

## **SaaS Terms and Conditions**

**The parties have indicated their acceptance to be bound by the terms of these Terms and Conditions (“Terms and Conditions” or “Agreement”) by clicking on the Accept button on the sign-up form in the application. This is an electronic agreement that does not require physical sign-off or signature. By clicking on the Accept button the Customer (“Customer”) expressly agrees that it has executed these Terms and Conditions as an agreement pursuant to, and in accordance with, the Malaysian Digital Signature Act 1997.**

Last updated: 16 February 2018

## Terms and Conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services shall be governed by these Terms and Conditions, and the Provider will ask the Customer for the Customer's express acceptance of these Terms and Conditions before providing any such services to the Customer.

### 1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in the state of Selangor in Malaysia;

"**Business Hours**" means the hours of 09:00 to 18:00 Malaysian time on a Business Day;

"**Change**" means any change to the Agreement;

"**Charges**" means the following amounts:

- (a) the amounts specified in Clause 11;
- (b) such amounts as may be agreed in writing by the parties from time to time.

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Customer**" shall have the meaning ascribed to it in Schedule 6;

"**Customer Confidential Information**" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement that at the time of disclosure:
  - (i) was marked as "confidential"; or

- (ii) should have been reasonably understood by the Provider to be confidential; and

(b) the Customer Data.

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

**"Customer Indemnity Event"** has the meaning given to it in Clause 19.1.

**"Customer Personal Data"** means Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement and shall include: Company Name, Registration Number, Account-holders' Names and Designations, Telephone Numbers, Email Addresses, Postal Addresses, Username, Password;

**"Buyer Administrator"** means the person or persons identified as such in the Platform;

**"Customer Systems"** means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

**"Subscription Effective Date"** has the meaning ascribed in Schedule 6;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means *Procurehere*, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

**"Hosted Services Defect"** means a defect, error or bug in the Platform having a material adverse effect the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorized by the Customer to use the Platform or Hosted Services;

- (b) any use of the Platform or Hosted Services contrary to the documentation, whether by the Customer or by any person authorized by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

**"Hosted Services Specification"** means the specification for the Platform and Hosted Services set out in Schedule 5 ;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or un-registrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Maintenance Services"** means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

**"Permitted Purpose"** has the meaning ascribed to it under Clause 13.2 below;

**"Personal Data"** has the meaning given to it in the Malaysian Personal Data Protection Act 2010;

**"Platform"** means the Platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**"Provider"** means Privasia Sdn Bhd, a company incorporated in Malaysia (registration number 262717-T) having its registered office at Unit C-21-02, 3 Two Square, No.2, Jalan 19/1, 46300 Petaling Jaya, Selangor;

**"Provider Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and

(b) the terms of the Agreement;

**"Provider Representatives"** means the person or persons identified as such by the Provider, and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**"Supported Web Browser"** means the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

**"Term"** means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Agreement, namely the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

**"Update"** means a hotfix, patch or minor version update to any Platform software; and

**"Upgrade"** means a major version upgrade of any Platform software.

## **2. Term**

2.1 The Agreement shall come into force upon the Subscription Effective Date.

2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 22.

## **3. Hosted Services**

3.1 The Provider shall ensure that the Platform will, on the Effective Date, automatically generate an Account for the Customer and provide to the Customer login details for that Account based on the information provided by the Customer during the registration by the Customer on the Platform.

3.2 The Provider hereby grants to the Customer a worldwide, non-exclusive license to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with these Terms and Conditions during the Term. Schedule 6 ("Customer as a Buyer Subscription Parameters and Pricing") and Schedule 7 ("Customer as a Supplier Subscription

Parameters and Pricing”) set out the specific terms and conditions for each Subscription type available for purchase by the Customer and shall be read as an integral part to these Terms and Conditions.

3.3 The license granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

- (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
- (b) the Hosted Services may only be used by the active users identified in the Platform (for the duration of the Term, and for so long as they remain active users) corresponding to the package subscribed to by the Customer as detailed in Schedule 6 or Schedule 7 (whichever is applicable to the Customer), providing that the Customer may change, add or remove a designated named user in accordance with Schedule 6 or Schedule 7 (whichever is applicable to the Customer).
- (c) the Hosted Services must not be used at any point in time by more than the number of concurrent users specified in Schedule 6 or Schedule 7 (whichever is applicable to the Customer), providing that the Customer may add or remove concurrent user licences in accordance with the procedure set out in Schedule 6 or Schedule 7 (whichever is applicable to the Customer).

3.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:

- (a) the Customer must not sub-license its right to access and use the Hosted Services;
- (b) the Customer must not permit any unauthorized person to access or use the Hosted Services;
- (c) the Customer must not republish or redistribute any content or material from the Hosted Services; and
- (d) the Customer must not make any alteration to the Platform.

3.4 The Customer shall use reasonable endeavors, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorized person may gain access to the Hosted Services.

3.5 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.

- 3.6 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer Account comply with Schedule 1 (Acceptable Use Policy).
- 3.7 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.8 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.9 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

#### **4. Maintenance Services**

- 4.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 4.2 The Provider shall provide the Maintenance Services with reasonable skill and care.
- 4.3 The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).

#### **5. Support Services**

- 5.1 Subject to Clause 5.4, the Provider shall provide the Support Services to the Customer during the Term.
- 5.2 The Provider shall provide the Support Services with reasonable skill and care.
- 5.3 The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).
- 5.4 The Provider has the right to suspend the provision of the Support Services during such periods where the Customer is not subscribed or if there are no active Users to the Hosted Services.

#### **6. Customer obligations**

- 6.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licenses, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

- 6.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement.

## **7. Customer Systems**

- 7.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of the Platform, subject to any changes agreed in writing by the Provider.

## **8. Customer Data**

- 8.1 The Customer hereby grants to the Provider a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 8.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation in any jurisdiction and under any applicable law.
- 8.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days, and to the extent required by law the Customer hereby consents to such back-up and retention.
- 8.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 8.3. The Customer acknowledges that this



process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **9. No assignment of Intellectual Property Rights**

- 9.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **10. Representatives**

- 10.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in the Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:

- (a) may treat all such instructions as the fully authorized instructions of the Provider; and
- (b) must not comply with any other instructions in relation to that subject matter.

- 10.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in the Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
- (b) must not comply with any other instructions in relation to that subject matter.

## **11. Charges**

- 11.1 The Customer shall pay the Charges corresponding to its Subscription to use the Hosted Services to the Provider in accordance with these Terms and Conditions. The Charges and pricing corresponding to each available Subscription are as detailed in Schedule 6 or Schedule 7 (whichever is applicable to the Customer) to these Terms and Conditions.

- 11.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable goods and services tax.

- 11.3 The Provider may elect to vary any element of the Charges provided in these Terms and Conditions.

## **12. Payments**

12.1 The Customer must pay the Charges by debit card, credit card or direct debit following the registration of the Customer as a user on the Provider's Platform and the acceptance of these Terms and Conditions. In special cases, other payment methods may be allowed/required at the sole discretion of the Provider.

### **13. Provider's confidentiality obligations**

13.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

13.2 Notwithstanding Clause 13.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, developers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work, for the operation or performance of any Services under these Terms and Conditions, or to any government authority as required or requested (or as reasonably believed by the Provider to be compelled by any legal process), or as required by law (each a "Permitted Purpose" in relation to a Party).

13.3 This Clause 13 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

13.4 The restrictions in this Clause 13 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.

13.5 The provisions of this Clause 13 shall continue in force indefinitely following the termination of the Agreement.

#### **14. Customer's confidentiality obligations**

14.1 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality approved in writing by the Provider;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information; and
- (e) not use any of the Provider Confidential Information for any purpose other than the Permitted Purpose.

14.2 Notwithstanding Clause 14.1, the Customer may disclose the Provider Confidential Information to the Customer's officers, employees, professional advisers, auditors, agents and subcontractors who have a need to access the Provider Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Provider Confidential Information.

14.3 This Clause 14 imposes no obligations upon the Customer with respect to Provider Confidential Information that:

- (a) is known to the Customer before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Customer.

14.4 The restrictions in this Clause 14 do not apply to the extent that any Provider Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.

- 14.5 Upon the termination of the Agreement, the Customer must immediately cease to use the Provider Confidential Information.
- 14.6 The provisions of this Clause 14 shall continue in force indefinitely following the termination of the Agreement.

## **15. Publicity**

- 15.1 Neither party may make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party.
- 15.2 Notwithstanding Clause 15.1, the Customer unconditionally gives consent to the Provider to make disclosures relating to the Agreement or the subject matter of the Agreement as a case study on the Provider's website, presentations, advertisements and/or in other marketing materials.
- 15.3 Nothing in this Clause 15 shall be construed as limiting the obligations of the parties under Clause 13 or 14.

## **16. Data protection**

- 16.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with these Terms and Conditions, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with these Terms and Conditions will not breach any applicable data protection or data privacy laws (including the Personal Data Protection Act 2010).
- 16.2 The Provider warrants to the Customer that:
- (a) it will act only on instructions from the Customer in relation to the processing of Customer Personal Data;
  - (b) it has in place reasonable security measures (both technical and organizational) against unlawful or unauthorized processing of Customer Personal Data;
  - (c) it will only process the Customer Personal Data for the purposes of performing its obligations and exercising its rights under the Agreement;
  - (d) it will process the Customer Personal Data in compliance with all applicable laws; and
- 16.3 The Provider shall notify the Customer as soon as practicable if:

- (a) any of the Customer Personal Data is lost or destroyed, or becomes damaged, corrupted or unusable;
- (b) the Provider receives any complaint or regulatory notice which relates to the processing of any of the Customer Personal Data; or
- (c) the Provider receives a request from a data subject for access to any of the Customer Personal Data.

16.4 The Provider shall co-operate with the Customer in relation to:

- (a) any request from the Customer to amend or delete any of the Customer Personal Data;
- (b) any complaint or regulatory notification relating to the processing of any of the Customer Personal Data; and
- (c) any request from the Customer for access to any of the Customer Personal Data,

at the cost and expense of the Customer.

16.5 The Provider shall ensure that access to the Customer Personal Data is limited to those Provider personnel who have a reasonable need to access the Customer Personal Data to enable the Provider to perform its duties under the Agreement; any access to the Customer Personal Data must be limited to such part or parts of the Customer Personal Data as are strictly necessary.

16.6 The Provider shall take reasonable steps to ensure the reliability of any Provider personnel who have access to the Customer Personal Data. Without prejudice to this general obligation, the Provider shall ensure that all relevant Provider personnel are informed of the confidential nature of the Customer Personal Data and are aware of the Provider's duties in respect of that Personal Data.

## **17. Warranties**

17.1 Each of the Parties warrant to the other that:

- (a) it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions; and
- (b) it will comply with all applicable legal and regulatory requirements applying to the exercise of its rights and the fulfilment of its obligations under these Terms and Conditions.

17.2 The Provider specifically does not warrant to the Customer that:

- (a) the Platform and Hosted Services meet any merchantability or fitness for a particular Customer purpose;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; or
- (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

17.3 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **18. Acknowledgements and warranty limitations**

- 18.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 18.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 18.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 18.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **19. Indemnities**

19.1 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

19.2 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

without prejudice to the Customer's obligations under Clause 19.1.

## **20. Limitations and exclusions of liability**

20.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

20.2 The limitations and exclusions of liability set out in this Clause 20 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 20.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory

duty, except to the extent expressly provided otherwise in these Terms and Conditions.

- 20.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 20.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 20.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 20.6 Neither party shall be liable to the other party in respect of any loss of use or production.
- 20.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 20.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 20.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 8.3 and Clause 8.4.
- 20.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 20.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under the Agreement in the 6 month period preceding the commencement of the event or events.

## **21. Force Majeure Event**

- 21.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment to the Provider), that obligation will be suspended for the duration of the Force Majeure Event.
- 21.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
  - (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.



21.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **22. Termination**

22.1 The Provider may terminate the Agreement by giving to the Customer not less than 30 days' written notice of termination.

22.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of the Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).

22.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any judicial arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
- (d) if that other party is an individual:

- (i) that other party dies;
- (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
- (iii) that other party is the subject of a bankruptcy petition or order.

22.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 22.4.

## **23. Effects of termination**

23.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.9, 10, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24 and 25.

23.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

23.3 Within 30 days following the termination of the Agreement for any reason the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement without prejudice to the parties' other legal rights.

## **24. Notices**

24.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

24.2 Any notice given by the Customer to the Provider under these Terms and Conditions must be sent by email using the relevant contact details as provided by the Provider.

24.3 Any notice given by the Provider to the Customer under these Terms and Conditions must be sent by email using the relevant contact details as provided by the Customer.

- 24.4 The addressee and contact details of the Provider may be updated from time to time on the Provider's website. The Customer is required to provide and may update its latest addressee and contact details on the Customer's Account.
- 24.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.
- 24.6 A notice will be deemed to have been received at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent).

## **25. Subcontracting**

- 25.1 The Provider may subcontract any of its obligations under the Agreement.
- 25.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 25.3 Notwithstanding any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **26. Assignment**

- 26.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under these Terms and Conditions
- 26.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Provider.

## **27. No waivers**

- 27.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 27.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

## **28. Severability**

28.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

28.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **29. Third party rights**

29.1 The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

29.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

## **30. Variation**

30.1 The Parties agree that the Provider shall have the right to supplement, revise, vary, or otherwise amend the terms of these Terms and Conditions from time to time. Such changes will be posted on the Provider's website or Policy or otherwise specifically notified by the Provider, and the last updated date of these Terms and Conditions will be revised.

30.2 It is the Customer's responsibility to review these Terms and Conditions upon each access or use of the Hosted Services to ensure that it is aware of any amendments made. The continued access and use of the Hosted Services by the Customer after changes are posted constitutes its express agreement and consent to be legally bound by the Terms and Conditions as updated and amended.

## **31. Entire agreement**

31.1 The main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

31.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

31.3 The provisions of this Clause 31 are subject to Clause 20.1.

## **32. Law and jurisdiction**

32.1 These Terms and Conditions shall be governed by and construed in accordance with Malaysian law.

32.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of Malaysia (or, at the election of the Provider, may be referred to the Regional Centre for Arbitration Kuala Lumpur (“RCAKL”) for arbitration in accordance with its Rules).

### **33. Interpretation**

33.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

33.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

33.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

33.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **Schedule 1 (Acceptable Use Policy)**

### **1. Introduction**

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of [www.procurehere.com](http://www.procurehere.com), [app.procurehere.com](http://app.procurehere.com), [demo.procurehere.com](http://demo.procurehere.com), any successor website, and the services available on that website or any successor website (the "**Services**"); and
  - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to the Provider (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services. In the event this Policy is supplemented to, revised, varied or otherwise amended, your continued action to upload or submit any Content or otherwise use the Services shall constitute your agreement to such supplement, revision, variation or amendment.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

### **2. General usage rules**

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

### **3. Unlawful Content**

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorized by you, must not:
- (a) be libellous or maliciously false;
  - (b) be obscene or indecent;
  - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
  - (d) infringe any right of confidence, right of privacy or right under data protection legislation;
  - (e) constitute negligent advice or contain any negligent statement;
  - (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
  - (g) be in contempt of any court, or in breach of any court order;
  - (h) constitute a breach of racial or religious hatred or discrimination legislation;
  - (i) be blasphemous;
  - (j) constitute a breach of official secrets legislation; or
  - (k) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

#### **4. Factual accuracy**

- 4.1 Content must not be untrue, false, inaccurate or misleading.
- 4.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

#### **5. Negligent advice**

- 5.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.

- 5.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

## **6. Etiquette**

- 6.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 6.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 6.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 6.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 6.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 6.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 6.7 You must ensure that Content does not duplicate other content available through the Services.
- 6.8 You must ensure that Content is appropriately categorised.
- 6.9 You should use appropriate and informative titles for all Content.
- 6.10 You must at all times be courteous and polite to other users of the Services.

## **7. Gambling**

- 7.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

## **8. Monitoring**

- 8.1 You acknowledge that we do not actively monitor the Content or the use of the Services except in the event that access has been granted to us to facilitate the provision of support.



## **9. Hyperlinks**

- 9.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

## **10. Harmful software**

- 10.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 10.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

## **Schedule 2 (Availability Service Level Agreement)**

### **1. Introduction**

- 1.1. This Service Level Agreement (“**Availability SLA**” or “**Schedule 2**”) is a policy governing the use of Hosted Services under the Terms and Conditions. This Availability SLA applies separately to each account using the Hosted Services. We reserve the right to change the terms of this Availability SLA in accordance with the Terms and Conditions.

### **2. Service Commitment**

- 2.1. The Provider will use commercially reasonable efforts to make the Hosted Services available with a Monthly Uptime Percentage (defined below) of at least 99.00%, in each case during any monthly billing cycle (the “Service Commitment”).
- 2.2. In the event the Provider does not meet the Service Commitment, the Customer will be eligible to receive a Service Credit as described below. Only Customers defined as Buyers in Schedule 6 below would be eligible to receive a Service Credit.

### **3. Definitions**

- 3.1. “**Monthly Uptime Percentage**” is calculated by subtracting from 100% the percentage of minutes during the month in which the Hosted Services, as applicable, was in the state of “Unavailable”. Monthly Uptime Percentage measurements excluding downtime resulting directly or indirectly from any *Procurehere* SLA Exclusion (defined below).
- 3.2. “**Unavailable**” means the Customer’s Account has no external connectivity.
- 3.3. A “**Service Credit**” is a dollar credit, calculated as set forth below, that the Provider may credit back to an eligible Account of a Customer as a Buyer. For the avoidance of doubt, only Customers as Buyers are eligible to receive Service Credits.
- 3.4. “**Business Hours**” mean standard working hours, Malaysia time from 9:00 AM to 6:00 PM, Monday to Friday excluding all the gazetted holiday of the state of Selangor.
- 3.5. Except as otherwise expressly provided herein above, all terms and references used in this Schedule 2 and which are defined or construed in the Terms and

Conditions and its Schedules but which are not specifically defined or construed in this Schedule 2, shall have the same meaning and construction as in the Terms and Conditions and its Schedules.

#### **4. Service Commitments and Service Credits**

- 4.1. Service Credits are calculated as a percentage of the total charges paid by the Customer to the Provider in a monthly billing cycle in which the unavailability occurred in accordance with the schedule below:

<b>Monthly Uptime Percentage</b>	<b>Service Credit Percentage</b>
Less than 99.00 % but equal to or greater than 95.00%	10%
Less than 95.00%	30%

- 4.2. The Provider will apply any Service Credits only against future payments otherwise due from the Customer. Service Credit will not entitle the Customer to any refund or other payment from the Provider. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (USD 1). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Terms and Conditions, the Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by the Provider to provide the Hosted Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this Availability SLA.

#### **5. *Procurehere* SLA Exclusions**

- 5.1. The Service Commitment does not apply to any unavailability, suspension or termination of the Hosted Services:
- 1) That result from a suspension described in Clause 5.4 of the Terms and Conditions.
  - 2) Caused by factors outside the Provider's reasonable control, including any Force Majeure Event or Internet access or related problems beyond the demarcation point of the Hosted Services.
  - 3) That result from any actions or inactions of the Customer or any third party, including failure to acknowledge a recovery volume.
  - 4) That result from the Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within the Provider's direct control).

- 5) That result from any maintenance as provided for pursuant to the Terms and Conditions.
  - 6) Arising from the Provider's suspension or termination of the Customer's right to use the Hosted Services in accordance with the Terms and Conditions.
- 5.2. If availability is impacted by factors other than those used in the Provider's Monthly Uptime Percentage calculation, then the Provider may issue a Service Credit considering such factors at the Provider's sole discretion.
- 5.3. In the event of a breach of any Service Commitment, the Customer must contact the Provider through the service desk (support@procurehere.com) to enable the Provider to perform any necessary root-cause analysis, log review, and to otherwise determine whether there has been a deterioration of the Service Commitment attributable to *Procurehere*. For the avoidance of doubt, there shall be no breach of any Service Commitment where the cause falls under Clause 5.1 of this Schedule 2. The Customer agrees that it shall where reasonably requested by the Provider, furnish all such necessary documentation and/or information to enable the Provider to assess the alleged breach of Service Commitment. Notwithstanding the generality of the forgoing, the Customer accepts the Provider's determination of whether there has been a breach of a Service Commitment (or the availability of any Service Credit) to be final.

### **Schedule 3 (Maintenance SLA)**

#### **1. Introduction**

- 1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

#### **2. Scheduled Maintenance Services**

- 2.1 The Provider shall where practicable give to the Customer reasonable prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

#### **3. Updates**

- 3.1 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and reasonable prior written notice of the application of any non-security Update to the Platform.
- 3.2 The Provider shall apply Updates to the Platform as follows:
- (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
  - (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
  - (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

#### **4. Upgrades**

- 4.1 The Provider shall produce Upgrades at least once in each calendar year during the Term.
- 4.2 The Provider shall give to the Customer reasonable prior written notice of the application of an Upgrade to the Platform.
- 4.3 The Provider shall apply each Upgrade to the Platform within any period notified by the Provider to the Customer or agreed by the parties in writing.

## **Schedule 4 (*Procurehere* Support Service Level Agreement)**

### **1. Introduction**

- 1.1 This *Procurehere* Support Service Level Agreement (“**Support SLA**” or “**Schedule 4**”) is a policy governing the use of the Hosted Services under the Terms and Conditions. This Support SLA applies separately to each Account using the Hosted Services. The Provider reserve the right to change the terms of this Support SLA in accordance with the Terms and Conditions.

### **2. Support Commitment**

- 2.1 The Provider will use reasonable efforts in responding to emails sent by the Customer during business hours within the response time of one (1) Hour. In the event the Provider does not meet the service commitment, the Customer will be eligible to receive a Service Credit as described below. Only Customers defined as Buyers in Schedule 6 below would be eligible to receive a Service Credit.

### **3. Definitions**

- 3.1 “**Email**” means support request sent via email to support@procurehere.com.
- 3.2 “**User**” means actively subscribed users.
- 3.3 “**Business Hours**” mean standard working hours, Malaysia time from 9:00 AM to 6:00 PM, Monday to Friday excluding all the gazetted holiday of the state of Selangor.
- 3.4 “**Response Time**” is calculated from the initial support request receipt by service desk agents during business hours. Request sent in close to the end of the business day will be responded within the first hour of the next business day.
- 3.5 “**Service Credit**” is a dollar credit, calculated as set forth below, that we may credit back to an eligible Account of a Customer as a Buyer. For the avoidance of doubt, only Customers as Buyers are eligible to receive Service Credits..
- 3.6 “**Monthly Uptime Percentage**” has the definition prescribed to it in Schedule 2.
- 3.7 “**Procurehere SLA Exclusion**” has the definition prescribed to it in Clause 5 of Schedule 2.
- 3.8 Except as otherwise expressly provided herein above, all terms and references used in this Schedule 4 and which are defined or construed in the Terms and

Conditions and its Schedules but which are not specifically defined or construed in this Schedule 4, shall have the same meaning and construction as in the Terms and Conditions and its Schedules.

#### **4. Service Commitments and Service Credits**

- 4.1 Service Credits are calculated as a percentage of the total charges paid by the Customer to the Provider in a monthly billing cycle, in accordance with the schedule below.

Condition	Service Credit Percentage
Response time exceeds one (1) hour	1%
The Service Credit Percentage for resolution time is capped to a maximum of 5% for each billing cycle.	

- 4.2 The Provider will apply any Service Credits only against future payments otherwise due from the Customer. Service Credit will not entitle the Customer to any refund or other payment from the Provider. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (USD 1). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Terms and Conditions, the Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by the Provider to provide the service commitment is the receipt of a Service Credit (if eligible) in accordance with the terms of this Schedule 4.

#### **5. *Procurehere* SLA Exclusions**

- 5.1 The Service Commitment does not apply to any unavailability, suspension or termination of the support services under this Schedule 4:
- 1) that result from a suspension described in Clause 5.4 of the Terms and Conditions;
  - 2) caused by factors outside the Provider's reasonable control, including any Force Majeure Event or Internet access or related problems beyond the demarcation point of the Hosted Services;
  - 3) that result from any actions or inactions of the Customer or any third party, including failure to acknowledge a recovery volume;
  - 4) that result from the Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within the Provider's direct control);

- 5) that result from any maintenance as provided for pursuant to the Terms and Conditions; or
- 6) arising from the Provider's suspension or termination of the Customer's right to use the Hosted Services in accordance with the Terms and Conditions.

5.2 If availability is impacted by factors other than those used in the Provider's Monthly Uptime Percentage calculation, then the Provider may issue a Service Credit considering such factors at the Provider's sole discretion.



## Schedule 5 (Hosted Services Specification)

### 1. Introduction

- 1.1 *Procurehere* is used for e-Sourcing and Requisitioning. It is located on the cloud and accessed through a standard browser by a monthly subscription fee (Software as a Service, or SaaS model), and requires no hardware.

### 2. Features

- 2.1 Subject to Schedule 6 (“Customer as a Buyer Subscription Parameters and Pricing”) and Schedule 7 (“Customer as a Supplier Subscription Parameters and Pricing”), the *Procurehere* Platform offers the following features:

- (a) **RFx / Tenders:** *Procurehere* allows a buyer to create an event and publish it, and allows suppliers to review the event and make submissions, and Customers to evaluate it and make awards, all on the Platform.
- (b) **Auctions:** These are similar to RFx in process, except that instead of just a submission, there is real-time bidding by suppliers to drive the price in the desired direction.
- (c) **Requisitioning:** This is a system by which any User in the buyer organization can raise a Purchase Requisition with a known/open supplier and items from the catalogue, and have this pass through a pre-determined approvals route before being allowed to generate a Purchase Order.

### 3. Additional Support Features

The main features are supported by:

- (a) Administration;
- (b) Supplier Registration;
- (c) Online Knowledgebase; and
- (d) Mobile App.

## **Schedule 6 (Customer as a Buyer Subscription Parameters and Pricing)**

This Schedule 6 (Customer as a Buyer Subscription Parameters and Pricing) falls under and forms part of the Terms and Conditions governing and regulating the Customer's Subscription to and use of the *Procurehere* Platform and website as a buyer.

### **GLOSSARY**

**Active Subscription** means a current Subscription between the Subscription Effective Date and the Subscription Expiry Date, entitling the Customer's Active Users to the use of some or all of *Procurehere's* features or Platform, subject to the Terms and Conditions.

**Active Users** are Users which are designated by the Customer's Administrator as active. While the Customer may register an unlimited number of Registered Users, the Customer may only designate a number of Active Users among those Registered Users totaling fewer than or equal to the Active User Limit. Active Users can be Normal Users or Approvers (as the case may be). For clarity the Customer's Administrator is always an Active User.

**Administrator** or **Customer's Administrator** is the primary Active User of the Platform who enters into and manages the Customer's Subscription, enters master data pertaining to the whole system, creates and manages Active Users on the Platform, has access to view some event data, and is generally responsible for the smooth running of the entire application.

**Approver** means a User registered on the *Procurehere* Platform with access to and use of limited functionalities (namely only viewing Events and PRs and/or approval of Events and/or PRs during an Active Subscription) on the Platform.

**Approver Limit** means the maximum number of Approvers that the Customer is permitted to designate from among its Registered Users during a Subscription Period.

**Customer** means an organization, its affiliated organizations and permitted Users that have entered into a Subscription on the *Procurehere* Platform pursuant to the Terms and Conditions. Customers can consist of **Buyers**, meaning a buyer under an Event hosted on the *Procurehere* Platform, the terms of which are governed under this Schedule 6, and **Suppliers**, meaning the suppliers under an Event hosted on the *Procurehere* Platform, the terms of which are governed under Schedule 7.

**Closed Subscription** means Subscription through *Procurehere* that is manually performed by the Provider's personnel.

**Event** means either one RFX event or one auction event. An **RFX Event** means an event (either a request for information, request for quotation, request for proposal, or a formal tender) that is hosted on the *Procurehere* Platform where the Buyer Customer invites its suppliers to make submissions for the Customer's consideration. An **Auction Event** means an event that is hosted on the *Procurehere* Platform, where the Buyer Customer invites its suppliers to submit bids in real-time.

**Event-Based Subscription** means a Subscription that limits usage by the Customer to the number of Events that the Customer is subscribed to use, with a User limit of 999 Users. Event-Based Subscriptions must be Purchased before an Event Credit is assigned to the Customer and before Active Users may be designated to use the *Procurehere* Platform.

**Event Credit** means the allowance for the Customer to host an Event, as Purchased under an Event-Based Subscription.

**Event Limit** means the maximum number of Events (or remaining Events) that the Customer can host on the *Procurehere* Platform.

**Inactive Subscription** means a Subscription that is past the Subscription Expiry Date, under which the Customer may have limited access to or use of *Procurehere's* features or Platform.

**Inactive User** means a User who has been deactivated on the *Procurehere* Platform.

**Normal User** means a User registered on the *Procurehere* Platform with, during an Active Subscription, access to and use of all functionalities on the Platform (as defined in and subject to this Schedule 6).

**Normal User Limit** means the maximum number of Normal Users that the Customer is permitted to designate from among its Registered Users during a Subscription Period.

**Open Subscription** means a Subscription purchased through the *Procurehere* website or, for existing Customers renewing their Subscriptions, through the Customer's account.

**Payment** is the amount paid by the Customer in a Purchase.

**Payment Date** means the date when a Purchase is made.

**Purchase** means a transaction where Event Credits are obtained (for Event-Based Subscriptions) or the Active User Limit is set, increased or extended (for User-Based

Subscriptions), through a Payment made on the *Procurehere* Platform subject to this Schedule 6 and the Terms and Conditions.

**PR/PO, or Purchase Requisition/Purchase Order** means the feature on the *Procurehere* Platform that allows a Buyer Customer's permitted User to create a purchase requisition and pass it through a defined approvals process before converting it into a purchase order.

**Registered Users** are Users that have been created and assigned login details by the Customer's Administrator. The Customer's Administrator can create an unlimited number of Registered Users. For clarity the Customer's Administrator is a Registered User and to **Register** a User is to create and assign a login for that User by the Customer's Administrator.

**Starter Package** means the special introductory price applicable for the first three (3) Active Users of a Customer's Subscription as further described in Clause 12 of this Schedule 6.

**Subscription** means a subscription by the Customer on and to use the *Procurehere* Platform pursuant to, and in accordance with, the Terms and Conditions and this Schedule 6.

**Subscription Block** means either an Active User Based Subscription or a future Subscription as described in Clause 23 *et seq* below.

**Subscription Effective Date** means the commencement of the Subscription Period, measured by the timestamp of each successful Purchase on a Payment Date. If a Purchase is made during an Active Subscription, the timestamp for the previous Purchase will remain as the Subscription Effective Date. If the Purchase is made during an Inactive Subscription, the timestamp for the latest Purchase shall replace all prior timestamps as the Subscription Effective Date. For illustration:

- If a Purchase was first made on 1 January 2017 and it expired on 31 March 2017, and latest subsequent Purchase was made on 1 May 2017 (that is, during an Inactive Subscription), then the Subscription Effective Date is 1 May 2017.
- If a Purchase was first made on 1 January 2017 and will expire on 31 March 2017, but on 1 February 2017 (that is, during an Active Subscription) a subsequent Purchase was made to extend it, then the Subscription Effective Date remains 1 January 2017 and not the latest Payment Date of 1 February 2017.

**Subscription Expiry Date** means the exact anniversary of the Subscription Effective Date ending the Subscription Period. For illustration:

- If the Subscription Period is for 12 months and the Subscription Effective Date is 3 Mar 2017, then the Subscription Expiry Date is 3 Mar 2018, i.e. Active Subscription ends at 2 Apr 2018 23:59:59.
- For months with fewer than 29 days, if the Subscription Expiry Date would fall between the 29<sup>th</sup> or the 31<sup>st</sup> of that month (inclusive of both), the Subscription Expiry Date will be postponed to 1<sup>st</sup> of the following month. For example, if the Subscription Period is for 1 month and the Subscription Effective Date is 29 January 2017, then the Subscription Expiry Date would be 1 March 2017.

**Subscription Period** means the period from the Subscription Effective Date to the Subscription Expiry Date, during which there is an Active Subscription.

**Users** are the Customer's personnel or those of its affiliated organizations, as the case may be, whose Administrator has registered in their *Procurehere* account and assigned login details, enabling that User to use some or all of its features provided they are Active Users. For clarity the Customer's Administrator is a User.

**User-Based Subscription** means a Subscription that allows usage by the Customer up to the Active User Limit during the Subscription Period, with an Event Limit of 9,999 Events. User-Based Subscriptions must be Purchased before Active Users may be designated to use the *Procurehere* Platform. A Purchase can be made either monthly, or in blocks of six (6) months, twelve (12) months or any other blocks as may be set by the Provider.

#### **(I) EVENT-BASED SUBSCRIPTION**

1. Unless otherwise agreed, the Customer shall pay United States Dollars Four Hundred and Ninety-Nine (USD 499.00) (excluding Applicable VAT/GST) for each Event Credit through a Purchase under the Event-Based Subscription.
2. Each Event Credit that is Purchased will have a Subscription Period of 3 years from the Subscription Effective Date. The Administrator will be notified about the expiry of an Event Credit via email and system notification six (6) months, three (3) months, and one (1) month before the Subscription Expiry Date.
3. Event-Based Subscriptions entitle the Customer to an Active User Limit of 9,999 Users.
4. Event-Based Subscriptions do not entitle a Customer to access, use or employ any of the PR/PO functions of the *Procurehere* Platform.

5. A Customer is allowed to own up to a maximum of 999 Event Credits at any one time.
6. The Provider will notify the Customer's Administrator via email and system notification once all Event Credits are used.
7. The Event Credit count will be deducted upon the launching of an Event, and not upon the creation of a draft Event.
8. The Customer is entitled to perform the following actions under three scenarios: (I) the Customer has a remaining Event Credit that can be used, (II) the Customer uses the Event Credit, (III) the Customer uses the Event Credit and completes the Event:

<b>Access Rights</b>	<b>Scenario I: Customer has a Remaining Event Credit</b>	<b>Scenario II: Event Credit Used and Event Not Completed</b>	<b>Scenario III: Event Credit Used and Event Completed</b>
Draft - View	Yes	Yes	Yes
Draft - Create	Yes	No	No
Finish Event	Yes	No	No
On-going - View	Yes	Yes	-
On-going - Modify	Yes	Yes	-
Close - View	Yes	Yes	-
Close - Modify	Yes	Yes	-
Completed - View	Yes	Yes	Yes
Global Supplier List	Yes	No	No
PR/PO	No	No	No

9. Promotions, discounts, loyalty benefits or incentives, if any, offered to the Customer may be redeemed through the provision of a promotional code which may be entered at the time of a Subscription.

10. The Customer accepts that no refunds howsoever arising will be given for any Purchased Event-Based Subscriptions.

## (II) USER-BASED SUBSCRIPTION

### Subscription and Pricing

11. A Customer is entitled to the following discounts for advance block payments of six (6) months and twelve (12) months, provided always that the Provider reserves the right to remove or revise the duration for which such discounts is available.

Block Payments for Subscription Periods of:	Discount
Six (6) months	5%
Twelve (12) months	10%

12. The price for a Subscription is as follows:

Tier	No. of Active Normal Users requested	Price per Month* during the Subscription Period (in USD)
1	First 3 Users (Starter Package)	Total of \$149.00
2	4th – 999th User	\$99.00 each

*\*Excluding applicable VAT / GST*

13. Under a User-Based Subscription, there will be an Event Limit of 9,999 Events per calendar month, and this limit will reset at the start of every subsequent calendar month during the Subscription Period.
14. The Customer will be reminded by a notification in the system and by an automatically generated electronic mail to the Customer's Administrator as the Customer's Subscription approaches the Subscription Expiry Date ("**Expiry Notification**"). The Expiry Notification will be issued 30 days and fourteen (14) days prior to the Subscription Expiry Date, with a final Expiry Notification sent on the Subscription Expiry Date.
15. In the event of a new User-Based Subscription, the Customer will Purchase the required Normal User Limit count for the Subscription Period.

- (a) For example, if the Subscription Effective Date is 30 January 2017 and the Subscription Period is for a period of one month (with the Subscription Expiry Date as 1 March 2017), and the Normal User Limit count is six (6) Users, then the Purchase price is realized as USD \$149 + [USD\$99 \* (6 – 3) Users], or USD \$ 446.00 per month (excluding Applicable VAT/GST).
  - (b) For each Normal User under a User-Based Subscription, the Customer will be entitled to and allocated with one (1) Approver free of charge and at no additional charge, with such access rights as described below.
  - (c) In the example in Clause 15(a), the User-Based Subscription of USD\$446.00 per month entitles a Customer to designate up to twelve (12) Active Users comprising of up to six (6) Normal Users and up to six (6) Approvers.
16. When a Subscription Period has ended (i.e. the current date has passed the Subscription Expiry Date), the Normal User's access to the Platform will become restricted as described in the table in Clause 20. The Approver's access to the Platform will also become similarly restricted as described in the table in Clause 20.
17. If a Subscription is renewed after the Subscription Expiry Date, then the Subscription Effective Date will be superseded and replaced by the new Payment Date, commencing a new Subscription Period, and the access rights will be restored as shown in Scenario VI of the table in Clause 18.
18. Examples of the pricing under different scenarios are shown in the following table.



	New Subscription	Scenario I: Subscription Expired	Scenario II: Increase Limit While Current Block Still Active	Scenario III: Create Block with Lower Limit		Scenario IV: Create Block with Same Limit		Scenario V: Create Block with Higher Limit		Scenario VI: Renew After Subscription Expired
Active Normal User Limit count	6	6	8	Present Block	Future Block	Present Block	Future Block	Present Block	Future Block	6
				6	5	6	6	6	8	
No. Event	999	999	999	999	999	999	999	999	999	999
Current date	30 January 2017	2 May 2017	1 March 2017	28 Feb 2017	28 Feb 2017	28 Feb 2017	28 Feb 2017	28 Feb 2017	28 Feb 2017	5 May 2017
Subscription Period	3 month	3 month	3 month	3 month	1 month	3 month	1 month	3 month	1 month	1 month
Subscription Effective Date	30 January 2017	30 January 2017	30 January 2017	30 January 2017	1 May 2017	30 January 2017	1 May 2017	30 January 2017	1 May 2017	5 May 2017
Subscription Expiry Date	1 May 2017	1 May 2017	1 May 2017	1 May 2017	1 June 2017	1 May 2017	1 June 2017	1 May 2017	1 June 2017	5 June 2017
Payment	USD (149 + (99 x (6-3))) x 3	n/a	USD 99 * 2 * 2	n/a	USD (149 + (99 x (5-3))) x 1	n/a	USD (149 + (99 x (6-3))) x 1	n/a	USD (149 + (99 x (8-3))) x 1	USD (149 + (99 x (6-3))) x 1

### **Assignment of Users**

19. A Customer may, subject to Section IV, assign Users as Active Users (whether Normal Users or Approvers) and may deactivate those Active Users on the Platform.
20. An Active Normal User has full access corresponding to the table in this Clause 20 below, while an Active Approver has limited access corresponding to the table in this Clause 20 below and Clause 21.

<b>Access Rights</b>	<b>Active Normal User</b>	<b>Active Approver</b>	<b>Inactive User</b>	<b>Account Subscription Expired</b>
Login	Yes	Yes	No	Yes
Draft - View	Yes	Yes	-	Yes
Draft - Create	Yes	No	-	No
Approve Event / PR	Yes	Yes	-	No
On-going - View	Yes	Yes	-	Yes
On-going - Modify	Yes	No	-	No
Close - View	Yes	Yes	-	Yes
Completed Event / PO - View	Yes	Yes	-	Yes

21. For the avoidance of doubt, an Approver has such access to the Platform that is limited to:
- (a) viewing Events in which they are a team member;
  - (b) viewing Purchase Requisitions in which they are a team member;
  - (c) approving Events in which they are designated as an event approver; and
  - (d) approving Purchase Requisitions in which they are designated as a PR approver.

### **User Limits**

22. Other than the duration of the Subscription Period, the other parameter for a Subscription is the Normal User Limit allowance, which may be increased (but may not be decreased) during an Active Subscription, as shown in Scenario II in the table in Clause 18 above. The Customer's Administrator can increase the Normal User Limit for a current Subscription Block or future Subscription Block, which will be effective from the current date to the Subscription Expiry Date of the current Subscription Block (or for the full duration of the future Subscription Block, as the case may be). Once a Subscription Block or a future Subscription Block is created on the Platform, the duration of that Subscription Block may not be changed and only the Active User Limit can be increased in accordance with this Clause.

### **The User-Based Subscription "Block" System**

23. The Customer's Administrator may at any time create and subscribe for future Subscription Blocks by adding that future Subscription Block on the Provider's Platform. For each future Subscription Block, there will be a corresponding Active User Limit and a corresponding future Subscription Block Subscription Expiry Date. The Subscription Effect Date and the start of the Subscription Period of each future Subscription Block will always be the on the Subscription Expiry Date of the previous Subscription Block without any interim period without an Active Subscription. The charges for a new block are shown in Scenario III – V of the table in Clause 18 above.
- (a) If the Customer desires to reduce its Normal User Limit, the Customer must enter into a new User-Based Subscription Block whereby the reduced Active User Limit will apply upon the commencement of the new Subscription Block.
  - (b) If the new Subscription Block has a lower Active User Limit than the Active Users in the current Subscription Block, the Customer's Administrator will receive three (3) notifications, i.e., within thirty (30) days, fourteen (14) days and seven (7) days before the Subscription Expiry Date of the then-current Subscription Block to the effect that all Active Users (except the Customer's Administrator) will be deactivated from the Platform unless:
    - (i) the Customer reduces the current number of Active Users or
    - (ii) The Customer increases the Active User limit for the future Subscription Block.

- (c) If the Customer's Administrator fails comply with paragraphs (i) or (ii), then all Active Users registered on the Platform will receive an e-mail and a system notification two (2) days before the start date of the next Subscription Block with the legend:

*"Your account will be deactivated in forty-eight (48) hours. Please contact your administrator for any inquiries"*

and all account(s) (except for the Customer's Administrator's) will be deactivated at the end of the current block or start of the next block.

- (d) To avoid doubt, Clauses 23(b), 23(c) and 24 shall apply in the case of Approvers as well, and Approver Limit shall be read *mutatis mutandis* for Active User Limit and Normal User Limit.

24. The new Active User Limit will take effect immediately upon the payment for the increase in Active User Limit count during an Active User-Based Subscription Period. However, regardless when the Active User Limit was increased prior to the Subscription Expiry Date for that Subscription, the increase in Active Users will only be valid until the then-current Subscription Expiry Date for that Subscription Block.

#### **Redemption of Discounts**

25. Promotions, discounts, loyalty benefits or incentives, if any, offered to the Customer may be redeemed through the provision of a promotional code which may be entered prior to subscribing for a Subscription. Promotional codes are described and governed by Section IX below.
26. The Customer accepts that no refunds howsoever arising will be given for any Purchased User-Based Subscriptions, including for any Purchased extensions to the Subscription Period or any Purchased increase in the Active User Limit count.

#### **Subscription Auto Renewal**

27. Auto renewals of any Subscription Period are subject to the availability of funds in the Customer's *Paypal* account.
28. The Customer can elect to have the Subscription Period auto-renewed upon the Subscription Expiry Date. This option must be set at the time of the creation of a

Subscription Block. The auto-renewal option does not allow for the creation of manually subscribed future Subscription Blocks.

29. If the auto-renewal option is selected, the system will automatically create a new Subscription Block of the same duration, user limit and pricing, seven (7) days before the expiry of the then-current Subscription Block and the Customer's *PayPal* account will be debited for that auto renewal Subscription Block. If the payment fails, due to any reason whatsoever, the system will notify the Customer and a further attempt to debit Customer's account again after twenty-four (24) hours will be made. If the payment fails a second time, the new Subscription Block will not be created and the auto-renewal will be cancelled.
30. If the Customer increases the Active User Limit for the then-current Subscription Block, the Customer's auto-renewal will be cancelled. The Customer may only reset the auto-renewal setting when the Customer creates the next Subscription Block, and the first auto-payment will start at the Subscription Expiry Date of that (subsequent) Subscription Block.
31. If, at any point during a Subscription Block, the Customer received a certain set of rates or otherwise enjoys a Promotional Code (for example, a twenty percent (20%) discount) ("**Current Rates**"), and if *Procurehere* subsequently changes the pricing (for example to state that Customers are entitled to receive a ten percent (10%) discount instead) ("**New Rates**"), the auto-renewal setting will continue to bill the Customer at the Current Rates. If the Customer cancels its auto-renewal setting for whatever reason and enters into a new or future Subscription Block, the New Rates shall apply (as determined by *Procurehere*).

#### **Temporary Extra Users**

32. In addition to the User-Based Subscription system described hereinabove, the Customer may subscribe to and pay for in advance temporary extra Normal Users for projects at the rate of USD \$99.00 per Normal User for each calendar month. At the end of that specified calendar month, the Active User Limit will revert to the original limit as prior to the addition of any extra Users.

### **(III) SWITCHING FROM EVENT-BASED SUBSCRIPTION TO USER-BASED SUBSCRIPTION**

33. Any switch from a Purchased Event-based Subscription to a User-based Subscription during an Active Event-based Subscription will result in all Event Credits being forfeited without refund, and the new (User-Based) Subscription will take effect immediately. The Active User Limit (or the Approver Limit, as the case may be) and Event Limit will be updated accordingly, corresponding to

the nature of the User Based Subscription Active Users in section 10 above for which the Customer has Purchased.

	<b>Current Event-Based Subscription</b>	<b>Switch to User-Based Subscription</b>
Active Normal User Limit	99	6
No. Event	1	999
Current Date	5 Feb 2017	5 Feb 2017
Effective Date	31 Jan 2017	5 Feb 2017
Expiry Date	5 Feb 2020	5 Mar 2017
Payment	USD 499	USD 149 + (99 x (6-3)) = USD 446

34. Customers may not switch from a Purchased User-based Subscription to an Event-based Subscription, prior to the expiry of the User-based Subscription.

#### **(IV) PROMOTIONAL CODES**

35. Each promotional code (“**Promotional Code**”) has the following details:

- (a) Promotional Code Name
- (b) Promotional Code Discount (\$ or %)
- (c) Promotional Code Start Date
- (d) Promotional Code End Date
- (e) Promotional Code Count Limit

36. The Promotional Code applies if:

- (a) the Customer enters it at the time of transaction for the purchase of a Subscription Block or a future Subscription Block;
- (b) the transaction is within the Promotional Code Start Date and the Promotional Code End Date; and
- (c) the Customer has not used up the count limit of the Promo Code.

37. To avoid doubt, the Promotional Code shall be applied on the Payment Date, regardless whether the Purchase is for a future Subscription Block (including future Subscription Blocks Purchased through auto renewal pursuant to Clause 27 to 31 above) whose Subscription Effective Date commences after the Promotion Code End Date.

## **Schedule 7 (Customer as a Supplier Subscription Parameters and Pricing)**

This Schedule 7 (Customer as a Supplier Subscription Parameters and Pricing) falls under and forms part of the Terms and Conditions governing and regulating the Customer's Subscription to and use of the *Procurehere* Platform and website as a supplier.

### **GLOSSARY**

**Subscription** means a subscription by the Customer on and to use the *Procurehere* Platform pursuant to, and in accordance with, the Terms and Conditions and this Schedule 7.

**Customer** shall have the meaning ascribed in Schedule 6.

**Event** means either one RFx event or one auction event. An **RFx Event** means an event (either a request for information, request for quotation, request for proposal, or a formal tender) that is hosted on the *Procurehere* Platform where the buyer invites the Customer to make submissions for the buyer's consideration. An **Auction Event** means an event that is hosted on the *Procurehere* Platform, where the buyer invites the Customers to submit bids in real-time..

**Users** are the Customer's personnel or those of its affiliated organizations, as the case may be, whose Administrator has registered in their *Procurehere* account and assigned login details, enabling that User to use some or all of its features provided they are Active Users. For clarity the Customer's Administrator is a User.

**Registered Users** are users that have been created and assigned login details by the Customer's Administrator. The Customer's Administrator can create an unlimited number of Registered Users. For clarity the Customer's Administrator is a Registered User.

**Active Users** are Users which are designated by the Customer's administrator as active. While the Customer may register an unlimited number of Registered Users, the Customer may only designate a number of Active Users among those Registered Users numbering fewer than or equal to the Active User Limit. For clarity the Customer's Administrator is always an Active User.

**Active Subscription** means a current Subscription between the Subscription Effective Date and the Subscription Expiry Date, entitling the Customer's Active Users to the use of some or all of *Procurehere's* features or Platform, subject to the Terms and Conditions.



**Inactive Subscription** means a Subscription that is past the Subscription Expiry Date, under which the Customer may have limited access to or use of *Procurehere*'s features or Platform.

**Single Specified Buyer Subscription** means a Subscription that allows a Customer to participate in Events with a single specified buyer.

**All Buyer Subscription** means a Subscription that allows a Customer to participate in Events with all buyers registered on *Procurehere*.

**Subscription Effective Date** has the meaning ascribed in Schedule 6.

**Subscription Expiry Date** means the exact one (1) year anniversary of the Payment Date.

**Subscription Period** means the period from the Payment Date to the Subscription Expiry Date.

**Purchase** means a transaction where Payment is made on the *Procurehere* Platform by the Customer to subscribe to a Single Specified Buyer Subscription or an All Buyer Subscription subject to this Schedule 7 and the Terms and Conditions.

**Payment** is the amount paid by the Customer in a Purchase.

**Payment Date** means the date when a Purchase is made.

## **CUSTOMER ON-BOARDING**

1. Customers may freely access the Customer sign-up page on *Procurehere*'s public website, and may sign up to be on-boarded free-of-charge by entering basic information about themselves as requested.
2. Once the request to be on-boarded has been approved, Customers can be invited to participate in RFx / Auction Events.
3. Only Customers who are Registered Users (that is, those who have Purchased a Subscription) will be able to participate in these Events.
4. There are two forms of Subscriptions: Single Specified Buyer Subscriptions and All Buyer Subscriptions.

## **SINGLE SPECIFIED BUYER SUBSCRIPTION**

5. For a Payment of USD 30 per annum, a Customer can participate in Events with a single specified buyer. These rights are not transferable to any other person or User.

## **ALL BUYER SUBSCRIPTION**

6. For a Payment of USD 199 per annum, a Customer can participate in Events with all buyers registered on *Procurehere*.

## **EXPIRY**

7. At the end of the Subscription Period, the Customer:
  - (jj) may not accept or reject any new Events to which the Customer has been invited;
  - (kk) may not perform any submission or take part in any Auction Event for any of the ongoing Events; and
  - (ll) may only view the Customer's past Event participations details.