

**1. GENERAL.** The following terms and conditions (“Terms and Conditions”) provide for terms that are common to this Agreement, including all Schedules. In the event of a conflict between these Terms and Conditions and any Schedule, the Schedule will control, unless expressly stated to the contrary in these Terms and Conditions.

## **2. SERVICES.**

**2.1 General.** All services provided by ProRata under this Agreement (“Services”), including the Software Services, will be provided to Company according to these Terms and Conditions, the applicable Order Form, and all schedules, exhibits, or other attachments made a part of this Agreement.

**2.2 Software Services.** ProRata will provide Company, and its End Users with access to the software products and related services provided by ProRata via a web browser and identified on the applicable Order Form (“Software Services”). During the Term and subject to Company’s compliance with this Agreement, ProRata grants Company the non-exclusive, nontransferable, non-assignable, and limited right to allow End Users to remotely access the Software Services for Company’s internal business purposes in accordance with the terms of this Agreement. “End User” means individuals who are authorized by Company to use the Software Services, for whom Company has ordered Software Services, and to whom Company (or ProRata at Company’s request) have supplied a user identification and password for a Customer utilizing the Software Services (including, for example, Company’s employees, consultants, contractors and agents, and third parties with which Company transacts business). “Customer” means any company or other entity inserted or otherwise identified using the feature of the Software Services identified as “Create New Customer”.

**2.3 Service Delivery.** ProRata may provide the Services from any facility and may from time to time transfer any or all of the Services being provided hereunder to any new facility(ies) or relocate the personnel, equipment and other resources used in providing those Services.

**2.4 Restrictions.** Company shall not lease, license, sell, sublicense or otherwise transfer its access to or use of the Software Services. The Software Services may only be used by Company and End Users. In addition, Company shall not modify, create Derivative Works of, or attempt to decipher, decompile, disassemble or reverse engineer the Software Services. Nothing in this Agreement confers upon either party any right to use the other party’s Marks, except in ProRata’s performance of the Services. All use of such Marks by either party will inure to the benefit of the owner of such Marks, use of which will be subject to specifications controlled by the owner.

**3. RIGHTS RESERVED.** Title, ownership rights, and intellectual property rights in and to the Software Services, all ProRata service marks, trademarks, trade names, logos, and any modifications to the foregoing (“Marks”) (and all suggestions, contributions, enhancements, improvements, additions, modifications, or derivative works (“Derivative Works”) thereto

and copies thereof) will remain in possession of ProRata. Company acknowledges that the Software Services in source code form remains Confidential Information of ProRata and that the source code is not licensed to Company by this Agreement or any Schedule and will not be provided by ProRata. No right or implied license or right of any kind is granted to Company regarding the Services, including any right to use, reproduce, market, sell, translate, distribute, transfer, adopt, disassemble, decompile, reverse engineer the Software Services or the documentation thereof, or any portions thereof, or obtain possession of any source code or other technical material relating to the Software Services.

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

**4.1 Services Fees.** For the Services provided under this Agreement, Company will pay ProRata the fees in the amounts set forth on the applicable Order Form. Unless otherwise set forth on the applicable Order Form, applicable fees will be invoiced to Company monthly in advance. Fees are non-cancelable and non-refundable (unless terminated by ProRata without cause, in which case prepaid and unused fees will be refunded to the Customer). Payment terms are set forth on the applicable Order Form. ProRata may adjust the fees by providing at least sixty (60) days advance written notice to Company. All fees paid and expenses reimbursed under this Agreement will be in United States currency.

**4.2 Late Fees.** Company will pay a late fee of 1.5% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. ProRata, at its option, may suspend the Services, in whole or in part, if ProRata does not receive all undisputed amounts due and owing under this Agreement within thirty (10) days after delivery of notice to Company of the failure to pay such overdue balances.

**4.3 Taxes.** The fees and expenses due to ProRata as set forth in this Agreement are net amounts to be received by ProRata, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by Company or imposed on ProRata in the performance of this Agreement or otherwise due as a result of this Agreement. This section will not apply to taxes based solely on ProRata’s income.

**4.4 Offset.** Fees and expenses due from Company under this Agreement may not be withheld or offset by Company against other amounts for any reason.

## **5. COMPANY OBLIGATIONS**

**5.1 Technical Requirements.** Company must have required equipment, software, and Internet access to be able to use the Software Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely Company’s responsibility. ProRata neither represents nor warrants that the Software Services will be accessible through all web browser releases.

**5.2 Use of Software Services.** Company shall not and shall not permit others in using the Software Services to: (i) defame, abuse, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as rights of privacy, publicity and

intellectual property) of others or ProRata; (ii) publish, ship, distribute or disseminate any harmful, inappropriate, profane, vulgar, infringing, obscene, false, fraudulent, tortuous, indecent, unlawful, immoral or otherwise objectionable material or information (including any unsolicited commercial communications); (iii) publish, ship, distribute or disseminate material or information that encourages conduct that could constitute a criminal offense or give rise to civil liability; (iv) engage in any conduct that could constitute a criminal offense or give rise to civil liability for ProRata; (v) misrepresent or in any other way falsely identify Company's identity or affiliation, including through impersonation or altering any technical information in communications using the Software Services; (vi) transmit or upload any material through the Software Services contains viruses, trojan horses, worms, time bombs, cancelbots, or any other programs with the intent or effect of damaging, destroying, disrupting or otherwise impairing ProRata's, or any other person's or entity's, network, computer system, or other equipment; (vii) interfere with or disrupt the Software Services, networks or servers connected to the ProRata systems or violate the regulations, policies or procedures of such networks or servers, including unlawful or unauthorized altering any of the information submitted through the Software Services; (viii) attempt to gain unauthorized access to the Software Services, Customers' computer systems, or networks using the Software Services through any means; or (ix) interfere with another party's use of the Software Services, including any parties Company has done business with or choose not to do business with through the Software Services. ProRata has no obligation to monitor Company's use of the Software Services. However, ProRata reserves the right (but has no obligation) at all times to monitor, review, retain and disclose any information as necessary to satisfy or cooperate with any applicable law, regulation, legal process or governmental request. Company shall use commercially reasonable efforts, including reasonable security measures relating to administrator account access details, to ensure that no unauthorized person may gain access to the Services.

5.3 Compliance with Law. Company agrees not to use (and will use its best efforts not to allow its End Users to use) the Software Services for illegal purposes or for the transmission of material that is unlawful, harassing, libelous (untrue and damaging to others), invasive of another's privacy, abusive, threatening, or obscene, or that infringes the rights of others. Company is solely responsible for any and all improper use of the Software Services that occurs as a direct or indirect result of any act or omission of Company. Company will notify ProRata immediately of any unauthorized use of the Software Services or any other breach of security that is known or suspected by Company.

## 6. NON-DISCLOSURE AND CONFIDENTIALITY.

6.1 Disclosure. Each party may disclose to the other party certain Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or customers. "Confidential Information" means any information that is of value to its owner and is treated as confidential, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers,

pricing, and marketing; "Disclosing Party" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "Recipient" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient's employees or agents.

6.2 Requirement of Confidentiality. The Recipient agrees: (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Recipient may disclose the Confidential Information of the Disclosing Party to its, and its affiliates, officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 6; (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations or as otherwise authorized under the Agreement; and (c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party. Company acknowledges that the Software Services and documentation are the Confidential Information of ProRata. The obligations in this Section 6 shall survive termination and continue for so long as the applicable information constitutes Confidential Information. Confidential Information shall not include information that: (a) is already known to the Recipient without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Recipient; (c) is developed by the Recipient independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Recipient from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

6.3 Compelled Disclosure. If the Recipient becomes legally compelled to disclose any Confidential Information, the Recipient shall provide: (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Recipient remains required by Law to disclose any Confidential Information, the Recipient shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, the Recipient is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

7. **LIMITED WARRANTY**. ProRata represents and warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the

provision thereof and that the Software Services will perform substantially in accordance with the documentation under normal use and circumstances. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 7, EACH PARTY DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO THE OTHER PARTY REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY PRORATA. NO WARRANTY IS MADE THAT USE OF THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES FUNCTIONALITY WILL MEET COMPANY'S REQUIREMENTS. FINALLY, PRORATA EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR, AND COMPANY HEREBY HOLDS PRORATA HARMLESS FROM ANY DAMAGES OR LOSSES RELATING TO OR ARISING FROM: (I) THE ACCURACY OR INTEGRITY OF ANY DATA PROVIDED BY OR THROUGH PRORATA, COMPANY, CUSTOMERS, OR OTHERWISE; (II) ANY USE OR ACCESS OR DATA CONTAINED WITHIN OR PASSING THROUGH THE SERVICES, WHETHER THE DATA IS ACCESSED OR COMPROMISED THROUGH THE EXPLOITATION OF SECURITY GAPS, WEAKNESS, OR FLAWS OR OTHERWISE; OR (III) ACCESS TO DATA BY THIRD PARTIES THROUGH ILLEGAL OR ILLICIT MEANS.

## 8. LIMITATION OF LIABILITY.

8.1 Exclusion of Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 8.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE, REVENUE, PROFIT, OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 Liability Cap. EXCEPT AS OTHERWISE PROVIDED IN SECTION 8.3, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO PRORATA PURSUANT TO THIS AGREEMENT DURING THE TWELVE

(12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8.3 Exceptions. The exclusions and limitations in Section 8.1 and Section 8.2 shall not apply to: (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 6 (Non-Disclosure and Confidentiality); or (b) a party's obligations under Section 9 (Indemnification).

## 9. INDEMNIFICATION.

9.1 ProRata Indemnification. ProRata shall defend Company and its officers, directors, employees, agents, successors and permitted assigns against any third party claim, suit, action or proceeding (each, an "Action") based on a claim that Company's receipt or use of the Services in accordance with this Agreement infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against Company to the extent based on such an Action; provided, however, that ProRata shall have no obligations under this Section 9.1 with respect to claims to the extent arising out of: (a) any instruction, information, designs, specifications or other materials provided by Company to ProRata; (b) use of the Services in combination with any materials or equipment not supplied to Company or specified by ProRata in writing; or (c) any modifications or changes made to the Services by or on behalf of any person or entity other than ProRata. If the Services, or any part thereof, become, or in the opinion of ProRata may become, the subject of a claim of infringement or misappropriation, ProRata may, at its option: (i) procure for Company the right to use such Services free of any liability; (ii) replace or modify the Services to make them non-infringing; or (iii) terminate this Agreement and refund to Company any portion of the fees prepaid by Company for the infringing Services.

9.2 Company Indemnification. Company shall defend ProRata and its officers, directors, employees, agents, affiliates, successors and permitted assigns against all Actions based on a claim that any information or materials provided by Company, or ProRata's receipt or use thereof, infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against ProRata to the extent based on such an Action. Furthermore, Customer will indemnify ProRata from all liabilities, costs, and expenses incurred by ProRata in connection with (i) any request by a Customer to pull Customer data in connection with the Software Services (or perform related services); or (ii) any subpoena, testimony, deposition, or other ProRata participation in connection with any third-party Action brought against Customer involving Customer's data or Customer's employees or business.

9.3 Indemnification Procedures. The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's

sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 9.1 shall not relieve the indemnifying party of its obligations under this Section 9.1 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

## 10. TERM AND TERMINATION.

10.1 Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for the term set forth on the applicable Order Form, unless earlier terminated as set forth herein ("Term").

10.2 Termination. Without prejudice to any other remedies and in addition to any other termination rights herein, the parties shall have the right to terminate this Agreement as provided below:

a. By either party in the event the other party materially breaches the Agreement and is unable to cure such breach within thirty (30) days of receiving written notice thereof from the other party; or

b. By either party if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws.

10.3 Effect. Upon termination of this Agreement for any reason, all rights and licenses granted by ProRata hereunder to Company will immediately cease. Within thirty (30) days after termination or expiration of this Agreement, each party shall return or destroy the Confidential Information of the other party.

10.4 Survival. Termination of this Agreement or any Schedule will not affect the provisions regarding ProRata's or Company's treatment of Confidential Information, provisions relating to the payments of amounts due, indemnification provisions, provisions limiting or disclaiming ProRata's liability, or any other terms which by their nature should survive, which provisions will survive such termination.

## 11. GENERAL.

11.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule.

11.2 Conflicting Terms. Notwithstanding the content of any Company purchase order or any other document or record, whether in writing or electronic, relating to the subject matter of this Agreement, the terms of this Agreement shall govern and any conflicting, inconsistent, or additional terms contained in such documents shall be null and void.

11.3 Notice. All communications required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered (i) by hand, (ii) by registered or certified mail, postage prepaid, return receipt requested; or (iii) by a nationally recognized overnight courier service; to the address set forth on the applicable Order Form, as may be amended by the parties by written notice to the other party in accordance with this Section 11.3. Notwithstanding the foregoing, Customer may terminate this Agreement (to the extent authorized by this Agreement) by providing email notice to ProRata or by using any functionality allowing such termination built into the Software Services.

11.4 Assignment. Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided that upon prior written notice to the other party, either party may assign the Agreement to an affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.5 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another.

11.6 Severability. In case any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11.7 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

11.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto.

# SERVICES AGREEMENT

## TERMS AND CONDITIONS

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11.9 Amendment; Waiver. As ProRata's business evolves, ProRata may change this Agreement. If ProRata makes a material change to the Agreement, ProRata will provide Company with 30 days notice prior to the changes by emailing the email address associated with Company's account and by posting a notice on the [www.prorata.com](http://www.prorata.com). The revised terms and conditions will become effective on the date set forth in ProRata's notice, and if Company accesses or uses the Services after that date, such access or use constitutes Customer's acceptance of the revised Terms and Conditions. If any change to this Agreement is not acceptable to Customer, Customer's sole remedy is to cancel its account and stop using the Services, which Customer may do by providing written notice to ProRata. Except as set forth in the foregoing sentences of this Section, this Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11.10 Force Majeure. Neither party shall be liable for delay or failure in performing any of its obligations hereunder due to causes beyond its reasonable control, including an act of nature, war, natural disaster, governmental regulations, terrorism, communication or utility failures or casualties or the failures or acts of third parties.

11.11 Equitable Relief. Each party acknowledges that a breach by a party of Section 2.4 (Restrictions) or Section 6 (Non-Disclosure and Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach

or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

11.12 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

11.13 Relationship of Parties. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

11.14 Company Reference. Company authorizes ProRata to use its name in conversations and Company's name and logo in any list regarding existing business relationships, including in brochures, websites, reference listings or client listings used in an effort to promote products or services rendered by ProRata.

11.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.