscriber receives from or through the Service. Procurant Data includes, but is not limited to, (i) data regarding the pricing of any Products, (ii) data regarding ordered Products, including the quantity of Products ordered, and (iii) data regarding the shipment or delivery of any Products. Procurant Data also includes any information, data, or results derived from or using any Procurant Data.

"Products" means the products sold by Subscriber using the Service.

"Subscriber Data" means all information processed or stored on computers or other electronic media or provided to Procurant for such processing or storage by Subscriber or on Subscriber's behalf. Subscriber Data includes, without limitation: (i) information on paper or other non-electronic media provided to Procurant for computer processing or storage, or information formerly on electronic media; (ii) information provided to Procurant by Subscriber and its Authorized Users; and (iii) user and usage data regarding Subscriber's operation or use of the Service. Subscriber Data may include Personal Data. For avoidance of doubt, Subscriber Data does not include any Procurant Data.

"User Documentation" means the technical information or materials developed by Procurant and provided to you in connection with the use of the Service.

AGREEMENT

1. License

1.1 Procurant Service Hosted by Procurant Subject to all of the terms and conditions of this Agreement, Procurant hereby grants to Subscriber a non-exclusive, non-transferable, right and license (i) to access and use the Procurant Service as provided on its Website; and (ii) to reproduce, print, download, and use the User Documentation as reasonably necessary to support (i). Except as specifically licensed in this Agreement, Subscriber shall have no other rights with respect to the Procurant Service or any constituent parts thereof. Any additional services agreed to by the parties, such as consulting or systems integration services, shall be under a separate agreement.

2. Hosting and Support for the Procurant Service

2.1 Hosting, Support and Maintenance

Procurant shall host, support and maintain the Service and the Website in accordance with the terms of this Agreement.

2.2 Obligations of Subscriber

Subscriber agrees that it will: (i) be responsible for the accuracy and completeness of the information, including, without limitation, all activity\transaction information, it inputs through the Website and Service; (ii) pay all undisputed fees in accordance with Section 4; (iii) maintain a unique password for access to and use of the Procurant Service to each individual authorized to use the Procurant Service, and revoke such password upon any change of such individual's employment responsibilities or termination of employment with Subscriber; (iv) use information obtained through the Website and Services only as necessary to use the Service as authorized under this Agreement, including, without limitation, to complete any transaction in which Subscriber is involved (v) reasonably cooperate with, and provide assistance to Procurant, as requested by Procurant in connection with the integration and implementation of any internal or third party software or systems used by Subscriber ("Subscriber Systems"), if applicable, into the Procurant Service; and (vi) comply with the functional specification requirements made available to Subscriber necessary to properly use the Website and Service as described in any Exhibits to this Agreement. Subscriber agrees that it will not: (a) share with any third parties (who are not Authorized Users) or any unauthorized user of the Procurant Service (including, without limitation, employees, agents and contractors whose passwords have been revoked under clause (iii) above) the passwords and/or other access codes issued to Subscriber unless Subscriber first obtains Procurant's explicit prior written consent to such sharing, and Subscriber shall take full responsibility for any activities taken under its passwords and/or other access codes (except to the extent such activities result from Procurant's failure to comply with its data security obligations under Section 7); (b) provide any third parties (who are not Authorized Users) or any unauthorized user access to the Service or any function accessible through the Service; (c) frame any page or portion of the Website or Services; however, Subscriber can create a link in its internal systems that points to the Website through a new window or new tab within the browser; (d) use the Procurant Service in any manner which violates laws applicable to Subscriber's use of the Service (including, but not limited to, laws and regulations related to spamming, privacy, obscenity or defamation); or (viii) knowingly introduce viruses or otherwise cause harm to the



Procurant Services or Website. Subscriber is solely responsible for the operation of Subscriber Systems and the results of Subscriber's (and its Authorized Users') use of the Procurant Services.

3. Representations and Warranties

Procurant represents and warrants to Subscriber that it either owns or has the right to use (as contemplated in this Agreement) the Procurant Service, and has the right to grant the rights hereunder to Subscriber for the use of Procurant Services. Procurant also represents and warrants to Subscriber that neither the Procurant Services nor the Website in the form integrated with Subscriber System infringes the rights of any person or is subject to any third party restrictions, and Subscriber's sole remedy for a breach of this representation and warranty shall be to receive indemnification therefore as set forth in Section 10.1. Procurant further represents and warrants to Subscriber that:

- (a) the Procurant Service shall perform substantially in accordance with the User Documentation;
- (b) the Services, if integrated with Subscriber Systems, contain no time bomb, clock, counter, or other limiting instruction or routine that would cause the Procurant Services or Subscriber Systems to become inoperable;
- (c) it will perform virus checking procedures standard in the software industry prior to integration to ensure the Services do not contain any viruses;
- (d) to the best of its knowledge, the Service made available to Subscriber or integrated with Subscriber System do not contain any viruses or similar malicious code;
- (e) support services will be performed in a professional and workmanlike manner consistent with industry standards.

Each party represents and warrants to the other that it has the right and is fully authorized to enter into and is fully able to perform under this Agreement, to furnish the materials and to grant the rights and licenses provided for in this Agreement, and that it is not subject to any conflicting obligations that will or might prevent it from furnishing such materials or from granting the rights and licenses provided for in this Agreement.

4. Fees, Payments, & Invoices

4.1 Subscription Fees

Upon Subscriber's execution of a written quote for the Services, Subscriber will pay an annual subscription fee ("Subscription Fee") for the Services according to the pricing terms and conditions described in the applicable Order. In most cases, the initial payment for Services shall be invoiced upon the Active Date.

4.2 Setup, Onsite Training & Custom Work

If applicable, Subscriber will pay one-time setup fees as described in the initial Order associated with this Agreement. Any additional professional services ("Professional Services") will be provided to Subscriber on a time and materials basis pursuant to a mutually agreed upon Statement of Work ("SOW"). For all such requests, Procurant shall develop a ("SOW") which will also include a price quote and delivery timeline. Subscriber will be required to approve and authorize the SOW



before work begins. All Professional Services shall be billable at the billing rates stated in the applicable SOW.

4.3 New Functionality

Procurant reserves the right to introduce new or additional fees for new functionality or modules not covered by this document or any included Exhibits. These fees will be addressed as an addendum to this document or as an individual Order. Notwithstanding the foregoing, Procurant will provide Subscriber and its Authorized Users all updates, upgrades, bug fixes, enhancements, new releases, new versions, and other improvements to the Services that Procurant provides at no additional charge to its other similarly situated customers ("Updates"). Subscriber reserves the right to decline use of new functionality or modules that require additional fees.

4.4 Payment Terms

Unless otherwise agreed to by the parties in writing, Subscription Fees are payable annually in advance. The initial Subscription Fee payment is due 30 days from the date services are received as defined by the Active Date in Section 4.1. All subsequent payments are due and payable by Subscriber within thirty (30) days subsequent to the date the invoice is received by Subscriber. All amounts due to Procurant hereunder are exclusive of taxes and Subscriber shall be responsible for and pay all sales, use, excise, value-added or similar tax, fee or duty not based on Procurant's net income (collectively "Sales Taxes"), provided such Sales Taxes are set forth on the applicable Exhibit. In addition to any other rights Procurant may have under the Agreement, if any payments that have not been disputed by Subscriber in writing to Procurant are more than sixty (60) days past due during the term of this Agreement, then Procurant shall have the right to terminate this Agreement after 30 days' prior written notice is delivered to Subscriber notifying them of the intent to terminate the Agreement for non-payment. Procurant shall have no other right to terminate this Agreement except as for provided for herein.

5. Marketing and Publicity

5.1 Marketing and Publicity

Subscriber agrees that Procurant may use Subscriber's names and logos to identify Subscriber in Procurant's advertising and marketing materials as a customer of the Service. Accordingly, Subscriber hereby grants Procurant a license to use Subscriber's names and logos solely in connection with the marketing and advertising of the Service during the term of this agreement.

6. Term and Termination

6.1 Term

This Agreement will commence on the Active Date and will continue until the expiration or Renewal Date, each as set forth in the Order. The Agreement will renew as of the Renewal Date only upon mutual agreement of the parties and payment by Subscriber to Procurant of the fees for the applicable renewal Order, unless terminated earlier in accordance with Section 6.2.

6.2 Termination

Subscriber may terminate this Agreement if Procurant materially breaches any provision of this Agreement by written notice specifying in detail the nature of the breach, with such termination



to be (i) effective in 30 days unless the Procurant first cures such breach, or (ii) effective immediately if the breach is not curable by Procurant.

Promptly after any termination or expiration of this Agreement, Procurant will return to Subscriber all Subscriber Data and all other Subscriber Confidential Information in such format as Subscriber may reasonably require. Each party shall, at the other party's request, certify to in writing that it has complied with its obligation in the preceding sentences. The provisions of this Agreement labeled Ownership Rights, Limitation of Liability and Confidentiality shall survive the expiration or termination of this Agreement, as well as any provision that must survive to fulfill its essential purpose.

7. Confidential Information and Data Protection

7.1 Confidential Information.

The Parties will treat all business, commercial, financial and technological information, including marketing and customer information, business plans, software including object and source codes, trade secrets and all other proprietary information of the disclosing Party which is furnished to the other Party in writing or orally by or on behalf of the disclosing Party (herein collectively referred to as the "Confidential Information") in accordance with the provisions of this Agreement and will take or refrain from taking certain other actions herein set forth. The term "Confidential Information" does not include information which (i) either Party can clearly demonstrate to have been in its possession at the time Confidential Information is disclosed to such Party, provided that, such information is not known by such receiving Party to be subject to another confidentiality agreement with, or under other obligations of secrecy to, the other Party or another third party, or (ii) becomes generally available to the public other than as a result of a disclosure by the Party to which the Confidential Information is disclosed or by such Party's employees or agents, or (iii) becomes available to either Party on a non-confidential basis from a source other than the other Party, provided that, such source is not known by the receiving Party to be bound by a confidentiality agreement with, or other obligations of secrecy to, the other Party or another third party, or (iv) the Party that owns the Confidential Information consents in writing that it may be disclosed by the other Party.

7.2 Disclosure.

Each Party will receive Confidential Information in confidence and (except as required by court or governmental order, prompt notice of which is given by the receiving Party to the other Party, and with respect to which the other Party will cooperate with the receiving Party in obtaining a proper protective order) maintain such confidence with respect to each item of Confidential Information and will not disclose such item to any other person after its delivery to such Party, except only to persons in such Party's organization or professional advisers who need to have access to the Confidential Information for the purposes contemplated by this Agreement, each of whom has been made aware of the terms of this Agreement and agreed in writing to be bound by its terms. Each Party will be responsible for assuring compliance by such persons. Each Party will use Confidential Information solely for the purposes contemplated by this Agreement. Without limiting the generality of the foregoing, the receiving Party will protect the Confidential Information of the disclosing Party with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.



The receiving Party will promptly notify the disclosing Party of any misuse or misappropriation of Confidential Information that comes to the receiving Party's attention.

7.3 Property Rights.

All Confidential Information delivered to each Party is and shall remain the property of the disclosing Party. Written Confidential Information, and all copies thereof, shall be returned to each disclosing Party upon the termination of the Parties' relationship or upon written request by the disclosing Party, whichever first occurs. Each Party will destroy all documents, memoranda, notes and other writings whatsoever prepared by it based on the information in Confidential Information or containing such Party's analysis thereof, and each Party shall certify in writing to the other Party that such destruction has taken place. The Parties may not retain any copy of Confidential Information or such other document described in this paragraph.

7.4 No Warranty.

Except as explicitly set forth in this Agreement, each Party makes no warranty or representation as to the accuracy or completeness of any Confidential Information.

7.5 Retention of Rights.

This Agreement does not transfer ownership of Confidential Information or grant a license thereto, unless this Agreement specifically provides to the contrary. Each Party will retain all right, title, and interest in and to such Party's Confidential Information.

7.6 Subscriber Data.

Subscriber shall own all right, title and interest in and to all of the Subscriber Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Subscriber Data. Subscriber hereby agrees and acknowledges that Procurant may make use of the Subscriber Data to provide the Services and/or to formulate the Procurant Data.

7.7 Procurant Data

As between Procurant and Subscriber, Procurant shall own all right, title and interest in and to all of the Procurant Data, and all intellectual property rights therein, under all applicable laws of the United States and any other applicable state or foreign laws. If Subscriber generates any Procurant Data, Subscriber hereby assigns all right, title, and interest in and to such Procurant Data, including all related intellectual property rights, to Procurant. Procurant hereby grants Subscriber a limited, non-exclusive, non-transferable license to access and use the Procurant Data during the term of this Agreement solely to make use of the Service. Subscriber may not sublicense the Procurant Data except to an Integrator, provided that (a) the Integrator agrees to comply with the EDI Integration Guidelines set forth in any related Exhibits, and (b) Subscriber agrees that it will be liable of any breach of the EDI Integration Guidelines by Integrator or any action by Integrator that would be a breach of this Agreement had it been done by Subscriber. Subscriber agrees that it will not (i) access all or any part of the Service or the Procurant Data in order to build a product or service which competes with the Service; (ii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service or the Procurant Data available to any third party except as allowed



by this Agreement, or (iii) attempt to obtain, or assist third parties in obtaining, access to the Service or the Procurant Data, other than as provided under this Section 7.7.

7.8 Data Security.

Procurant shall maintain, implement and comply with information security best practices that provide policies and procedures for all reasonable administrative, technical, physical, anti-virus, and password related security for the Website, Service and Professional Services to prevent the unauthorized exposure or disclosure of Subscriber Data and Subscriber Confidential Information. Subscriber shall maintain, implement and comply with information security best practices that provide policies and procedures for all reasonable administrative, technical, physical, anti-virus, and password related security to prevent the unauthorized exposure or disclosure of Procurant Data. Such policies and procedures will contain administrative, technical, and physical safeguards, including without limitation: (i) guidelines on the proper disposal of Subscriber Data and Subscriber Confidential Information or Procurant Data, as applicable, after it is no longer needed to carry out the purposes of the Agreement; (ii) access controls on electronic systems used to maintain, access, or transmit Subscriber Data or Procurant Data, as applicable; (iii) access restrictions at physical locations containing Subscriber Data or Procurant Data, as applicable; (iv) encryption of electronic Subscriber Data or Procurant Data, as applicable; (v) testing and monitoring of electronic systems; (vi) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Subscriber Data or Procurant Data, as applicable; and (vii) installation of security patches based on commercially reasonable industry standards.

7.9 Data Incidents.

Each Party will implement and maintain a program for managing the actual or suspected unauthorized disclosure or exposure of Subscriber Data or Procurant Data, as applicable (each a "Security Incident"). In the event of a Security Incident, or in the event that either party suspects a Security Incident, such party will follow the procedures outlined in its Incident Management Policy (available upon request) to contact customers who are likely to have been impacted by the incident. Each party recognizes the urgency of these notifications and will do these as expeditiously as possible, including by contacting the other party within 72 hours of a declared Security Incident.

7.10 Data Privacy.

To the extent Procurant processes Personal Data Procurant will comply with its privacy policy located at <https://www.procurant.com/privacy-policy> (as updated from time to time) and with all laws and regulations governing the handling of Subscriber Data applicable to its provision of the Service and Professional Services and will not engage in any activity related to Subscriber Data that would place Subscriber in violation of any applicable law or regulation. If Procurant receives an access request from a data subject, Procurant will refer the data subject to Subscriber and will not respond directly to such request, unless required to do so by applicable law.

7.11 Disaster Recovery; Business Continuity.

Procurant warrants that as of the Effective Date of this Agreement, it has in effect a Business Continuity Plan ("BCP") and a Disaster Recovery Plan ("DRP") for the Services and Website covered



by this Agreement that meets or exceeds industry standards for such plans and that Procurant will maintain the BCP and DRP in effect for the term of this Agreement.

7.12 Injunction.

Each party agrees that breach of this Section 7 would cause the non-breaching party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the injured party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

8. Ownership / Intellectual Property Rights

8.1 Procurant Service and Marks

As between the parties, Procurant is the exclusive owner of the Procurant Services and all constituent parts, including without limitation, all software code, the Website, HTML scripts, the uniform resource locator (URL) for the Website, all Procurant trademarks, service marks and logos, all enhancements and improvements thereto, and all patent, copyright, trademark, trade secret, trade dress and other intellectual property rights therein throughout the world. Subscriber shall not reverse engineer, decompile, or create derivative works of the Procurant Services. Subscriber agrees that the trade names, trademarks, service marks, and trade dress used on or in connection with or associated with Procurant and further including the Procurant URL (collectively, the "Procurant Marks") and any goodwill attached to, or generated by, such Procurant Marks shall be owned exclusively by Procurant and shall inure solely to the benefit of Procurant. Subscriber shall not include Procurant Marks into its corporate name and/or domain name. Subscriber shall also not obtain, use, register, or otherwise acquire any trade names, trademarks, service marks, and/or trade dress that are confusingly similar to Procurant Marks. Subscriber shall have no claim of ownership in the Procurant Services, any of its constituent parts, any enhancements thereto, or intellectual property rights therein.

8.2 Data and Submissions

Notwithstanding anything to the contrary in this Agreement, Subscriber retains ownership of its intellectual property rights in and to Subscriber Data. As between Procurant and Subscriber, Subscriber reserves all rights and retains title and full ownership of Subscriber Data, and all intellectual property rights therein, under all applicable laws of the United States and any other applicable state or foreign laws.

Notwithstanding the foregoing, Subscriber may, but is not obligated to, provide comments, feedback, suggestions and ideas regarding the features and functionality of the Services to Procurant (collectively "Submissions") and Subscriber hereby grants Procurant a non-transferable, non-exclusive, perpetual and royalty free license to use such Submissions in the conduct of its business provided such Submissions do not include Subscriber Confidential Information or disclose Subscriber as the source of such Submissions. Procurant shall have the right to disclose or publish, without Subscriber written consent, statistical data collected and/or generated from the Service as long as such information is disclosed or published only in aggregate form and not directly attributable to Subscriber or any individual user.

9. Insurance Obligations of Procurant



Procurant agrees to keep in full force and effect during the term of this Agreement sufficient insurance policies in the types and at minimum amounts listed below. All policies will be issued by insurance companies licensed to do business in California and have an A.M. Best's rating of at least A- VII:

- (i) Workers' Compensation in statutory limits.
- (ii) Commercial General Liability Insurance with \$1,000,000 each occurrence, \$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate.
- (iii) Business Automobile Liability with \$1,000,000 combined single limit.
- (iv) Professional Liability (Errors & Omissions), where applicable, with a limit not less than \$1,000,000.

All policies will be primary and non-contributory to any insurance held by Subscriber and waive any right of subrogation (with the exception of professional liability) in favor of Subscriber. The Commercial General Liability and Automobile Liability policies will be endorsed to include Subscriber as additional insured. Breach of any of the warranties or conditions in this Agreement by Procurant will not prejudice Subscriber rights under these policies. Procurant will furnish Subscriber with Certificates of Insurance evidencing the above coverage upon request.

10. Indemnification Obligations

10.1 By Procurant

If any action, claim, suit or proceeding ("Claim") is brought against Subscriber, based solely upon an allegation that the Procurant Services (excluding any modifications made to the Service pursuant to Subscriber direction) infringe any patent, copyright, trademark or other intellectual property rights of any third party, or Procurant's violation of any local, state or federal laws or regulations, Procurant will defend such Claim at its own expense and shall indemnify and hold Subscriber harmless from and against all damages, liabilities, losses, expenses and costs incurred by Subscriber or arising in connection therewith.

10.2 By Subscriber

If any Claim is brought against Procurant by a third party, based upon Subscriber's (including its authorized agents) use of the Procurant Services, the Procurant Data, and/or Procurant's Marks in violation of this Agreement infringes such third party's intellectual property rights, or Subscriber's violation of any local, state and/or federal laws and regulations, Subscriber will defend such Claim at its own expense and shall indemnify and hold Procurant harmless from and against all damages, liabilities, losses, expenses and costs incurred by Procurant or arising in connection therewith.

10.3 Indemnification Procedures

With respect to indemnity obligations arising under this Section 10 the following shall apply: (i) the indemnified party shall promptly notify the other party when it becomes aware of any Claim eligible for indemnification and reasonably cooperate with the indemnifying party in the defense of such Claim at the indemnifying party's expense; (ii) the indemnified party will have the right to approve the terms of any settlement or compromise of an indemnified claim that restricts its rights granted under this Agreement or subjects it to any ongoing obligations; (iii) an



indemnifying party shall not be obligated to indemnify the other party, to the extent that a claim, suit, or proceeding arises out of the indemnified party's breach of this Agreement; and (iv) if a party is not controlling the defense, it has the right to participate in the defense and be represented by its own counsel at its own expense.

11. Disclaimer of Warranties

EXCEPT AS EXPRESSLY PROVIDED HEREIN: (I) THE PROCURANT SERVICES AND SOFTWARE ARE PROVIDED "AS IS" AND PROCURANT MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE PROCURANT SERVICES AND/OR SOFTWARE OR ANY RESULTS TO BE ACHIEVED THROUGH USE OF THE SAME; (II) PROCURANT ADDITIONALLY MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE PROCURANT SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE; (III) PROCURANT HAS NO CONTROL OVER AND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE QUALITY OR SAFETY OF THE ITEMS AND SERVICES OFFERED, THE ACCURACY OF THE INFORMATION OR DATA, THE ABILITY OF USERS TO RUN BUSINESS OPERATIONS; (IV) PROCURANT ALSO DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

12. Limitation of Damages

EXCEPT AS PROVIDED HEREIN OR OTHERWISE PROHIBITED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, REGARDLESS OF WHETHER EITHER PARTY HAS WARNED OR BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. ADDITIONALLY, PROCURANT SHALL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY AND/OR SERVICES OR RESULTING FROM ANY GOODS, DATA, SUBMISSIONS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE WEBSITE OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF DATA OR ARISING FROM ANY OTHER MATTER RELATING TO THE WEBSITE AND/OR PROCURANT SERVICES. THIS INCLUDES, BUT IS NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLES, EVEN IF PROCURANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR (I) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (II) EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 7; (III) EITHER PARTY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS; OR (IV) A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, IN NO EVENT SHALL EITHER PARTY'S LIABILITY EXCEED THE AMOUNTS PAID OR TO BE PAID TO PROCURANT DURING THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. EACH PARTY HEREBY WAIVES ITS RIGHTS TO PUNITIVE DAMAGES FOR ANY CLAIMS ARISING HEREUNDER.

13. Dispute Resolution

Prior to the commencement of litigation, the parties shall attempt in good faith to resolve any controversy or dispute pertaining to this Agreement, first by negotiations between the respective project managers of the parties (and, if appropriate, their respective legal counsel). The foregoing shall not apply to claims arising out of the breach or violation of a party's intellectual property rights or claims for injunctive equitable relief.

14. Notice



PROCURANT

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Subscriber will be addressed to the relevant billing contact designated by Subscriber. All other notices to Subscriber will be addressed to the relevant Services system administrator designated by Subscriber.

15. Miscellaneous.

Unless explicitly stated otherwise and/or incorporated herein by reference, this Agreement supersedes and cancels all prior negotiations, communications, understandings and agreements between Procurant and Subscriber. This Agreement may only be modified in a writing signed by an authorized officer of each party. The parties are independent contractors. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between the parties. Neither party will have the right to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever. Each party shall be solely responsible for any benefits, insurance and taxes related to its employees, servants, contractors and agents, as well as any claims, damages or lawsuits arising out of its acts or those of its employees, servants, contractors or agents or any of them. Neither party may assign this Agreement or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of the other party; provided, however, that Procurant may assign this Agreement or transfer any of its rights and obligations under this Agreement, without consent of the Subscriber, to: (a) any affiliate of Procurant, (b) any business organization resulting from the consolidation or merger of Procurant with or into another entity, (c) any person or entity which acquires a majority of Procurant's issued and outstanding capital stock or substantially all of Procurant's assets related to this Agreement. Any attempted assignment in violation of this Section 15 will be void and of no force and effect. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns. Except as specifically set forth herein, this Agreement is for the sole benefit of the parties hereto and does not create any third-party beneficiaries, whether intended or incidental. The failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is held void or unenforceable, that provision will be enforced to the maximum extent permissible, and the remaining provisions will remain in full force and effect. No failure or omission by either party to carry out or observe any of the terms or conditions of this Agreement shall give rise to any claim against such party or be deemed to be a breach of this Agreement if such failure or omission arises from a force majeure or cause reasonably beyond the control of that party ("Force Majeure Event").

Notwithstanding the foregoing, if suspension of Procurant's performance due to a Force Majeure Event continues for a period of more than ten (10) business days, Subscriber will have the right to terminate this Agreement upon written notice to Procurant. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof. Any action arising under or in connection with this Agreement may be brought in any appropriate state court sitting in Santa Cruz County, California or in any federal court sitting in the Northern District of California. This Agreement shall be binding on, inure to the benefit of, and be enforceable by the parties and their respective permitted successors and valid assigns.