

TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service ("**Terms**") are between you ("**you**" "**user**" or "**Customer**") and Proceduresync Pty Ltd ("**we**," "**us**," "**our**" or "Proceduresync"), and collectively the Parties. Proceduresync owns the cloud-based software (**Software**) which is accessible at www.proceduresync.com and by downloading the ProcedureSync application on a smart device ("**App**"). "You" means the person, organisation or entity that purchases products or related services from us. The Terms of Service apply to all sales made by us to consumers through our Website.

These Terms form the agreement under which we will supply products and services to you. Please read the Terms carefully. Please contact us if you have any questions, before you purchase or related services from us. You can contact us at admin@proceduresync.com.

Your use of or registration for any of the Services indicates that you have had sufficient opportunity to access the Terms and contact us, that you have read accepted and will comply with the Terms, and that you are eighteen (18) years or older. You must not order products or services from us if you are under eighteen (18) years of age. If you do not agree to be bound by these Terms, you must not use the Services. If you are using the Services on behalf of an organisation, unless that organisation has a separate paid contract in effect with us, you are agreeing to these Terms for that organisation, and representing to Proceduresync that you have the authority to bind that organisation to these Terms (in which event, "you" and "you" will refer to the organization). If you are using the Services on behalf of an organisation that has a separate paid contract in effect with us, the terms of that contract will govern your use of the Services.

These Terms may be modified from time to time. The date of the most recent revisions will appear on this page, so please check back often. Your use of or continued access to the Services after any changes constitutes your acceptance of those changes. If you do not agree to changes to the Terms, you must stop using the Services and cancel your user account.

For ease of reference, these Terms are broken into the following sections:

1. Definitions
2. Availability of the Services
3. Your Responsibilities relating to Use of the Services.
4. Fees and Payment.
5. Cancelling the Services
6. Feedback and Dispute Resolution
7. Confidentiality
8. Intellectual Property
9. Limitation of liability and disclaimers.
10. Australian Consumer Law
11. Indemnification
12. Suspension and Termination of your Use of the Services.
- 13. General Provisions**

1. Definitions

"Account" means a Content storage and distribution account created by you or on your behalf within the Services.

"Company Representative User" means a user identified as having administrative rights including, without limitation, the permission to add licenses, cancel licenses and define the scope of the Services. This user also has full control over content stored under your account and which users have access to this content.

"Administrator User" means a user you identify as having administrative rights including, without limitation full control over content stored under your account, adding and removing user accounts, granting additional privileges to Supervisor Users and Standard Users and which users have access to content stored on the account.

"Approver User" means an individual who is an employee, consultant, or contractor of you or your Affiliate that has access rights to edit Approver User, Supervisor User and Standard User accounts, generate reports and approve content for distribution.

"Supervisor User" means an individual who is an employee, consultant, or contractor of you or your Affiliate that has access rights to edit Supervisor User and Standard User accounts and generate reports.

"Standard User" means an individual other than a Supervisor User. For clarity, an employee, consultant or contractor of you or your Affiliate and this user can only access content that they are authorised to by a Company Representative or Administrator User.

"Document Control Supervisor User" means an individual who is an employee, consultant, or contractor of you or your Affiliate that has access rights to edit Document Control Supervisor User and Document Control Standard User details add/modify documents within the account and control document content distribution.

"Document Control Standard User" means an individual other than a Document Control Supervisor User. For clarity, an employee, consultant or contractor of you or your Affiliate and this user can add/modify documents with the account and control document content distribution..

"Affiliate" means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where "control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).

"Content" means files, materials, data, text, audio, video, images or other content.

"Documentation" means written or online user documentation that describe the functionality, operation, and use of the Services, and that Proceduresync provides or makes generally available to customers of the Services.

"Services " refers, collectively, to the hosted storage solution we provide for online storage, processing and distribution of Content, the Software, the Website, and Documentation.

"Software" means the software used, provided or made available by Proceduresync for use in connection with the Services. Software includes the Proceduresync Client Software which is that portion of the Software that may be installed on Customer's local server, desktop, mobile or other device (for example, mobile apps, desktop apps, group apps and web apps) and enables a user to engage Content with the Services.

"User" means an individual you authorize to be a Company Representative User, Administrator User, Approver User, Supervisor User, Standard User, Document Control Supervisor User or Document Control Standard Users.

"Website" means any websites owned or operated by Proceduresync, including (but not limited to) those located at www.proceduresync.com.

2. Availability of the Services

- a. Services.** We will make the Services available for your use on a non-exclusive basis and in strict compliance with these Terms and all applicable laws. Your use includes allowing Users to transmit, store, distribute and process Content through the Services solely through an Account registered to you and in accordance with the orders you place with Proceduresync. In the event that your Users exceed the quantity or User type for which you paid, you agree to pay for your additional Users at Proceduresync's then-current pricing, unless you have a separate prior written agreement with Proceduresync stating otherwise.
- b. Software Provided for Use with the Services.** Subject to your continued compliance with these Terms, we grant you the non-exclusive, non-transferable, worldwide, personal license to install and use the Proceduresync Client Software for the sole purpose of accessing the Services by Users. You acknowledge that, from time to time, we may issue updates to the Software (for example, to address security vulnerabilities, upgrade the protocol, improve usability or performance, and upgrade features). In that event, the version of the Software which is running on your computer or device may be automatically upgraded and you consent to such automatic upgrading. All updates to the Software will be subject to the terms and conditions of this Agreement.
- c. Support for the Services.** Proceduresync will provide response to support enquiries within 24 hours of receipt. Users can lodge a support ticket through the Proceduresync website.
- d. Updates to the Services.** We reserve the right, in our sole discretion, to change, update, and enhance the Services at any time including to add functionality or features to, or remove them from, the Services. We may also suspend the Services or stop providing the Services all together.

3. Your Responsibilities relating to Use of the Services.

- a. General obligations.** You warrant that all information provided to Proceduresync is true, accurate and complete. You acknowledge and agree that:
- (i) you are authorised to use the Software and to access any information or data that you input (**Data**) into the Software, including any Data which has been inputted into the Software by any person you have authorised to do so;
 - (ii) the Software must only be used for your own lawful internal business purposes, in accordance with these Terms;
 - (iii) all usernames and passwords required to access the Software are kept secure and confidential;
 - (iv) if there is any unauthorised use of your passwords or any other breach of security, you will immediately notify Proceduresync of such activity;
 - (v) the Software operates within the User's computing or smart device system ("**End User System**");
 - (vi) the reliability of the Software is dependent upon the User's configuration and implementation of the Software; and
 - (vii) it is the responsibility of the User to determine that the Software meets the needs of the User and their business, and is suitable for the purposes for which the Software is used.
- b.** You may use the Software on behalf of others or in order to provide services to others but if you do so you must ensure that you are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to you.
- c.** Proceduresync has no responsibility to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any person or entity other than you. If you use the Software on behalf of or for the benefit of anyone other than yourself, you agree that:
- (i) you are responsible for ensuring that you have the right to do so;
 - (ii) you are responsible for authorising any person who is given access to your Data, and you agree that Proceduresync has no obligation to provide any person or entity with access to such Data without authorisation from you and may refer any requests for access to the Data to you to address; and
 - (iii) you will indemnify Proceduresync against any claims or loss relating to Proceduresync's refusal to provide any persons with access to your Data in accordance with these Terms and Proceduresync making Data available to any person with authorisation from you.
- d.** The use of the Software is at the User's own risk.
- e.** You remain solely responsible for complying with all applicable laws. It is your responsibility to ensure that the storage of and access to your Data via the Software, the Site and the App comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.
- f.** Each User must have their own safeguards and back up processes in place to recover from any failures or loss of Data which might occur whilst using the Software.

- g. Passwords and Account.** To obtain access to certain Services, you will be required to obtain an Account with Proceduresync by completing a registration form and designating a user ID and password. Until you apply for and are approved for an Account, your access to the Services will be limited to those areas of the Services, if any, that Proceduresync makes available to the general public. You agree and represent that all registration information you provide is accurate, complete, and current, and that you will update it promptly when that information changes. Proceduresync may withdraw Account approval at any time in its sole discretion, with or without cause. You are responsible for safeguarding the confidentiality of your User ID and passwords, and for all activities that take place with your Account. Proceduresync will not be liable for any loss or damage arising from any unauthorized use of your Account.
- h. Notices from Proceduresync.** You acknowledge that once you have registered with us, we may send you communications or data regarding the Services using electronic means. These may include, but are not limited to
- (i) notices about your use of the Services, including any notices concerning violations of use,
 - (ii) updates to the Services,
 - (iii) promotional information and materials regarding Proceduresync's products and services, and information the law requires us to provide. We give you the opportunity to opt-out of receiving certain of these communications from us by following the opt-out instructions provided in the message. However, even if you opt-out, you understand that we may continue to provide you with required information by e-mail at the address you specified when you signed up for the Services or via access to a website that we identify. Notices we e-mail to you will be deemed given and received when the e-mail is sent. If you don't agree to receive required notices via e-mail, you must stop using the Services. If you provide Proceduresync with legal notices, you must transmit it to us via email to admin@proceduresync.com. Any such notice must specifically reference that it is a notice given under these Terms.
- i. Notices from You regarding Unauthorised Use.** You agree to notify us promptly in writing when you become aware of any unauthorized use of an Account, the Content or the Services, including if you suspect there has been any loss, theft or other security breach of your password or user ID. If there is an unauthorized use by a third party which obtained access to the Services through you or your Users, whether directly or indirectly, you agree to take all steps necessary to terminate the unauthorized use. You also agree to provide Proceduresync with any cooperation and assistance related to that unauthorized use which we reasonably request.
- j. Content.** Proceduresync does not monitor any Content transmitted or processed through, or stored in, the Services. You agree that you:

- (i) are responsible for the accuracy and quality of all Content that is transmitted or processed through, or stored in, your Account,
 - (ii) will ensure that the Content (including its storage and transmission) complies with these Terms, and applicable laws and regulations;
 - (iii) will promptly handle and resolve any notices and claims from a third party claiming that any Content violates that party's rights, including regarding take-down notices pursuant to the Australian Copyright Act; and
 - (iv) will maintain appropriate security, protection and backup copies of the Content, which may include (A) the use of encryption technology to protect the Content from unauthorized access and (B) routine archiving of the Content. Proceduresync will have no liability of any kind as a result of any deletion, loss, correction, or destruction of Content or damage to or failure to store or encrypt any Content.
- k. Use Restrictions.** You are responsible for Users' compliance with these Terms and for the quality, accuracy and legality of the Content. You will not, and will ensure that your Users do not
- (i) use the Services in any manner or for any purpose other than as expressly permitted by these Terms including, without limitation, allowing Standard Users to use the logins of your Company Representative, Administrator, Approver, Supervisor or Document Control Supervisor Users,
 - (ii) sell, rent, resell, lease, or sublicense the Services to any third party;
 - (iii) modify, tamper with or otherwise create derivative works of the Services;
 - (iv) reverse engineer, disassemble or decompile the Services, or attempt to derive source code from the Services;
 - (v) remove, obscure or alter any proprietary right notice related to the Services;
 - (vi) use the Services to send unsolicited or unauthorized junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages;
 - (vii) store or transmit Content:
 - i. containing unlawful, defamatory, threatening, pornographic, abusive, or libellous material,
 - ii. containing any material that encourages conduct that could constitute a criminal offense, or
 - iii. that violates the intellectual property rights or rights to the publicity or privacy of others;
 - (viii) use the Services to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs;
 - (ix) interfere with or disrupt servers or networks connected to the Services or the access by other Proceduresync clients to the servers or networks, or violate the regulations, policies or procedures of those networks;
 - (x) access or attempt to access Proceduresync's other accounts, computer systems or networks not covered by these Terms, through password mining or any other means; or
 - (xi) access or use the Services in a way intended to avoid incurring fees, exceeding usage limits and the like.

l. Third Party Services and Content. All transactions using the Services are between the transacting parties only. The Services may contain features and functionalities linking or providing you with certain functionality and access to third party content, including Web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole. You acknowledge that Proceduresync is not responsible for such content or services. We may also provide some content to you as part of the Services. However, Proceduresync is neither an agent of any transacting party nor a direct party in any such transaction. Any of those activities, and any terms associated with those activities, are solely between you and the applicable third-party. Similarly, we are not responsible for any third party content you access with the Services, and you irrevocably waive any claim against Proceduresync with respect to such sites and third-party content. Proceduresync has no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party. You are solely responsible for making whatever investigation you feel is necessary or appropriate before proceeding with any transaction with any of these third parties and your dealings with any third party related to the Services, whether online or offline, including the delivery of and payment for goods and services. In the event you have any problems resulting from your use of a third party service, or suffer data loss or other losses as a result of problems with any of your other service providers or any third-party services, we are not responsible unless the problem was the direct result of our breaches.

m. File Acceptance. You acknowledge that when using any of the Proceduresync services, software or applications that:

- i. When you select “Yes” to reading and understanding a file you are acknowledging that you have read and understood everything in that document and accept receipt of it. By acknowledging an electronic document/file as “read and understood” it is the same as if you have read, understood and accepted a physical paper version of this document/file. If you do not agree to accepting receipt of the file you must select “No”.
- ii. Upon marking a file as “Yes” or “No” to read and understood, this response, along with a date and time stamp, will be sent to the server for record keeping. These date and time stamps can be used by Company Representative, Approver and Supervisor level users during generation of reports.

4. Fees and Payment.

- a. **Fees.** You agree to pay us the Fee for the Services as set out in your Account. You agree to pay, using a valid credit card (or other form of payment which we may accept), the charges and fees (such as recurring monthly or annual fees) set forth on the Website (collectively, "Fees"), Taxes (as defined below), and other charges and fees incurred in order to access the Services. You will pay Fees in the currency we quoted for your account (and we reserve the right to change the quoted currency at any time). We will automatically charge your credit card or other account at the start of the billing period and at the start of each renewal period. Except as specifically set forth in this section, all Services are prepaid for the period selected (monthly, annually or otherwise) and are non-refundable. This includes accounts that are renewed.
- b. **Fees for Upgrade.** If you upgrade or expand consumption of the Services (for example, to obtain additional storage, User access, features or functionality to the Services) (collectively referred to as a "Services Upgrade"), additional fees may be due at Proceduresync's then-current pricing. If additional fees are due, those fees will be immediately charged to your credit card or other account and will apply for the entire month in which the Services Upgrade occurred. If you have paid for an annual period, Services Upgrades will be charged pro-rata for the remaining period.
- c. **Fee Increases.** We will notify you in advance, either through a posting on this Website or by email to the address you have most recently provided to us, if we increase Fees or institute new charges or fees. Any increase in Fees will take effect at the beginning of the next renewal subscription term for the Services. For example, if you pay monthly, your use of the Services will be charged at the new price when Services are renewed in the month that follows the notice. If you don't agree to these changes, you must cancel and stop using the Services.
- d. **Invoicing and Payment Terms.** You agree to keep all information in your billing account current. You may change your payment method or modify your billing account information at any time by using the means provided on the Website. Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request. In the event that we invoice you, then all fees will be due and payable upon receipt. We reserve the right to charge, and you agree to pay, a late fee on past due amounts. The late fee will be equal to the lesser of 1.5% of the unpaid amount each month or the maximum amount allowed by applicable law. We may use a third party to collect past due amounts. You must pay for all reasonable costs we incur to collect any past due amounts, including reasonable attorneys' fees and other legal fees and costs. In addition, we may suspend your access to the Services, or cancel the Services, if your account is past due.
- e. **Taxes.** Fees are inclusive of GST. You agree to promptly provide Proceduresync with legally sufficient tax exemption certificates for each taxing jurisdiction for which you claim exemption.

5. Cancelling the Services.

To cancel the Services, you must provide us with at least 30 days' notice and follow the process we specify on the Website. If you cancel, the Services will end at the end of your current Services period following the 30 days' notice. If you fail to cancel as required, we will automatically renew the Service for the same term and will charge your payment information on file with us commencing on the first day of the renewal term.

6. Feedback and Dispute Resolution

- a. **Your feedback is important to us.** We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.
- (i) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them ("Initial Meeting").
 - (ii) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
 - (iii) Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

7. Confidentiality.

- a. **Description of Confidential Information.** In connection with each party's rights and obligations under these Terms, each party (as the "disclosing party") may disclose to the other party (as the "recipient") certain of its confidential or proprietary information ("Confidential Information"). In the case of Proceduresync, the Services, these Terms and any other proprietary or confidential information we provide to you constitute Proceduresync Confidential Information. In the case of Customer, Content provided to Proceduresync by Customer constitutes Customer Confidential Information.
- b. **Protection of Confidential Information.** Each party as recipient agrees:
- (i) not to disclose the Confidential Information to any third party at any time;
 - (ii) to exercise at least the same degree of care to safeguard Confidential Information of the disclosing party as the recipient exercises to safeguard the confidentiality of its own confidential information, but not less than reasonable care;
 - (iii) to use the disclosing party's Confidential Information only in connection with exercising its rights and performing its obligations under these Terms, for the purpose for which it was disclosed by ProcedureSync and not for any other purpose; and

- (iv) to not disclose or disseminate the disclosing party's Confidential Information to any third party and that the only employees and contractors who will have access to the disclosing party's Confidential Information will be those with a need to know who have agreed to abide by the obligations set forth in this Section pursuant to a written confidentiality agreement.
- c. The User's obligations set out in sub-clause b, above, do not apply to Confidential Information:
 - (i) that is already in the public domain, except as a result of the actions of the User in breach of any of the Terms of this Agreement;
 - (ii) received from a third party, except where there has been a breach of confidence;
 - (iii) that must be disclosed by law, provided that the Users reveals only so much of the Confidential Information as the User is required by law to disclose and gives sufficient notice to ProcedureSync in order to allow ProcedureSync to object to, or otherwise prevent, the Confidential Information being disclosed.
- d. **Protection of Content.** We agree to maintain appropriate administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of the Content.
- e. **Exceptions to Confidentiality.** Information will not be deemed Confidential Information of either of us under these Terms if such information:
 - (i) is or becomes rightfully known to the recipient without any obligation of confidentiality or breach of these Terms;
 - (ii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of these Terms by the recipient of such Confidential Information; or
 - (iii) is independently developed by the recipient of such Confidential Information without breach of these Terms. Confidential Information will remain the property of the disclosing party.
- f. This clause will survive termination of this Agreement.

8. Intellectual Property

- a. Title to, and all Intellectual Property rights in the Software, the Site, and the App, and any documentation relating to the Software, remain the property of Proceduresync and its licensors. Proceduresync grants you a licence to ProceduresyncProceduresynctransmit, use, modify, adapt, reproduce, display or disclose the Content in the following circumstances:
 - (i) to provide the Services to Customer or any User,
 - (ii) to comply with any request of a governmental or regulatory body (including subpoenas or court orders) or as otherwise required by law,
 - (iii) for statistical use (provided that such data is not personally identifiable), and

- (iv) as necessary to monitor and improve the Services. Customer represents and warrants that Customer has all rights in the Content necessary to grant these rights and use the Services, and that the transmission, storage, retrieval, and processing of the Content do not violate any law or these Terms.
- b. In the event that Proceduresync agrees to customise, modify and/or enhance any Software for the User, or to develop programs, software or materials related to such Software, the User may contract with Proceduresync to provide any such services in a separate agreement. If the Parties contract for any such services:
 - (i) the Parties shall do so via a validly executed agreement; and
 - (ii) all items produced via such customisation, modification and/or enhancement services are software products owned by Proceduresync and all Intellectual Property rights remains with Proceduresync.
- c. Title to and all Intellectual Property rights in any data you input into the Software remain your property. However, your access to the data and continued use of the Software is contingent on monthly payments of your Subscription Fee.
- d. You grant Proceduresync a licence to use, copy, transmit, store, and back-up your information and data for the purposes of enabling you to access and use the Software and for any other purpose related to provision of Services to you.
- e. It is the responsibility of the User to maintain copies of all data which is inputted into the Software. Proceduresync will endeavour to prevent data loss, however, as the Software operates as a cloud-based service, provided through third parties, Proceduresync does not make any guarantees that there will be no loss of data.
- f. **Ownership by Proceduresync.** As between Proceduresync and Customer, Proceduresync or its licensors own and reserve all right, title and interest in and to the Services and all hardware, software, applications and other items used to provide the Services. No title to or ownership of any proprietary rights related to the Services is transferred to Customer or any User pursuant to these Terms or any transaction contemplated by these Terms. Proceduresync reserves all rights not explicitly granted to Customer. Proceduresync is free to use any comments, suggestions, recommendations, and other feedback you provide with respect to the Services for any purpose, without obligation.
- g. To access our Copyright Policy and the procedure of issuing notifications in cases of intellectual property breaches, please see our website: www.proceduresync.com

9. Limitation of liability and disclaimers.

- a. Proceduresync and the User agree that Proceduresync's liability for the Services provided via the Site, the App and the Software is governed solely by the Australian Consumer Law to the extent applicable, and this Agreement.

- b.** Proceduresync has no liability for use of the Software or App in countries other than as specified on the Site.
- c.** Our liability is addressed by our insurance which provides a limit of liability of:

 - (i) up to \$5 million for Professional Indemnity; and
 - (ii) up to \$10 million for Public and Products Liability.
- d.** We will take steps to maintain our insurance after the completion of the use of our Services and termination of this Agreement, for as long as we are required to do so by law.
- e.** You acknowledge that whilst Proceduresync will take reasonable steps to ensure that the Software will work for you, Proceduresync gives no guarantees that:

 - (i) the Software will meet your requirements as the functionality of the Software is dependent upon configuration with the End User System and other components;
 - (ii) the Software will work in each scenario; and
 - (iii) the Software can be executed on every operating system, as it is impossible to test each variant.
- f.** The Software uses third party hosting services which are provided without any sort of warranties, and Proceduresync cannot ensure that these libraries are provided free of defect.
- g.** Proceduresync provides the Services "as is," "with all faults," and "as available." To the maximum extent permitted by applicable law, Proceduresync makes no representations or warranties of any kind, whether express, implied, statutory or otherwise. Proceduresync specifically disclaims, without limitation, any warranty that the Services will be uninterrupted, error-free or free of harmful components, that the Content will be secure or not otherwise lost or damaged, or any implied warranty of merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement, and any warranty arising out of any course of performance, course of dealing or usage of trade. Some jurisdictions do not allow the foregoing exclusions. In such an event such exclusion will not apply solely to the extent prohibited by applicable law. The operation of the Software is dependent on public telephone services, computer networks, the Internet, which can be unpredictable and may from time to time interfere with the use of the Software. Proceduresync accepts no responsibility for any such interference or prevention of your use of the Software.
- h.** All risk arising out of the use or performance of the Software remains with you. You understand and agree that the use of the Software, material or data downloaded or otherwise obtained through the use of the Software, is at your own discretion and risk and that you will be solely responsible for any infections, contaminations or damage to your computer, system or network. Proceduresync is not responsible or liable for delays, inaccuracies, errors or omissions arising out of your use of the Software, any third party software or operating system.

- i. To the maximum extent permitted by applicable law, Proceduresync and its licensors disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party intellectual property rights or lack of viruses, for the Software. In no event will Proceduresync or its licensors be liable for any consequential, incidental, indirect, special, punitive, or other damages whatsoever arising out of this Agreement, the use of or inability to use the Software, even if Proceduresync has been advised of the possibility of such damages.
- j. The Software is not intended for use in the operation of medical instruments, water craft, military installations, warfare equipment, industrial control systems and or SCADA systems and or robotic systems, surgical/medical application or equipment, artificial intelligence application or system, gambling/wagering system, and prototype, experimental or single product items, nuclear facilities, aircraft navigation or communications systems or air traffic control machines or any other machines in which case the failure of the Software could lead to death, personal injury or severe physical or environmental damage.
- k. The User acknowledges that Proceduresync may pursue any available equitable or other remedy against you as a result of a breach by the User of any provision of this Agreement.
- l. Proceduresync or its licensors' liability for breach of any of its obligations under this Agreement for the Software, or breach of any warranty implied by law, will be limited, to the extent permitted by law, to the total price paid for the License to execute the Software or any related Services. Proceduresync's total liability to you for all damages in connection with the Software will not exceed the price paid by you under this agreement for the Software. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- m. The User acknowledges and agrees that Proceduresync will not be liable for any non-compensatory damages including punitive, aggravated, multiple, exemplary, liquated or any other non-compensatory damages or the consequences of non-payment.
- n. To the fullest extent permitted by applicable law, in no event
 - (i) will the liability of Proceduresync, its affiliates, officers, employees, or agents for any and all claims relating to the Services exceed the greater of \$100.00 or the total amount of fees that you paid us during the previous three month period and
 - (ii) will Proceduresync, its affiliates, officers, employees, or agents be liable for any indirect, incidental, special, punitive, cover or consequential damages (including, without limitation, damages for lost profits, revenue, goodwill, use or content) however caused, under any theory of liability, including, without limitation, contract, tort, warranty, negligence or otherwise, even if Proceduresync has been advised as to the possibility of such damages. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above exclusions or limitations may not apply to you. You may also have other rights that vary from state to state.

10. Australian Consumer Law

- a. Certain legislation including the Australian Consumer Law (ACL) in the Consumer and Competition Act 2010 (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (Statutory Rights).
- b. Nothing in these Terms removes your Statutory Rights as a consumer under the ACL. You agree that our liability for Services provided to consumers is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- c. Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- d. If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the services for or for a result which you have told us you wish the services achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our services is limited to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the services to which your claim relates.

11. Indemnification.

- a. You will be liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from: (i) any information that is not accurate, up to date or complete or is misleading or a misrepresentation; (ii) any breach of these Terms and/or applicable laws; (ii) any infringement of a registered patent, registered trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of Proceduresync's actions) (iii) and any misuse of the Software and/or License; from or by you, your employees, contractors or agents.
- b. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Software and License including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- c. Proceduresync will provide you with notification of any such claim or demand that is subject to your indemnification obligation.

- d. The obligations under this clause will survive termination of these Terms.

12. Suspension and Termination of your Use of the Services.

- a. General. Proceduresync reserves the right to temporarily suspend or terminate your access to the Services at any time in Proceduresync's sole discretion, with or without cause, and with or without notice, without incurring liability of any kind. For example, we may suspend or terminate your access to or use of the Services for:
- (i) the actual or suspected violation of these Terms;
 - (ii) the use of the Services in a manner that may cause Proceduresync to have legal liability or disrupt others' use of the Services;
 - (iii) the suspicion or detection of any malicious code, virus or other harmful code in your Account;
 - (iv) downtime, whether scheduled or recurring;
 - (v) your use of excessive storage capacity or bandwidth; or
 - (vi) unplanned technical problems and outages. If, in our determination, the suspension might be indefinite or we have elected to terminate your access to the Services, we will use commercially reasonable efforts to notify you through the Services. You acknowledge that if your access to the Services is suspended or terminated, you may no longer have access to the Content that is stored with the Services.
- b. Termination for Lack of Activity. In addition to our other rights of termination, if your Account is not currently subject to a paid subscription plan with us, we may terminate your Account if:
- (i) you do not engage in any activity in the Account within 30 days after registering for the Services, or
 - (ii) you do not engage in any activity in an Account for 120 consecutive days. In the event of such termination, any of your Content may be lost.
- c. **Post-Termination Obligations.** Upon termination of these Terms for any reason, all of your rights to use or access the Services will cease. You agree, within five days of such termination, to destroy all copies of the Software, the Documentation, and any Confidential Information of Proceduresync, including any Documentation in written or electronic form and any Software stored on your servers or other systems. In addition, if requested by Proceduresync, you will promptly provide to Proceduresync a written certification signed by an authorized representative certifying that all copies of the Software and any written or electronic documentation and Confidential Information of Proceduresync have been destroyed. For 30 days following the expiration of the Termination of these Terms or the applicable subscription term for which you have paid, and subject to your prior written request, we will grant you with limited access to the Services solely for purposes of your retrieval of the Content. After that 30-day period, Proceduresync has no further obligation to maintain the Content and will delete the Content unless legally prohibited.
- d. **Survival.** The terms of any sections that by their nature are intended to extend beyond termination will survive termination of these Terms for any reason.

13. General Provisions.

- a. **Governing Law.** These Terms will be construed and enforced in all respects in accordance with the laws of the State of Western Australia, without reference to its choice of law rules. Any dispute between the parties will be brought in a court in Perth, Australia and each party irrevocably waives any claim that such court does not have personal jurisdiction over the party. All use of the Services is expressly governed by any applicable export and import laws, and Customer must comply with all such laws. Claims arising out or related to these terms must be filed within one year of the date on which the claim arose unless local law requires a longer time to file claims. If a claim is not filed accordingly, then it is permanently barred.
- b. **Independent Contractors; Third Party Beneficiaries.** You and we are independent contractors, and nothing in these Terms creates a partnership, employment relationship or agency. There are no third-party beneficiaries of these Terms. Proceduresync may subcontract portions of the Services provided that Proceduresync shall remain responsible for all such obligations under these Terms.
- c. **Waiver.** Our failure to enforce any of these Terms will not be considered a waiver of the right to enforce them. Our rights under these Terms will survive any termination.
- d. **Assignment.** You may not assign these Terms or your rights and obligations under them, in whole or in part, to any third party without our prior written consent, and any attempt by you to do so will be invalid.
- e. **Severability.** Should any part of these Terms be held invalid or unenforceable, that portion will be construed consistent with applicable law and the remaining portions will remain in full force and effect.
- f. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform its obligations under these Terms (excluding payment obligations) if the delay or failure arises from any cause or causes beyond that party's reasonable control.
- g. **Public Announcement.** Proceduresync reserves the right to release a press announcement regarding the parties' relationship, and to include Customer's name on Proceduresync's customer lists on Proceduresync's web site and in any other marketing materials.

- h. Entire Agreement and Changes.** These Terms, including fees for Services on the Website, constitutes the entire agreement, and supersedes any and all prior agreements, between the parties with regard to the subject matter hereof. Proceduresync reserves the right to modify or replace these Terms at any time in its sole discretion. Proceduresync will indicate at the top of these Terms the date these Terms were last updated. Any changes will be effective upon posting the revised version of these Terms on the Services (or such later effective date as may be indicated at the top of the revised Terms). Customer's continued access or use of any portion of the Services constitutes Customer's acceptance of such changes. If Customer doesn't agree to any of the changes, Customer must cancel and stop using the Services.
- i. Privacy.** In order to operate and provide the Services, Proceduresync collect certain information about Customer. As part of the Services, Proceduresync may also automatically upload information about Customer's computer or other device, Customer's use of the Services, and the Services performance. Proceduresync will use and protect that information as described in the privacy policy located on the Website ("Privacy Policy"). Customer further acknowledges and agrees that Proceduresync may access or disclose information about Customer, including the content of Customer communications, in order to:
- (i) comply with the law or respond to lawful requests or legal process;
 - (ii) protect the rights or property of Proceduresync or Proceduresync's customers, including the enforcement of Proceduresync's agreements or policies governing Customer's use of the Services; or
 - (iii) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Proceduresync employees, customers, or the public.
- j. ACA.** We respect the intellectual property of others, and reserve the right to delete or disable Content that appears to violate these terms or applicable law. The *Australian Copyright Act* of 1968 (the "ACA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under Australian copyright law. If you believe in good faith that Content infringes your copyright, you (or your agent) may send us a notice requesting that the Content be removed or access to it blocked. Federal law requires that your notification include the following information:
- (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 - (ii) identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
 - (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;

- (iv) information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail;
- (v) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed

Notices must be sent to:

Proceduresync Pty Ltd

Attn: Legal Department

admin@proceduresync.com

Fax: (08) 9238 4956

We provide the above contact information for purposes of the ACA only and reserve the right to respond only to correspondence that is relevant to this purpose.