PROCARE PRODUCTS AND SERVICES UNIVERSAL TERMS AND CONDITIONS

Last updated June 2020

These Procare Products and Services Universal Terms and Conditions (the "**Terms**") govern access to and the use of the suite of products and services for classroom management and parent engagement (each, a "**Service**," and collectively, the "**Services**") offered by Procare Software LLC, including through its affiliates (e.g., KinderLime, Cirrus Group LLC, Kressa Software, and KidReports LLC) (collectively, "**Procare**"). These Terms are entered into by and between Procare and the business, organization or other legal entity ("**Customer**") identified in an order form, invoice or statement of work ("**Order Form**") that references these Terms, as well as individual users authorized by Procare or Customer pursuant to these Terms to access the Services (each, a "**User**"). These Terms supplement the supplemental terms, if any, for the specific Procare products or services identified in the Order Form between Customer and Procare (each, a "**Supplement**"). These Terms, the applicable Supplement(s), and the Order Form (including any documents or policies referenced in these Terms and Supplements) are collectively referred to as the "**Agreement**." The Agreement shall be effective as of the effective date set forth in the Order Form (the "**Effective Date**"). All terms not defined in this paragraph or in the applicable Supplement have the meanings set forth in these Terms below. In this Agreement, the words "include" and "including" will not be construed as terms of limitation.

By accessing or using the Services, submitting an Order Form, or clicking a button or checking a box marked "I Agree" (or something similar), Customer, through its authorized representative, or a Customer User, as applicable, signifies that it has read, understood, and agrees to be bound by this Agreement, and is legally able to receive the Services under the laws of the United States or other countries in which it is resident or from which it uses the Services. Users must be over the age of 18, and, if a business, duly organized and legally in good standing. A Customer must take all reasonable steps to ensure that its Users comply with these Terms. **Notwithstanding the foregoing, this Agreement does not supersede any signed agreement between Customer and Procare for a particular Service, which signed Service agreement shall govern Customer's access to and use of such Service until the end of the agreement's term.**

1. **Notification Procedures and Changes to these Terms**

   Procare may provide notifications, whether such notifications are required by law or are for marketing or other business-related purposes, to Users via email notice, written or hard copy notice, or through posting of such notice on its website, as determined by Procare in its sole discretion. Procare reserves the right to determine the form and means of providing notifications to its Users, provided that a User may opt out of certain means of notification as described in these Terms. Procare is not responsible for any automatic filtering that a User or User's network provider may apply to email notifications that Procare sends to the email address a User provides Procare. Procare may, in its sole discretion, modify or update these Terms from time to time, including updates to pricing and fees, and Users should review this page periodically for updates. When we change these Terms in a material manner, we will update the 'last modified' date at the top of this page and notify User that material changes have been made to these Terms. User's continued use of the Services after any such change constitutes User's acceptance of the new Terms. If you do not agree to any of these Terms or any future Terms, do not use or access (or continue to access) the Services.

2. **Accounts**

   2.1. **Users**. Users must register an account with Procare (an "**Account**") prior to accessing the Services. Users agree to: (a) not share User's Account or transfer any part of it to anyone else; (b) provide accurate, current and complete information during the registration process and keep User's Account up-to-date; and (c) keep User's password secure and confidential. Procare reserves the right to refuse registration of, or cancel, passwords that we deem inappropriate. User agrees to notify Procare immediately of any unauthorized use of User's Account and is responsible for anything that happens through User's Account prior to closing it or reporting misuse to us.

   2.2. **Customer License Administrator**. If a User is registering an Account as an administrator of the Services on behalf of a Customer, through our Online Order Center or other mechanism provided by Procare (a) when User accepts the Agreement, User accepts the Agreement on behalf of all Users authorized by Customer to access and use the Services under Customer's license, including employees of User's company and/or its affiliates, such as schools; and (b) User represents and warrants that it has the authority to legally bind the Customer and to grant Procare all permissions and licenses provided in this Agreement.

2.3. Account Access. Customer is responsible for ensuring that access to and use of the Services comports with any limits stated in the applicable Order Form, including by protecting all authentication keys and access tokens for the Services in accordance with the usage limitations; prohibiting access to or use of the Services by anyone other than authorized Users; and ensuring that the authentication keys or access tokens are used solely as necessary to exercise Customer's rights granted under the Agreement. Customer is responsible and liable to Procare for all activity that occurs with the authentication keys, access tokens or otherwise through or in connection with Customer's User Accounts.

2.4. Account Profile. A User may control its Account profile and how it interacts with the Services by changing the settings in its Account. User consents to Procare's using the email address User provides in its Account to send User Services-related notices, including any notices required by law, in lieu of communication by other means such as postal mail. Procare may also use User's email address to send User other messages, such as changes to Services features, special offers, or Services-related newsletters.

3. **Provision of the Services.**

3.1. General. During the Term (as defined in Section 9.1 (Term and Renewal) below), Procare grants Customer a revocable, nonexclusive, non-sublicensable, non-transferable, limited license to (a) access and use the Services described in the applicable Order Form solely in accordance with any usage or license limitations set forth in the Order Form; (b) if applicable, install any software described in the Order Form (the "**Software**") solely as permitted by the features of the Software, and use the Software solely for Customer's internal business purposes; and (c) access any and all documentation related to the Services or Software that Procare may make available from time to time in any format it may decide in its sole discretion (the "**Documentation**") internally and solely in connection with Customer's authorized use of the Services or Software, as applicable. The Services and related Software are licensed, not sold, to Customer. Upon the written agreement of the parties, Procare may also perform additional technical, supplemental, or professional services for Customer at either Procare's published pricing rates or at rates mutually agreed to in writing between Customer and Procare. The definition "Services" is comprehensive of professional services, technical support, programming, deliverables, training materials, documentation, and other services specific to Procare's and its affiliates' products and services.

3.2. Usage Limitations. The Services may be subject to certain limitations, such as, for example, (a) limits on the number of Users; (b) limits to named (not concurrent) devices or persons; (c) limits on the number of "Centers" (or "Centres," i.e., a building, school, unit, facility or business of operation with a unique business unit, physical or mailing address); or (d) limits on content storage capacity specific to Customer's subscription type. Procare will specify these limitations in the Order Form for the applicable subscription package. If Procare makes modifications to these limits that would negatively impact Customer, these modifications will not apply to Customer until the start of Customer's next subscription term, if any.

3.3. Services Updates. Customer's use of the Services includes the right to access all functionality available in the product to which Customer subscribed in the Order Form, on the effective date of such Order Form. Procare may enhance and modify the Services and introduce new Services from time to time but will provide Customer with notice unless such changes are of minor nature with no material effect on Procare's contractual obligations. Procare will not make changes to the Services that materially reduce the functionality Customer purchased for the applicable subscription term. To the extent Procare makes available any new or different features, functionality or enhancements to the Services, Procare will market these separately and may require the payment of additional fees. Customer agrees that Procare shall not be liable to Customer or any third party for any modification of the Services in keeping with this section.

3.4. Software Updates. The Software and Services identified in an Order Form may automatically download and install updates from time to time from Procare (or its licensors). These updates are designed to improve, enhance and further develop the Software or Service, as applicable, and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. Customer agrees to receive such updates (and permit Procare to deliver these to Customer) as part of Customer's use of the Software or Services.

3.5. Service Availability. Procare will make commercially reasonable efforts to keep the service up and running at all times. However, the Services may occasionally be unavailable for maintenance. In such cases, Procare will make commercially reasonable efforts to bring the Services down for maintenance during non-business hours. Procare will also make commercially reasonable efforts to announce routine maintenance with advance notice.

3.6. Third Party Products and Services. During use of the Services, Customer may enter into correspondence with, or purchase goods, software, hardware and/or services from third parties. Any such activity, and any terms, conditions, warranties or representations associated with such activity are solely between Customer and the applicable third-party. Procare and its licensors shall have no liability, obligation or responsibility associated with or for any such correspondence, purchase or promotion between Customer and any such third-party, whether or not we recommend such third-party. In no event shall Procare or its licensors be responsible for any content, products, warranties or other materials on or available from such third parties. Customer recognizes that certain third-party providers of ancillary products or services may require Customer's agreement to additional or different license or other terms prior to Customer's use of or access to such software, hardware or services. To the extent there is a conflict between such terms and conditions and the Agreement, the terms and conditions for the applicable third-party products or services shall control.

4. User Content.

4.1. License to User Content. Customer hereby grants to Procare a fully paid-up, royalty-free, worldwide, nonexclusive right and license, with the right to sublicense, copy, reproduce, modify, use, publicly perform, display, distribute and create derivative works of any and all text, images, video, audiovisual content, works of authorship or other types of materials, information or communications, or hyperlinks to any of the foregoing that Customer provides, posts, uploads, publishes, transmits or distributes on or through the Services (collectively, the "**User Content**") during the Term: (a) to provide the Services to Customer and its Users in accordance with the Agreement; (b) to perform such other actions as authorized or instructed by Customer in writing (email to suffice).

4.2. Responsibility for User Content. Procare does not own any User Content, and Customer, not Procare, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all User Content. In connection with User Content, Customer, and User as applicable, represents and warrants that it: (a) has the written consent of each and every identifiable natural person in the User Content, if any, to use such person's name or likeness in the manner contemplated by the Services and the Agreement; (b) has obtained (and is solely responsible for obtaining) all consents that may be required by federal, state or local law, regulation ordinance, court order or other legal process ("**Applicable Law**") to submit any User Content relating to third parties; (c) User Content and Procare's use thereof as contemplated by the Agreement and the Services will not violate any law or infringe any rights of any third party, including but not limited to any intellectual property rights and/or privacy rights; (d) Procare may exercise the rights to use User Content granted under these Terms without liability for payment of any guild fees, residuals, payments, fees, or royalties payable under any collective bargaining agreement or otherwise; and (e) User Content is truthful and accurate. Procare expressly disclaims any liability for the data and content transmitted through or intermediately, temporarily or permanently stored on Procare networks or any server and for the actions of omission of Customers or Users.

4.3. Our Right to Remove User Content. Procare has the absolute right to remove or disable access to any **User Content** on the Services as needed to (a) operate, secure and improve the Services (including without limitation for fraud prevention, risk assessment, investigation and customer support purposes); (b) ensure Users' compliance with the Agreement (or any Procare policy), Applicable Law, or an order or requirement of a court, law enforcement or other administrative agency or governmental body; or (c) as otherwise set forth in this Agreement. If Procare becomes aware of any **User Content** that allegedly violates this Agreement, Procare may investigate the allegation and determine in our sole discretion whether to act, but has no liability or responsibility to User to do so. Customer agrees to cooperate with Procare in good faith, as Procare may reasonably request, in any investigation Procare chooses to undertake.

5. Customer Data.

5.1. Compliance with Data Protection Laws. The Parties recognize that this Agreement is subject to, and intended to comply with, all Applicable Law in the United States relating to the use, collection, retention, storage, security, disclosure, transfer, sale or other processing of personal information (collectively, the "**Data Protection Laws**").

5.2. License to Customer Data. In connection with the provision of the Services to Customer, Procare may process personal information and data from or about Customer's authorized Users, employees, current or potential clients or other individuals that is collected, submitted, posted, displayed, uploaded or otherwise received from or provided by Customer's authorized Users by or through the Services (collectively, "**Customer Data**"). Customer hereby grants to Procare a fully paid-up, royalty-free, worldwide, nonexclusive right and license, with the right to sublicense, copy, reproduce, modify, use, publicly perform, display, distribute and create derivative works of all Customer Data during the Term for the purpose of (a) providing the Services in accordance with the purposes set forth in the

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Agreement and applicable Order Form and in accordance with Customer's instructions set forth in writing; (b) to build, improve or develop the quality of the Procare products and services or for other operational or business purposes; (c) to detect data security incidents or to protect against fraudulent or illegal activity; and (d) to enforce Procare's rights under this Agreement.

5.3. **Customer Data Disclosure.** Procare will not disclose or sell Customer Data other than as necessary to perform the agreed upon Services, or in accordance with Customer's instructions. Notwithstanding the foregoing, nothing in this Agreement shall restrict Procare's ability to disclose Customer Data (a) to a subcontractor for a business purpose pursuant to a written agreement to protect the confidentiality of Customer Data, provided that Procare shall be liable to Customer for the acts or omissions of any subcontractor to whom Procare has disclosed or permitted to access Customer Data as if they were the acts or omissions of Procare; (b) to a third party as necessary to comply with applicable laws; (c) with the Customer's or User's consent; or (d) as otherwise permitted by applicable Data Protection Laws.

5.4. **Customer Responsibilities.** Procare does not own any Customer Data, and Customer, not Procare, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Customer acknowledges and affirms that Customer has provided all notices and obtained all consents necessary, if any, under the Data Protection Laws, to provide to Procare, or permit Procare to access and collect, Customer Data for the purposes described in this Agreement. Customer shall not submit, or cause to be submitted by any User, Customer Data that includes (a) personal information relating to a resident of the European Economic Area or which may be subject to the General Data Protection Regulation (GDPR); (b) personal information or other data that may be subject to additional protections under applicable laws or regulations including, but not limited to, the Gramm-Leach-Bliley Act (GLBA) or the Health Insurance Portability and Accountability Act (HIPAA), the Children's Online Privacy Protection Act (COPPA); or (c) a social security number, passport number, driver's license number, or similar identifier, credit card or debit card number, financial information, without Procare's prior written approval. Customer shall not provide to Procare, or permit Procare to access and collect, Customer Data that includes personal information from a student's educational record as defined by the Family Education Rights and Privacy Act (FERPA), unless Customer has agreed to the Student Data Processing Addendum to this Agreement (available upon request).

5.5. **De-Identified or Anonymized Data.** Procare may collect, analyze and use De-Identified Data and/or aggregate data to (a) analyze, improve, market or develop the products and services or new products and services; (b) train predictive models; (c) conduct research; (d) inform our marketing and advertising campaigns. "**De-Identified Data**" means any data, including but not limited to Customer Data, usage data or other data generated from Customer's and its Users' use of the Services, from which all personal information, including direct and indirect identifiers, has been removed or obscured so that the remaining information does not reasonably identify an individual, and for which Procare has implemented technical safeguards and business processes to prohibit the reidentification of such data. For clarity and without limitation, De-Identified Data shall not be deemed "Customer Data," and nothing in these Terms shall limit Procare's right, both during and after the Term of the Agreement, to use, store, transmit, modify, copy, display, sublicense and create derivative works from De-Identified Data.

5.6. **Hosted Data Back Up**. Procare will back up User Content and Customer Data on a daily basis. All data backups will be retained for a period of seven (7) calendar days. Every effort is made to ensure the reliability of the backed up data in the event that it would be necessary to restore a database. Procare, however, makes no guaranties that the backed up database will be available or error free. Upon request, Procare will provide to the Customer a current database backup that can be restored to an alternate location to verify the contents and confirm the quality of the backup.

5.7. **California Consumer Privacy Act.** To the extent the California Consumer Privacy Act of 2018 and its implementing regulations (the "**CCPA**") applies, the Parties acknowledge that Procare processes the personal information contained in Customer Data for and on behalf of Customer as a "Service Provider" (as defined in the CCPA), and shall not collect, retain, use or disclose Customer Data for any commercial purpose other than for the specific purposes of performing the Services, as instructed by the Customer, and as otherwise specified in the Agreement. Procare agrees to reasonably cooperate with Customer, at Customer's expense, to assist Customer with ensuring its compliance with the CCPA, including to respond to requests for access, knowledge, deletion or rectification to the extent such actions cannot be performed by Customer through the Service dashboard and User controls. If and to the extent Customer instructs Procare to delete a User's personal information in response to a consumer request received by Customer which cannot be performed by Customer through Service dashboard, Procare agrees to delete or de-identify such information within thirty (30) days of receipt of the request. For the avoidance of doubt, Procare shall have no obligation to delete De-Identified Data.

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6. Acceptable Use.

6.1. Restrictions. Except as permitted by the Agreement, Customer and Users will not, and will not permit any third-party to: (a) use the Services or any portion thereof except as permitted by the Agreement or by Procare in writing; (b) use the Software or Services or any portion thereof for any commercial purpose; (c) sell, rent, lease or use the Software or Services or any portion thereof for time sharing purposes; (d) use the Software or Services or any portion thereof for the purpose of building a similar or competitive product or service to such Software, Service, or to any of Procare's other products or services; (e) decompile, disassemble, or reverse engineer the Software, or underlying software to the Services, or any portion thereof (unless this restriction is not permitted under Applicable Law); (f) remove, modify, or obscure any copyright or proprietary notices contained in the Services or any portion thereof; (g) access or use the Software or Services or any portion thereof in a manner intended to circumvent or exceed any account limitations or requirements, including, without limitation, any account limitations or requirements set forth in the Order Form; (h) obtain unauthorized access to the Services or any portion thereof (including, without limitation, permitting access to or use of the Software or Services or any portion thereof via another system or tool, the primary effect of which is to enable input of requests or transactions by other than Users); (i) use the Software or Services or any portion thereof in a manner that is contrary to Applicable Law, including but not limited to privacy regulations such HIPAA, COPPA and FERPA, or in willful violation of any third party proprietary rights, including, without limitation, any rights of privacy or intellectual property rights; (j) knowingly publish, post, upload or otherwise transmit any data via the Software or Services or any portion thereof that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (k) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software or Services or any portion thereof; (l) cause or initiate security breaches or disruptions of network communication and/or connectivity, including port scans, flood pings, email-bombing, packet spoofing, IP spoofing, and forged routing information; or (m) knowingly post, upload, transmit or provide any User Content that (i) may create a risk of harm, loss, physical or mental injury, emotional distress, or physical or mental illness to any person, (ii) may constitute or contribute to a crime or tort, or (iii) contains any information or content that Procare reasonably deems to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, obscene, or otherwise objectionable. Customer and Users shall be responsible for determining which Applicable Laws are applicable to their use of Software and Services. If Customer or any User uses the Software, Services, Procare network or its physical infrastructure in a manner that exposes Procare to potential liability, as reasonably determined by Procare, Procare may permanently suspend or terminate Customer's or such User's access to the Software or Services without refund or the provision of service credit.

6.2. Communications and Messaging Services. If and to the extent that Customer and/or any User uses the Services to transmit, send, receive, or facilitate email, calls, SMS/MMS messages or other communications ("**Communications**") or causes or induces such Communications to be sent through the Services, then the following additional terms apply to Customer, and Customer is responsible for the actions of each User of Customer's license:

6.2.1. Customer and User shall at all times comply with the CAN SPAM Act of 2003, the Telephone Consumer Protection Act (47 U.S.C. §227), the Do-Not-Call Implementation Act and the Do-Not-Call list registry rules (http://www.donotcall.gov), the Telemarketing Sales Rule, 47 C.F.R. § 64.1200 et seq, and all other state or local laws, rules, regulations, and guidelines relating to calling or texting, including without limitation, rules, regulations and guidelines set forth by the Federal Trade Commission and the Federal Communications Commission (collectively, the "**Calling Laws**").

6.2.2. Customer agrees that, as between Customer, User and Procare, Customer is the initiator and sender of any call, SMS/MMS message, email or other Communication transmitted through the Service and for all content relating to, inducing, or encouraging Communications to take place.

6.2.3. Customer is responsible for all activity occurring under Customer's and authorized User's accounts, including any unauthorized use of such accounts by any third party.

6.2.4. Customer and User agree to familiarize themselves with, and abide by, all Applicable Laws that place restrictions on certain types of phone calls and/or SMS or MMS messages, and Customer and Users are solely responsible for compliance with such laws and for all Communications and content sent, initiated or

transmitted through the Services. Procare is not responsible for reviewing the contents of any Communication transmitted through the Service or transmitted by Customer or any User related to Customer's or its Users' use of the Service, nor is it responsible for obtaining any necessary consents or permissions from the recipients of such Communications.

6.2.5. Customer warrants and agrees on behalf of itself and its Users that Customer and its Users have all necessary consents and permissions necessary to transmit Communications to recipients, and shall not transmit or cause to be transmitted Communications to recipients who have unsubscribed, withdrawn consent or otherwise opted-out of receiving Communications from Customer or Customer's Users.

6.2.6. The Services shall not be used for marketing, telemarketing, commercial or political activities or Communications.

6.3. Legal Investigations. In addition to any other actions it may take under this Agreement, Procare will comply with any court orders including: discovery orders, subpoenas, freeze orders, search warrants, information requests, wire taps, electronic intercepts and surveillance, preservation requests, and any other order from a court, government entity or regulatory agency (each an "**Investigation**"). Procare may charge Customer or any person seeking compliance with an Investigation for the reasonable costs and expenses associated with Procare's compliance with any Investigation. Procare reserves the right to comply with any Investigation without notice to Customer. Procare shall not be deemed in breach of this Agreement for Procare's compliance with any Investigation that may cause Customer to incur downtime or requires the sequestering of all or a portion of User Content. Customer shall not be entitled to a refund or any service credit as a result of any such downtime.

7. Proprietary Rights

7.1. Ownership. As between Procare and Customer (a) Customer and its licensors own all right, title and interest in and to (i) the User Content, (ii) Customer Data, and (ii) Customer's copyrights, trademarks, service marks, trade names, trade secrets, and other intellectual and proprietary rights with respect to Customer's products and services; and (b) Procare and its licensors own all right, title and interest in and to (i) the Services (including, but not limited to, the Software, Documentation and any information, text, links, graphics, photos, audio, videos, and all other forms of data or communication that Users can view on, access or otherwise interact with through the Services, with the exception of User Content and Customer Data), and (ii) Procare's and its affiliates' copyrights, trademarks, service marks, trade names, trade secrets, and other intellectual and proprietary rights with respect to Procare's and its affiliates' products and services.

7.2. Feedback. If Customer or a User provides any feedback, comments, questions, suggestions, or the like about the Services or Software (collectively "**Feedback**"), then Customer or User, as applicable, hereby assigns to Procare all right, title, and interest in, and Procare is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, including, without limitation, for the improvement, marketing, and promotion of the Services or Software. Customer agrees that Feedback provided by Customer or its Users is given entirely voluntarily and that Feedback, even if designated as confidential by Customer, will not, absent a separate written agreement, create any confidentiality obligation for Procare with respect to such Feedback.

7.3. Reservation of Rights. Each party reserves all rights not expressly granted in the Agreement, and no licenses are granted by either party to the other under the Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

8. Fees and Payment.

8.1. Charges. Customer agrees to pay all charges, fees, penalties, early cancellation charges, and other amounts due under the Agreement (collectively "**Charges**"), including, without limitation, any fees for the Services or Software set forth in the Order Form. Any and all Charges shall be paid in United States dollars. Unless otherwise indicated in the Order Form, Customer shall make payments by: (i) on the second (2nd) business day of each month for any recurring monthly charge (the "**Monthly Charge**"), by credit card; (ii) by a one-time prepayment for any Service or Software with a fixed Initial Term, including for any Renewal Term (each as defined below), due within thirty (30) days of Customer's receipt of invoice; or (iii) otherwise in accordance with the payment schedule set forth in the Order Form.

8.2. Service Credit. Procare will provide Customer with a credit towards Service fees in the event that Customer uses Procare's payment processing Service to process its own tuition, enrollment or other end user payments made

through the applicable Service(s). Such credit will appear as a line item on Customer's invoice for the applicable Service(s). Procare will determine, in its sole discretion, what constitutes "use" of the payment processing Service. If Procare determines that Customer is not using Procare's payment processing Service per the "use" definition determined by Procare in its sole discretion, Procare may terminate the credit, and will notify Customer within thirty (30) days of such termination so that remediation steps regarding "use" of the payment processing Service can be taken to reinstate the credit.

8.3. **Third Party Fees**. Subject to Section 8.2 (Service Credit), and unless otherwise agreed to in writing, Customer is responsible for; (a) third party fees related to the operation and or integration of Services specific to Customer's systems; and (b) fees for payment gateways or gateway integration fees, credit card processing fees, debit, ACH, e-check or related integration or processing fees.

8.4. **Changes to the Fees.** Unless otherwise specified in an Order Form, Procare may change the fees for a Service(s) by providing Customer written notice of its intent to change the fees at least thirty (30) days prior to effective date of the change ("**Fee Change Period**"). Notwithstanding the foregoing, any promotional pricing on Services will be valid for the first twelve (12) months of Customer's subscription, after which Procare reserves the right to increase the promotional pricing to standard pricing without notice. In the event Procare increases the fees for a Service, Customer may terminate the Agreement during the Fee Change Period by completing the cancellation form made available on Procare's website during the Fee Change Period, which will be effective upon Procare's receipt. Such termination will be Customer's sole and exclusive remedy in the event Customer disagrees with a fee increase. If Customer does not terminate the Agreement within the Fee Change Period under this Section 7.4, then Customer will waive any further rights to termination in connection with any fee increases by Procare and will be deemed to have accepted the fee increase.

8.5. **Late Fees; Suspension of Services**

    8.5.1. **Interest on Late Payments.** Any and all amounts not paid by Customer when due shall will be subject to interest at the lesser rate of: (a) one and one-half percent (1.5%) per month; or (b) the highest interest rate permitted by applicable law.

    8.5.2. **Suspension and Termination of Services.** If Customer fails to pay any past due amount within seven (7) days after payment is due and payable, Procare may suspend all or part of Customer's access to and use of the Services. If such past due amounts remain unpaid for an additional ten (10) days thereafter, Procare may terminate the Agreement and all of Customer's access to and use of the Services. After such termination, Customer may contact Procare to reinstate its access to and use of the Services, which Procare may allow for a reinstatement fee to be determined by Procare at its sole discretion, in addition to the payment of any outstanding amounts owed by Customer and any accrued interest on those amounts. Customer will continue to be charged for Services during any period of suspension.

    8.5.3. **Collection Costs.** Customer shall also pay to Procare all expenses incurred by Procare in exercising any of its rights under the Agreement or Applicable Law with respect to the collection of a payment default, including, but not limited to, attorney's fees and court costs. Procare reserves the right to impose a reconnection fee in the event Customer's access to Services has been suspended due to non-payment. Customer furthermore agrees and acknowledges that Procare has no obligation to retain User Content or Customer Data and that such User Content and Customer Data may be irretrievably deleted if Customer's account is thirty (30) days or more delinquent.

8.6. **Free Trial Services.** Procare may make certain Services to which Customer has subscribed on a free trial basis (a "**Trial**") available to Customer until the earlier of: (a) the end of the then-current Trial period offered by Procare; (b) the start date of any paid Services ordered by Customer; or (c) the date on which Procare elects in its sole discretion to terminate Customer's access to the Trial (the "**Trial Term**"). Customer acknowledges and agrees that the features and functionality of the Services may be limited during the Trial Term. In addition, any changes made to User Content or Customer Data (by or for Customer) during the Trial Term may be permanently lost unless Customer purchases a subscription to the same or upgraded Services to those covered during the Trial Term. Procare reserves the right to delete User Content and Customer Data following the Trial Term to the extent Customer does not purchase a paid subscription within seven (7) days following the end of the Trial Term. NOTWITHSTANDING ANYTHING TO THE CONTRARY THIS AGREEMENT, PROCARE DOES NOT PROVIDE ANY WARRANTY, SUPPORT OR INDEMNIFICATION OF ANY KIND WITH RESPECT TO THE SERVICES DURING THE TRIAL TERM.

8.7. **Payment Dispute.** Customer will be deemed to have accepted as conclusively accurate any Charges that it has not disputed in writing and delivered to Procare within thirty (30) days of the Charge date. Customer may withhold the

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disputed portions of payments that are properly and timely disputed hereunder as long as it timely pays all undisputed Charges that are outstanding. The parties shall work together in good faith to resolve any such disputed Charge(s).

8.8. Audit. Upon thirty (30) days written notice, Procare may audit Customer's use of the Services. Customer agrees to cooperate with any Procare audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations. Customer furthermore agrees that Procare shall not be responsible for any of Customer's costs incurred in cooperation with the audit.

8.9. Sales and Use Taxes. Customer is responsible for all taxes related to purchases of and subscriptions to Procare's products and Services, to include but not limited to any and all sales taxes, value-added taxes, import taxes/customs/duties and any other similar taxes imposed by any governmental entity (except taxes imposed on Procare's net income), which will be billed to and paid by Customer.

9. Term and Termination

9.1. Term and Renewal. The initial term of a Service shall begin on the effective date of the subscription specified in the Order Form, and extend for the period specified in the applicable Order Form (the "**Initial Term**"), unless earlier terminated or cancelled pursuant to this Agreement. The Initial Term may be renewed upon mutual agreement of the parties and payment of the applicable Charges (in each case, a "**Renewal Term**" and collectively with the Initial Term, the "**Term**").

9.2. Termination.

9.2.1. Procare Termination. Procare may immediately terminate the Agreement at any time, and without liability to Customer ("**Procare Termination**") in the event of: (a) Customer's failure to pay any Charges or other amounts payable to Procare when due; (b) Customer's or, with respect to an individual User, User's material breach or violation of any provision of the Agreement (except for Section 6 (Acceptable Use)) that is not cured within ten (10) days of Customer's receipt of written notice from Procare referencing such breach or violation; (c) Customer's or User's material breach or violation of Section 6 (Acceptable Use); (d) Customer ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) calendar days, or making an assignment for the benefit of its creditors; (e) Procare is required to do so by law (for example, due to a change to the Applicable Law governing the provision of the Service); (f) the Services rely on data or services provided by a third party partner and the relationship with such partner (i) has expired or been terminated, or (ii) requires Procare to change the way Procare provides the data or services through the Services; or (g) providing the Services could create a substantial economic burden, security risk, or material technical burden, as determined by Procare in its reasonable good faith judgment.

9.2.2. Customer Termination. Customer may terminate the Agreement with respect to all, and not less than all, of the Services without liability (except as set forth in Section 9.4 (Outstanding Payments; No Refunds) below) (a) for convenience with thirty (30) days' prior written notice to Procare; and (b) upon the occurrence of a material breach by Procare of its obligations to provide the Services according to the terms of the Agreement that is not cured within thirty (30) business days after Procare's receipt of written notice from Customer describing such breach in detail is received by Procare (subsection (b), a "**Customer Termination for Breach**").

9.3. Effect of Termination. Unless otherwise stated in the Agreement, upon the expiration or termination of the Agreement: (a) all rights and licenses granted by a party to the other party will immediately terminate; (b) Procare will terminate Customer's and/or User's access to its User Content and Customer Data through the Services (subject to Section 9.5 (Availability of User Content and Customer Data) below); and (c) subject to Section 9.4 (Outstanding Payments; No Refunds) or as otherwise specified in this Agreement, each of the parties will be relieved of their further duties and obligations arising under the Agreement.

9.4. Outstanding Payments; No Refunds. In the event that the Agreement is terminated by Procare for any reason constituting Procare Termination or by Customer for any reason other than Customer Termination for Breach, all Charges and any other amounts owing to Procare under the Agreement shall accelerate and be immediately due and payable, including, without limitation: (a) in the case of any Services subscribed to on a month-to-month basis, Charges through the end of the month in which the Services are terminated; and (b) in the case of any Services subscribed to for other than on a month-to-month basis, Charges through the remainder of the Initial Term or the then-current Renewal Term as applicable. Customer agrees that Procare may charge such unpaid fees to Customer's credit card or otherwise bill Customer for such unpaid fees. Customer acknowledges that it will not be entitled to any refund or credit hereunder, and Customer hereby waives all rights to any such refund or credit. Set-up fees, monthly service fees and usage fees are non-refundable.

9.5. Availability of User Content and Customer Data. In the event of a termination or expiration hereunder, Customer or User, as applicable, will have access to, and the ability to export, its Customer Data or User Content for a period of thirty (30) days following such termination or expiration. After thirty (30) days, Procare shall have no obligation to retain Customer Data or User Content, which shall be permanently deleted according to Procare's standard data retention and deletion schedule. Except for making applicable functionality available through the Services, Procare has no obligation to assist Customer and/or User in exporting its Customer Data or User Content; provided, however, that Customer or User may request in writing that Procare provide such assistance, and, to the extent that Procare agrees to such request, shall incur any costs associated with such assistance, to be determined at Procare's sole discretion. Notwithstanding the foregoing, Customer Data or User Content shall only be made available to Customer or User, as applicable, if all Charges and other amounts due and payable to Procare under the Agreement have been paid, and Customer or User, as applicable, has not materially breached or violated Section 6 (Acceptable Use). Customer and Users hereby agree and acknowledge that Procare has no obligation to retain Customer Data or User Content, and may delete such Customer Data and User Content, more than thirty (30) days after termination. Upon termination for cause, the Customer's or User's, as applicable, right to access or use Customer Data or User Content immediately ceases, and Procare shall have no obligation to maintain or forward any Customer Data or User Content .

9.6. Survival. The expiration or termination of the Agreement will not otherwise release either party from its obligation to pay any sum that may be then or thereafter owing to the other party nor operate to discharge any liability that had been incurred by either party prior to any such termination. Sections 5 (with the exception of Section 5.6 (Hosted Data Backup)), 6, 7, this Section 9.6, and 10 through 31 (inclusive) shall survive the expiration or termination of the Agreement for any reason.

10. Confidential Information.

10.1. Confidentiality. Procare and Customer each agree to retain in confidence the non-public information and know-how disclosed pursuant to the Agreement which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure, or should reasonably be understood to be confidential by the recipient (the "**Confidential Information**"). Notwithstanding any failure to so designate them, the Services and Software shall be Procare's Confidential Information; and the Customer Data and User Content shall be Customer's Confidential Information. Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees, officers, affiliates, controlling stockholders, agents, advisors, subcontractors and other representatives as is reasonably required in connection with the exercise of its rights and obligations under the Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Each party agrees to immediately notify the other party of any unauthorized disclosure or use of any Confidential Information and to assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known without breach of the Agreement; (ii) discovered, created or independently developed by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party; or (iv) required to be disclosed by law or court order; provided that the receiving party shall provide prompt notice thereof and commercially reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives (and only subject to confidentiality obligations at least as protective as those set forth herein) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto. Each party agrees and acknowledges that any breach or threatened breach of this Section 10.1 may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of the Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law. Any and all Confidential Information provided under the Agreement will remain the sole and exclusive property of the disclosing party and nothing in the Agreement will be construed to grant the receiving party any ownership right in, or license to, Confidential Information provided by the disclosing party unless otherwise stated in the Agreement. Upon the earlier of the expiration or termination of the Agreement or the disclosing party's written request, the receiving party will, within a reasonable time, return to the disclosing party or permanently delete or destroy any and all of the disclosing party's Confidential Information, and any and all copies thereof, within its possession or control as may have been provided pursuant to the Agreement.

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10.2. Data Security. Procare employs commercially reasonable administrative, physical and technical safeguards and technologies, designed to secure Customer Data from unauthorized access, disclosure or use. Such measures will not be diminished during the Term. In the event that Procare determines that unencrypted or unredacted Customer Data was accessed or acquired by an unauthorized party, Procare will promptly inform Customer without undue delay and shall provide reasonable cooperation with Customer's investigation of the incident. Customer, as the owner of Customer Data, shall be solely responsible for compliance with any notification obligations that may be required under applicable laws. NOTWITHSTANDING THE FOREGOING IN THIS SECTION 10.2, PROCARE DOES NOT GUARANTEE THAT UNAUTHORIZED THIRD PARTIES WILL NEVER BE ABLE TO DEFEAT PROCARE'S SECURITY MEASURES OR USE THE CUSTOMER DATA FOR IMPROPER PURPOSES. CUSTOMER ACKNOWLEDGES THAT IT PROVIDES CUSTOMER DATA AT ITS OWN RISK AND THAT PROCARE TAKES NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR CUSTOMER DATA.

11. **Privacy.** Procare cares about Users' privacy. User understands that by using the Software and Services, User consents to the collection, use and disclosure of User's personal information and aggregate and/or anonymized data as set forth in Procare's Privacy Policy. Insofar as the User Content, Customer Data or other content submitted by User includes personal information ("**Personal Information**"), Procare will only use such Personal Information in accordance with Section 5 (Customer Data) of these Terms.

12. **Indemnification.** Customer agrees to indemnify and hold harmless Procare, its affiliates, their affiliates and each of their respective directors, officers, employees, shareholders and agents (collectively, the "**Indemnified Parties**") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or any and all costs thereof (collectively, "**Losses**") to which the Indemnified Parties may become subject and which Losses arise out of, or relate to, the Agreement, Customer's use of the Services, Software, User Content, Customer Data, breach of any confidentiality obligation, or any alleged infringement of any trademark, copyright, patent or other intellectual property right, and will reimburse the Indemnified Parties for all legal and other expenses, including, but not limited to, reasonable attorney's fees incurred by the Indemnified Parties, in connection with investigating, defending, or settling any Loss, whether or not in connection with pending or threatened litigation in which the Indemnified Parties may be a party.

13. **Limitation on Liability and Claims.** Procare shall not be liable for: (a) any indirect, incidental, special or consequential damages, or for any loss of profits or loss of revenue resulting from the use of the Services or Software by Customer or any third parties or any failure of the Services or Software; or (b) any loss, exfiltration, disclosure or corruption of Customer Data, User Content or other data, including, without limitation, loss of data resulting from delays, non-deliveries, miss-deliveries, service interruptions, failure of Procare's network, reclamation of servers, failure of servers, the reloading of an operating system or other software on a server. In no event shall Procare's aggregate liability under the Agreement exceed the aggregate amount paid by Customer to Procare in the billing cycle immediately preceding such claim. NO CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE ASSERTED BY CUSTOMER AGAINST PROCARE MORE THAN ONE (1) YEAR FOLLOWING THE DATE OF THE EVENT THAT UNDERLIES ANY SUCH CLAIM.

14. **Disclaimer of Warranties.** PROCARE PROVIDES ALL SERVICES AND SOFTWARE "AS IS," WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS MAY BE OTHERWISE STATED IN A SUPPLEMENT, CUSTOMER BEARS THE ENTIRE RISK AS TO THE PERFORMANCE OF THE SERVICES OR ANY SOFTWARE INCLUDED IN THE SERVICES. PROCARE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, AND ASSUMES NO RESPONSIBILITY OR LIABILITY OF ANY KIND FOR ERRORS IN SOFTWARE OR SERVICES OR FOR THE CONSEQUENCES OF ANY SUCH ERRORS. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, TECHNOLOGY, SOFTWARE, CUSTOMER DATA, CONFIDENTIAL INFORMATION, OR OTHER MATERIALS. THE SOFTWARE AND SERVICES ARE EXPRESSLY NOT INTENDED TO BE AND ARE EXPRESSLY NOT WARRANTED TO BE COMPLIANT WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (KNOWN AS "**HIPAA**"). Customer shall be solely responsible for the selection, use and suitability of the Software and Services, and Procare shall have no liability therefore.

15. **Notices.** Unless otherwise specified herein, all notices, requests and other communications hereunder shall be sufficiently given if in writing and delivered by email, recognized overnight courier, USPS postal, registered or certified mail to the address of Customer listed in Procare's records, or, if to Procare, then to the address set forth below. Such notices or other communications shall be deemed to have been given on the date that return confirmation is received.

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> Suite 1800

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16. **Force Majeure.** Neither party shall lose any rights hereunder or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure is due by any occurrence or contingency beyond its reasonable control, including, but not limited to, war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party; provided that such party shall use commercially reasonable efforts to promptly mitigate any damages or losses.

17. **Publicity.** Customer agrees that Procare may publicly disclose that Procare is providing Software or Services to Customer and may include Customer's name, logo, trade names, trademarks, service marks, trade dress, logos and other rights in indicia in any promotional materials, including without limitation any press releases issued by Procare and on Procare's website and printed materials. Except as set forth in this Agreement, neither party may publicly use the other party's name, logo or other trade or service mark.

18. **Customer Equipment Maintenance and Troubleshooting.** If Procare provides any support of the Software or Services to Customer, and such support includes local troubleshooting of Customer's infrastructure or equipment, Customer will provide qualified technicians capable of independently assessing and resolving issues relating to Customer's computer infrastructure including, without limitation, computers, Local Area Network components and operation, and all conditions relating to connections to and thru Customer's Internet Service Provider. Such service shall be provided solely by Customer in recognition of Customer's requirement to maintain and operate their equipment installation.

19. **Third-Party Beneficiaries.** There shall be no third-party beneficiaries to the Agreement, including, without limitation, customers, employees, agents, or insurers.

20. **Assignment.** This Agreement shall not be assignable by Customer without Procare's prior written consent. Procare may assign the Agreement in whole or in part upon written notice to Customer. This Agreement shall be binding upon and accrue to the benefit of any permitted assignee, and any such assignee shall agree to perform the obligations of the assignor.

21. **Governing Law.** This Agreement and any dispute arising from the performance or breach hereof shall be governed by and construed and enforced in accordance with the laws of the State of Colorado. Customer hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts of the city and county of Denver, Colorado, for the purposes of any suit, action or other proceeding arising out of the Agreement or the subject matter hereof or any of the transactions contemplated hereby brought by Customer or Procare or their respective successors or assigns. Customer hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that the Agreement or the subject matter hereof may not be enforced in or by such court. A final judgment obtained in respect of any action, suit or proceeding referred to in this Section 21 shall be conclusive and may be enforced in other jurisdictions by suit or judgment or in any manner as provided by Applicable Law.

22. **Legal Investigations.** Procare will comply with any legal process or requirement including, but not limited to, any investigations, court orders, discovery orders, subpoenas, freeze orders, search warrants, information requests, wire taps, electronic intercepts and surveillance, preservation requests, and any other order from a court, government entity or regulatory agency (each an "**Investigation**" and collectively, "**Investigations**"). Procare may charge Customer or any person seeking compliance with any Investigations for the reasonable costs and expenses associated with Procare's compliance with any Investigations. PROCARE RESERVES THE RIGHT TO COMPLY WITH ANY INVESTIGATIONS WITHOUT NOTICE TO CUSTOMER. Procare shall not be deemed in breach of the Agreement for Procare's compliance with any Investigations that require the sequestering or disclosure of all or a portion of the Customer Data.

23. **U.S. Government Restricted Rights.** If the Software or Services are being licensed by the U.S. Government, the Software and Services are commercial computer software and documentation developed exclusively at private expense, and (i) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (ii) if acquired by or on behalf of units of the Department of Defense ("**DOD**") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

24. **Export Law Assurances.** Customer understands that the Software and Services are or may be subject to export control laws and regulations. CUSTOMER MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE

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SOFTWARE OR SERVICES OR ANY TECHNICAL OR OTHER DATA PROVIDED IN CONNECTION THEREWITH OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS. NONE OF THE SOFTWARE OR SERVICES NOR ANY UNDERLYING INFORMATION OR TECHNOLOGY MAY BE DOWNLOADED OR OTHERWISE EXPORTED OR RE- EXPORTED: (A) INTO (OR TO A NATIONAL OR RESIDENT OF) ANY COUNTRY TO WHICH THE UNITED STATES HAS EMBARGOED GOODS; OR (B) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S LIST OF PROHIBITED COUNTRIES OR DEBARRED OR DENIED PERSONS OR ENTITIES. CUSTOMER HEREBY AGREES TO THE FOREGOING AND REPRESENTS AND WARRANTS THAT CUSTOMER IS NOT LOCATED IN, UNDER CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

25. **Advice of Legal Counsel.** Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

26. **Modification, Counterparts, Waiver, and Remedies.** No modification of or amendment to the Agreement, nor any waiver of any rights under the Agreement, shall be effective unless in writing and signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default. Unless otherwise provided under this Agreement, all rights of termination or cancellation, or other remedies set forth in this Agreement, are cumulative and are not intended to be exclusive of other remedies to which Procare may be entitled to under this Agreement, whether at law or in equity. Use of one or more remedies will not bar use of any other remedy for the purpose of enforcing any provision of this Agreement.

27. **Severability.** If any provision of the Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of the Agreement will remain in full force and effect.

28. **Compliance with Laws**. The parties recognize that this Agreement is subject to, and intended to comply with, Applicable Law, and agree that the Services addressed in this Agreement do not exceed those which are reasonably necessary to accomplish the commercially reasonable business purposes of this Agreement.

29. **Entire Agreement.** This Agreement (including each Order Form) contains the entire understanding between Procare, Customer and User relating to the subject matter herein and supersedes all prior oral or written agreements between them. Customer acknowledges that it has not entered in the Agreement based on any representations other than those contained herein. Procare rejects any additional or different terms proposed by Customer, including those contained in Customer's purchase order or website. Notwithstanding the foregoing, this Agreement does not supersede any signed agreement between Customer and Procare for a particular Service, which signed Service agreement shall govern Customer's access to and use of such Service until the end of the agreement's term.

30. **Independent Contractor**. In the event of a conflict between these Terms and an Order Form, the terms of the Order Form shall control, but only as to that Order Form. Procare and Customer are independent contractors, and this Agreement does not create a partnership, joint venture, employment or agency relationship between Procare and Customer or any User. This is a non-exclusive arrangement.

31. **Information or Complaints**. If a User has a question or complaint regarding the Services, please send an e-mail to notice@procaresoftware.com. Users may also contact Procare by writing to 1125 Seventeenth Street, Suite 1800 Denver, Colorado 80202, or by calling Procare at 800-338-3884. Please note that e-mail communications will not necessarily be secure; accordingly User should not include credit card information or other sensitive information in User's e-mail correspondence with Procare. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

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