

**Workbooks Online Limited**  
**Terms and Conditions of Service**

**1. Definitions**

In these Terms and Conditions the following terms have the following meanings:

**"Agreement"** means these Terms and Conditions, the Order and any other Workbooks Documentation that is expressly incorporated by reference by Workbooks on the Order.

**"Authorised Customer Contact(s)"** means any person(s) acting on behalf of the Customer in connection with this Agreement and the rights and obligations set out therein including the nominated customer contacts as set out in Clause 5.3.

**"Consultancy Services"** means any professional services which the Customer may have ordered from time to time including customised training courses, implementation consultancy, data migration, script writing all or any of which may form part of a defined scope of work ("**Consultancy Project**"), or any Workbooks branded professional services as advertised on the Workbooks website including, but not limited to, the Advisory Service, Customer Success Plus or scheduled Workbooks Admin Training courses.

**"Customer"** means the individual or Company, on behalf of itself or any subsidiary or affiliated companies, that has executed this Agreement and ordered Services from Workbooks or through an authorised Partner or subscribed online to the Workbooks Free Edition or a Workbooks Trial Subscription.

**"Customer Data"** means any electronic data or information provided by the Customer or collated by Workbooks in the provision of the Services or any data entered into the Workbooks Service by the Customer. Customer Data may include "Personal Data" as defined in Clause 7.3.

**"Electronic Communications"** means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

**"Fair Usage Policy"** means Workbooks' fair usage policy, which the Customer may access online at [www.workbooks.com/fairusagepolicy](http://www.workbooks.com/fairusagepolicy)

**"Fees"** means the charges for the Services as specified on the Order and payable by the Customer for the Workbooks Service including (i) the "**Subscription Fees**" as agreed between the Customer and Workbooks, or the Customer and a Workbooks' Partner as appropriate, (ii) any fees for Consultancy Services ("**Consultancy Fees**") (iii) any "**Excess Usage Charges**" which may become payable as set out in the Fair Usage Policy.

**"Order"** means an Workbooks order form accepted by the Customer via email or in writing, or submitted to Workbooks by a Workbooks Partner on behalf of an indirect Customer, in relation to the purchase of the Services by the Customer, duly accepted by Workbooks, which specifies (a) the Workbooks Service to be provided by Workbooks for the Subscription Term and (b) any the Consultancy Services to be provided by Workbooks, both as subject to the terms of this Agreement.

**"Permitted Users"** means the permitted number of users who are enabled for login to the Workbooks Service, being individuals authorised by the Customer or on the Customer's behalf, including but not limited to the Customer's employees, agents or contractors.

**"Privacy Policy"** means our privacy policy, which the Customer may access online at [www.workbooks.com/privacypolicy](http://www.workbooks.com/privacypolicy)

**"Security Policy"** means our data security policy, as amended and updated from time to time and available at [www.workbooks.com/securitypolicy](http://www.workbooks.com/securitypolicy)

**"Service Documentation"** means any supporting documentation relating to the use of the Service made available to the Customer by Workbooks, including a description of the functionality of the Workbooks Service, user guides and videos, together with the knowledge base all of which can be accessed online at [www.workbooks.com/community/kb](http://www.workbooks.com/community/kb) and as may be amended or updated from time to time.

**"Services"** means the services Workbooks shall provide including (a) the Workbooks Service and (b) any Consultancy Services which the Customer may have ordered.

**"Site"** means our website [www.workbooks.com](http://www.workbooks.com) & <https://secure.workbooks.com/login> or such other domain as we use to provide the Services.

**"Subscription Term"** means the current term of the subscription for the Workbooks Service as documented in the Order: either an "**Initial Subscription Term**", or one or more "**Renewal Subscription Term(s)**" each respectively stipulating a start date ("**Start Date**") and end date ("**End Date**").

**"Technical Support"** means the provision of web and telephone assistance to Customer's Authorised Support Contacts in relation to questions they may have or issues they are encountering with the Workbooks Service, delivered in accordance with Schedule II.

**"Third Party Applications"** means online, web-based applications or services, including scripts, processes and plugins, together with on-premise software products that are provided by third parties, including but not restricted to Workbooks Partners, or by the Customer, which interoperate with the Workbooks Service.

**"Upgrade Order"** means a specific Order placed by the Customer, or by a Workbooks Partner on behalf of an indirect Customer, during an existing Subscription Term for additional Services or User Subscriptions, to cover a period co-terminating with the existing Subscription Term.

**"User Subscriptions"** means the number of subscriptions purchased by the Customer as set out on an Order (or any Upgrade Order with a co-terminating End Date), which entitles Permitted Users to access and use the Workbooks Service in accordance with this Agreement.

**"Workbooks"** means Workbooks Online Limited, company registration number 06393851, trading from Unit 9, Suttons Park Avenue, Reading, Berkshire, RG6 1AZ.

“**Workbooks API**” means the application programming interface to the Workbooks Service.

“**Workbooks Infrastructure**” means the software, operating systems and hardware owned and configured by Workbooks for the purposes of delivering the Workbooks Service.

“**Workbooks Partner**” means a company, organisation or individual that has entered into a partnership or reselling arrangement with Workbooks, including but not limited to OEM technology partners, resellers, system integrators, consultants and IT or internet service providers.

“**Workbooks Process Engine**” means the hosted environment which allows the execution of scripts and processes which may update Customer Data held within the Workbooks Service and / or Third Party Applications.

“**Workbooks Published Scripts**” means the generic software code, scripts or plugins developed and maintained by Workbooks for use in an unmodified form in conjunction with the Workbooks Service and which are documented in the script library within the automation section of the Workbooks configuration area of the Workbooks Service.

“**Workbooks Service(s)**” means the software provided as an on-demand service by Workbooks in accordance with the Service Documentation, incorporating software delivered as a service, software including any installable plug-ins, the Workbooks Process Engine, the Workbooks API, any Workbooks Published Scripts together with any associated Technical Support.

## 2. Agreement & Term

- 2.1. The parties contract on these Terms and Conditions which shall prevail over any inconsistent terms which the Customer shall seek to introduce on any purchase order or any other communication for the purchase of the Services. Unless expressly stated otherwise, in the event of a conflict between the terms of this Agreement, the following documents shall prevail in the following (descending) order: (i) Order Form, (ii) Terms and Conditions; then (iii) Service Documentation.
- 2.2. Workbooks shall provide the Services and the Customer shall pay the Fees under the terms and conditions of this Agreement
- 2.3. This Agreement shall be effective from the Start Date on the Order and (unless terminated earlier in accordance with the provisions of Clause 10 shall continue in full force and effect for the Services for the Subscription Term on the Order. Thereafter this Agreement shall terminate in accordance with the provisions of Clause 10.

## 3. Terms of Service

- 3.1. Upon Workbooks' acceptance of an Order and subject to the terms and conditions set out in this Agreement, including any set out in the Order, Workbooks grants the Customer, during the Subscription Term, the non-transferable, non-exclusive, worldwide right to allow the Permitted Users to use the Workbooks Service solely for the Customer's own internal business operations.
- 3.2. To the extent that the Workbooks Service is specifically designed to allow the Customer's customers and suppliers to interact with the Customer in the furtherance of the Customer's internal business operations, such use is also allowed under this Agreement notwithstanding the Customer is responsible for their compliance with this Agreement during such use.
- 3.3. The Customer may use the Workbooks Service during the Subscription Term provided the Customer has paid the Subscription Fees.
- 3.4. The Customer may upgrade the number of User Subscriptions or Workbooks Service modules or extensions during a Subscription Term, such that they terminate on the End Date of the current Subscription Term. The Customer may not reduce the quantity of User Subscriptions or Workbooks Service modules or extensions during a Subscription Term.
- 3.5. The provision of the Workbooks Service for the Subscription Term commencing on the Start Date as shown on the Order is contractually separate from any additional Consultancy Services which you may purchase in connection with your implementation of the Workbooks Service.
- 3.6. Subject to the terms and conditions of this Agreement, Workbooks will use its best endeavours to:
  - 3.6.1. provide the Workbooks Service for the Subscription Term in accordance with the Service Level Agreement as set out in Schedule I;
  - 3.6.2. deliver the Workbooks Service using the degree of care, skill and diligence which would (at the relevant time) be reasonably expected of a professional supplier of the Services;
  - 3.6.3. ensure that the Services will be performed by appropriately qualified and trained employees, with due care and diligence;
  - 3.6.4. ensure that the Workbooks Service conforms in all material respects with the descriptions set out in the Service Documentation;
  - 3.6.5. provide Technical Support to the Customers' Authorised Customer Support Contacts in accordance with Schedule II.
- 3.7. Payment of the Subscription Fees entitles the Customer to two (2) Authorised Customer Support Contacts per Subscription Term, with one (1) additional Authorised Customer Support Contact for every fifty (50) Permitted Users of the Service.
- 3.8. Subject to the Customer complying with its obligations of confidentiality and payment under this Agreement, Workbooks hereby grants the Customer a non-exclusive licence to use, modify and adapt the Service Documentation solely for its own business use. The Customer hereby indemnifies and holds Workbooks harmless from any direct and indirect liability arising from any modifications or adaptations to the Service Documentation carried out by, or on behalf of, the Customer or any use thereof.
- 3.9. Workbooks may recommend Third Party Applications or services, including implementation, customization and other consulting services related to Customers' use of the Workbooks Service. Except as set out in the Order, Workbooks does not warrant the availability, suitability or reliability any such Third Party Applications or services, regardless of whether or not such Third Party

Applications or services are provided by a third party that is a member of a Workbooks partner program or otherwise designated by Workbooks as "authorised," "approved" or "recommended." Any procurement by Customer of any Third Party Applications or services is solely between Customer and the applicable third party provider. Workbooks is not responsible for any other aspect of such Third Party Applications or services that Customer may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third Party Applications or services for use with the Service, Customer agrees that Workbooks may allow such third party providers to access Customer Data as required for the interoperation of such Third Party Applications with the Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider. Workbooks shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers.

**3.10.** Technical Support included within the Subscription Fees paid in relation to the Workbooks Service shall include support for non-modified Workbooks Published Scripts, however Technical Support does not extend to support for (i) Workbooks Published Scripts which have been modified by the Customer or any third party acting on their behalf, (ii) scripts produced as part of a Consultancy Project ("Workbooks Custom Scripts"), (iii) other Third Party Applications including scripts produced by Workbooks partners. Support or assistance may be provided to the Customer through the procurement of Consultancy Services.

#### **4. Fees and Payment**

**4.1.** Unless agreed otherwise in writing all Fees:

- 4.1.1. shall be invoiced in accordance with the following: (i) Subscription Fees for the Workbooks Service will be invoiced annually in advance at the commencement of the Subscription Term, and (ii) a proportion (typically 50%) of Consultancy Fees will be invoiced for payment in advance of the work commencing, and thereafter will be invoiced on a time and materials basis for each day, or part thereof of Consultancy Services performed;
- 4.1.2. payable to Workbooks are due within the payment terms set out on the Order without deduction, set off or retention;
- 4.1.3. are exclusive of value added tax and all other similar taxes which may be applicable thereto (which shall be added to the Fees at the rate prevailing at the date of the invoice );
- 4.1.4. are exclusive of Workbooks reasonable expenses e.g. travel, hotel, subsistence, cancellation, which shall be paid by the Customer at Workbooks then current rates as set out on the Order;
- 4.1.5. are based on Workbooks Services purchased for the Subscription Term on the Order and are not based on actual usage;
- 4.1.6. are non-refundable unless as specifically permitted under the terms of this Agreement.

**4.2.** The provisions of Clause 4.1.1 to 4.1.4 shall not apply where the Services have been ordered through a Workbooks Partner.

#### **5. Customer Obligations**

- 5.1.** The Customer undertakes that the maximum number of Permitted Users that it authorises to access and use the Workbooks Service shall not exceed the number of User Subscriptions it has purchased. For the avoidance of doubt (i) a Permitted User must be one unique person; (ii) multiple people must not share user credentials and (iii) if an individual no longer needs to access the Workbooks Service the Customer may assign the licence to another individual. If the Customer knows or believes that it is or may be exceeding the number of Permitted Users it must inform Workbooks immediately and (i) reduce the number of Permitted Users to the authorised amount, or (ii) place an Upgrade Order for additional User Subscriptions as necessary. The Customer agrees that Workbooks may from time to time audit the number of Permitted Users on the Workbooks Service.
- 5.2.** The Customer agrees not to use the Workbooks Service for any unlawful purpose and to indemnify and hold Workbooks harmless against any and all losses, costs and expenses which Workbooks may incur as a result of such unlawful activities, including but not limited to: (i) civil or criminal offences of intellectual property rights infringement, including but not limited to copyright, trade mark and patent infringement; or (ii) transmission or posting of obscene, indecent or pornographic materials; or (iii) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person.
- 5.3.** The Customer shall provide accurate, current and complete information on the Customer's legal business name and address, together with the contact names, email addresses and phone numbers of the Authorised Customer Contacts (including a Primary Contact, a Finance Contact and the nominated Authorised Customer Support Contacts) and promptly inform Workbooks if this information should change.
- 5.4.** The Customer has not relied on the future availability of any functionality or features in entering into this Agreement.
- 5.5.** The Customer agrees that prior to purchasing the Workbooks Outlook Connector it is their responsibility to check that they fulfil the technical requirements outlined at [www.workbooks.com/outlook\\_connector\\_system\\_requirements](http://www.workbooks.com/outlook_connector_system_requirements) .
- 5.6.** The Customer shall abide by the Fair Usage Policy. In the event of a breach of the Fair Usage Policy the Customer may be subject to an Excess Usage Charge calculated in accordance with the Fair Usage Policy. The Fair Usage Policy shall not be amended (in so far as it relates to the provision of the Workbooks Services to the Customer) during the current Subscription Term without the prior written consent of the Customer, such consent not to be unreasonably withheld. Free Edition subscribers will be required to upgrade to a paid subscription and shall then be subject to additional Fees calculated in accordance with the Fair Usage Policy.
- 5.7.** Any use of the Workbooks Service other than as expressly permitted by this Agreement, by any person, business, corporation, government organisation or any other entity is strictly forbidden and will be deemed a material breach of this Agreement. The Customer may not rent, lease or timeshare the Workbooks Service or provide subscription services for the Workbooks Service or permit others so to do.

## 6. Consultancy Services

- 6.1.** Where the Customer directly engages Workbooks to provide Consultancy Services, as evidenced by an Order between Workbooks and the Customer:
- 6.1.1. unless expressly stated otherwise on the Order, the Consultancy Services shall be provided on a time and materials basis, in accordance with prevailing charge out rates, as set out on the Order;
  - 6.1.2. the Customer shall nominate a contact ("**Project Manager**") who will be responsible for scheduling the Customers' resources, agreeing a project schedule and confirming specific dates on which Workbooks can deliver the Consultancy Services (the "**Consultancy Project**");
  - 6.1.3. the Customer shall perform in a timely and professional manner any and all obligations that are required for the provision of the Consultancy Services including but not limited to: access to Customer premises, computer systems and /or data as is necessary; affording Workbooks reasonable working conditions and facilities, promptly and within agreed timescales furnishing the information requested of the Customer, for example where data must be provided for import into the Workbooks Services, or in relation to any other aspect of the Consultancy Services and to ensure its agents and employees co-operate with Workbooks;
  - 6.1.4. that once dates for Consultancy Services, (including Workbooks Admin Training Courses) have been agreed by the Customer, the Customer may reschedule the days at no charge up to 10 full working days ahead of the agreed dates. If the Customer wishes to reschedule the agreed dates between 5 – 9 full working days prior to the agreed dates, Workbooks retains the right to charge 50% of the Consultancy Fees agreed. If the Customer wishes to reschedule agreed consultancy dates less than 5 full working days prior to the agreed dates, Workbooks retains the right to charge 100% of the Consultancy Fees agreed. In the event the Customer reschedules the agreed dates and Workbooks can utilise the consultancy days for another customer, no charges will be made;
  - 6.1.5. in the event the Customer reschedules pre-agreed Consultancy Services dates, Workbooks shall endeavour to accommodate such changes with minimum disruption, however the Customer agrees that the estimated project delivery date and future pre-booked consultancy days may be affected. The Customer agrees that the assigned Workbooks consultant may no longer be available, and that any costs incurred in handing the project over to another Workbooks consultant is in addition to the Consultancy Services on the Order and will be invoiced accordingly;
  - 6.1.6. any unused Advisory Points shall lapse at the end of (a) the current Subscription Term as detailed on an Order, or (b) twelve (12) months from date of Order, whichever is the later, and any Consultancy Services purchased under Customer Success Plus program can be carried forward for three (3) months at which point they shall lapse. The Customer's attendance on a scheduled Workbooks System Admin course must take place within twelve (12) months of the date of the Order.
- 6.2.** A Consultancy Project may be put on hold or suspended ("**On-Hold**") for the following reasons:
- 6.2.1. non-payment of Fees;
  - 6.2.2. changes in Customer resource availability or project sponsorship which result in the Consultancy Project not being viable at the current time;
  - 6.2.3. changes in Consultancy Project requirements that impact the project budget and/or scope and/or timescales which require sign-off by the Customer, should that sign-off not be received within two (2) weeks of notification of such change by Workbooks;
  - 6.2.4. the Customer has ordered more Consultancy Days than are required for completion of a specific phase of a Consultancy Project and is not yet ready to use that time;
- 6.3.** If a Consultancy Project is placed On-Hold in accordance with Clause 6.2, Workbooks shall notify the Primary Contact as provided in accordance with Clause 5.3 and the Project Manager in writing. Workbooks reserves the right to raise Fees for any Consultancy Services work performed to date and to reallocate any Workbooks consultants assigned to the Consultancy Project. Should a Consultancy Project remain On-Hold for more than three (3) months with no change or re-confirmation of a start date by the Customer, Workbooks reserves the right to cancel any remaining Consultancy days. In the event that the Customer has been invoiced for Consultancy days not utilised, these shall be forfeited by the Customer. Advisory Points or Customer Success Plus days will continue to be available for use until they expire in accordance with Clause 6.1.6.
- 6.4.** In the event the Customer engages a Workbooks Partner to provide Consultancy Services, Workbooks makes no representation as to the quality of service provided by the Workbooks Partner and shall have no liability for any claims arising from actions or work undertaken by Workbooks Partners, their agents or subcontractors.

## 7. Customer Data and Data Protection

- 7.1.** Workbooks acknowledges that all it has no rights, title or interest in the Customer Data to the extent it is proprietary to the Customer. The Customer grants Workbooks a licence to use the Customer Data for the purpose of providing the Service.
- 7.2.** Workbooks and Customer acknowledge that for the purposes of the Data Protection Act 1998 (as amended) ("**the Act**"), the Customer is the data controller and Workbooks is the data processor of any Personal Data.
- 7.3.** In this Agreement Personal Data shall have the meaning set out in Clause 1(1) of the Act and relates only to personal data, or any part of such personal data, of which the Customer is the data controller and in relation to which Workbooks is providing services under this Agreement. For the purposes of this Clause processing and process shall have the meaning set out in Clause 1(1) of the Act.

**7.4.** Workbooks shall:

- 7.4.1. process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in this Agreement and in accordance with the Customer's written instructions from time to time;
- 7.4.2. take appropriate organisational, physical and technical safeguards that are designed to protect against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data (and as are commensurate with that Personal Data ) to ensure compliance with the seventh data protection principle, including but not limited to those measures in the Security Policy;
- 7.4.3. shall promptly comply with any request from the Customer requiring Workbooks to amend, transfer or delete the Personal Data;
- 7.4.4. ensure that access to the Personal Data is limited to those employees who need access to the Personal Data to meet Workbooks' obligations under this Agreement; and in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties;
- 7.4.5. take reasonable steps to ensure the reliability of any of Workbooks' employees who have access to the Personal Data;
- 7.4.6. not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer, or as obligated to by a court order, required by law or as otherwise provided for in this Agreement;
- 7.4.7. subject to its confidentiality undertakings to third parties, notify the Customer immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Customer Data. Workbooks will use commercially reasonable efforts to restore the Customer Data as quickly as possible;
- 7.4.8. comply with Workbooks' Privacy Policy and Security Policy relating to the privacy and security of Customer Data. Workbooks may modify these policies at any time in its sole discretion; however, by any such modification, Workbooks will not materially reduce the level of protection afforded the Customer Data by these policies for the Subscription Term without the Customer's prior written agreement (accessing the Workbooks Service after being reasonably notified of a change to such policies shall be acceptance of such policies).

- 7.5.** If either Party receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Act 1998 (as amended) and the data protection principles set out therein, it shall immediately notify the other Party and provide the other Party with its full co-operation and assistance in relation to any such complaint, notice or communication. The Customer acknowledges and agrees that Customer Data stored on the Workbooks Service is currently stored in the European Economic Area ("**EEA**"), which may be outside of the country or other jurisdiction where the Customer and the Customer's Permitted Users are located. The Customer further acknowledges that Customer Data, other than Customer Data stored on the Workbooks Service, may now, or in the future be transferred or stored outside of the EEA, subject to Workbooks being satisfied that the resulting country or territory ensures an adequate level of protection in relation to the processing of Personal Data.
- 7.6.** The Customer acknowledges and agrees that it is the Customer's obligation to inform third parties of the use, processing, or transfer of Customer Data or Personal Data and to ensure that such third parties have given their consent to such use, processing, and transfer as required by all applicable data protection legislation. Customer warrants, represents and undertakes to Workbooks that it has obtained, and shall maintain throughout the Subscription Term, all licences, clearances and consents as may be necessary to use the Workbooks Service to processes the Customer Data or Personal Data.
- 7.7.** The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and warrants that the Workbooks Services shall in no way be used for any unlawful or illegal content of any kind.
- 7.8. Data Storage:** The Customer acknowledges that the technical processing and storage of Customer Data is fundamental to the provision of the service. Customer expressly consents to Workbooks storage of Customer Data and the back-up of that data onto various media in order to ensure the availability and integrity of the Service. The Customer grants Workbooks a limited non-exclusive non-transferable licence to copy, store, record, transmit, maintain, display, view, print or otherwise use Customer Data to the extent necessary to provide the Services to the Customer. The Customer agrees that the licence to store and maintain Customer Data shall survive the termination of this Agreement for a maximum of 180 days.
- 7.9. Data Storage Limits:** The amount of database storage i.e. of emails, electronic documents, images and application data is limited. Data Storage volumes are calculated by Workbooks every 24 hours and will include Customer Data and the indexes and other related items which together support the delivery of the Workbooks Service to the Customer. The Data Storage limit for subscribers to the Workbooks Free Edition is 1GB. The limit for all other subscribers is 10GB plus any additional storage capacity purchased by the Customer. Any Customers using database storage in excess of their limits may a) in the case of Free Edition subscribers, be required to upgrade to a paid subscription; or b) in the case of all other Customers be charged additional Subscription Fees for the additional storage. Workbooks will inform Customers before any additional storage charges are levied and allow customers fifteen (15) days to reduce the amount of database storage used after which a) in the case of Free Edition subscribers, they are required to upgrade to a paid subscription or have their Workbooks account suspended; or b) in the case of all other Customers, be charged for the additional data storage.
- 7.10. Transmission of Data:** The Customer acknowledges that the technical processing of Customer's Electronic Communications is fundamentally necessary for Customer's use of the Workbooks Service. The Customer is responsible for securing a suitable internet connection and up to date browser software which supports Javascript in order to utilise the Workbooks Service. The Customer expressly consents to Workbooks interception and storage of Electronic Communications and/or Customer Data and/or Personal Data, and Customer acknowledges and understands that Customer's Electronic Communication will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Workbooks. Customer acknowledges that Electronic Communications may be accessed by unauthorised parties when communicated over the Internet, network communication facilities, telephone or other electronic means. The Customer agrees that Workbooks is not responsible for any Electronic Communications and/or Customer Data and/or Personal Data which is delayed, lost, altered, intercepted or stored during



the transmission of any data whatsoever across networks not owned and/or operated by Workbooks, including, but not limited to, the Internet and Customer's local network.

## 8. Trial and Free Subscriptions

- 8.1. If you register on our website for a Trial Subscription, we will make the Workbooks Service available to the Customer on a trial basis free of charge until the earlier of (a) the Start Date of the Subscription Term on your first Order or (b) the end of the trial period for which you registered to for the Trial Subscription, subject to the terms of this Agreement. At the end of the Trial Subscription, the Customer must pay any applicable Subscription Fees or this Agreement will automatically terminate.
- 8.2. Any data you enter into the Workbooks Service, together with any customisation made by or for you to the Workbooks Service, will be permanently lost unless you purchase a User Subscription for the same Workbooks Services as covered by the trial, or export your data prior to the end of the Trial Subscription. If you purchase of a User Subscription which is a downgrade from the version you trialled e.g. purchase Workbooks CRM having trialled Workbooks Business, we cannot guarantee that any customisations or data will be maintained. Subscription to the Workbooks Free Edition, as described on [www.workbooks.com/pricing](http://www.workbooks.com/pricing) may be obtained subject to the terms of this Agreement for use by the Customer on successive ninety (90) day periods.
- 8.3. If you are using the Service under a Trial or Free Subscription the provisions of Clauses 3.6.1, 3.6.5, 4, 13.2 and 13.3 shall not apply.

## 9. Suspension

- 9.1. Workbooks may suspend Customer's access to and use of the Workbooks Service for any Customers (a) for which payment is due but unpaid but only after Workbooks or the Workbooks Partner has provided the Customer with two payment requests and at least thirty (30) days have passed since the transmission of the first payment request, or (b) has not notified Workbooks of its desire to renew the Service by the End Date of the current Subscription Term, as evidenced by the Customer placing an Order with Workbooks or via a Workbooks Partner for a Renewal Subscription Term, prior to the End Date of the current Subscription Term, or (c) for Free Edition subscribers who are in breach of Clause 5.6 or 7.9.
- 9.2. If Workbooks reasonably concludes that the Customer's use of the Workbooks Service is being used to engage in denial or service attacks, hacking, spamming or any other illegal or malicious activity causing immediate, material or ongoing harm to Workbooks or others, then Workbooks may suspend all or part of the Workbooks Service immediately, until the problem has been resolved. In the exceptional event that Workbooks suspends the Workbooks Service, Workbooks will promptly inform the Customer and work with the Customer to resolve such issues in order to reinstate the Workbooks Service at the earliest possible opportunity. Workbooks shall not be liable to the Customer nor to any third party for any suspension of the Service under this Clause 9.2.

## 10. Termination

- 10.1. This Agreement and the Customer's right to use the Services will terminate automatically at the end of the Subscription Term.
- 10.2. This Agreement may be terminated by either party if the other party has a receiver or administrator appointed over any or all of its undertakings or assets or passes a resolution for winding up otherwise than for the purpose of a bona fide scheme of reconstruction (or a court competent jurisdiction makes an order to that effect), enters into a voluntary arrangement with creditors, becomes subject to an administration order or ceases to carry on in business.
- 10.3. Either party may immediately terminate this Agreement in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice of the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the alleged breaching party at the address provided under Clause 5.3 ("**Notice**").
- 10.4. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, Customer agrees that Workbooks shall be entitled to, and the Customer shall be liable to pay, all of the Fees due under this Agreement for the entire Subscription Term. If this Agreement is terminated as a result of a breach on Workbooks' part, Workbooks shall refund the pro rata portion of any Subscription Fees actually paid by a Customer, or by a Partner in respect of a Customer, in so far as they relate to the terminated portion of the Subscription Term.
- 10.5. **Handling of Customer Data in the event of Termination:** The Customer agrees and acknowledges that following termination in accordance with this Clause 10,
  - 10.5.1. Workbooks may immediately deactivate the Customer's account and that following a period of not less than ninety (90) days shall be entitled to delete the Customer's account and all associated Customer Data, and
  - 10.5.2. during this 90 day period and upon the Customer's reasonable request and provided that the Customer has paid in full all amounts unpaid for Services plus related taxes and expenses, Workbooks shall grant the Customer limited access to the Workbooks Service for the sole purpose of permitting the Customer to retrieve Customer Data. The Customer agrees and acknowledges that after the expiry of such 90 day period Workbooks has no obligation to retain Customer Data and that Customer Data may be irretrievably deleted.
- 10.6. Notwithstanding anything else to the contrary in this Agreement, provisions that survive termination or expiration are those relating to limitation of liability, payment, and others which by their nature are intended to survive.

## 11. Intellectual Property Rights

- 11.1. Any and all copyright, intellectual property and other proprietary rights, title and which arise or subsist in, or in connection with the Services and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Workbooks are owned exclusively by Workbooks or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto.

- 11.2.** Workbooks shall own and be fully entitled to use in any way it deems fit any intellectual property skills, knowledge, experience, techniques, materials, concepts and know-how acquired, developed or used in performing the Services and any improvements made or developed during the course of delivering Services. Nothing herein shall be construed or give any effect to any transfer of right, title or interest in Workbooks' intellectual property.
- 11.3.** The word mark WORKBOOKS and the Workbooks logo are the trade marks of Workbooks Online Limited. The Workbooks logo is copyright Workbooks Online Limited, 2008.
- 11.4.** Workbooks shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including users, relating to the operation of the Service.

## **12. Mutual Indemnification for Third Party Intellectual Property Rights**

- 12.1.** Workbooks shall defend the Customer against any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use the Workbooks Service ("**Claim Against You**"). Workbooks shall indemnify the Customer for all costs, expenses and damages suffered or incurred by the Customer arising out of or in connection with a Claim Against You, provided the Customer shall:
- 12.1.1. promptly on becoming aware of a claim, or a potential claim by a third party, give written notice of the Claim to Workbooks, specifying the nature of the Claim in reasonable detail;
  - 12.1.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Workbooks (such consent not to be unreasonably conditioned, withheld or delayed);
  - 12.1.3. give Workbooks the sole control of any such action or proceedings;
  - 12.1.4. fully co-operates with Workbooks and provides such assistance as it may reasonably require to avoid, dispute, compromise, settle and/or defend such action or proceedings (at the cost of Workbooks);
- 12.2.** In the event that we become aware of a claim that the Workbooks Service may infringe any third party intellectual property rights, Workbooks may, in its sole discretion (a) modify the Workbooks Service, such that it is no longer claimed to infringe such third party intellectual property rights, at no additional cost to the Customer, or (b) obtain a licence for you to continue to use the Service under this Agreement or (c) if Clauses 12.2(a) and 12.2 (b) are not possible, Workbooks may terminate the Services on 30 days written notice to the Customer and refund any Subscription Fee paid in respect of the Service for the terminated portion of the Subscription Term.
- 12.3.** The provisions of Clause 12.1 above shall not apply to any infringement resulting from:
- 12.3.1. the use of the Workbooks Service which does not comply with the uses permitted under this Agreement; or
  - 12.3.2. the combination of the Workbooks Service with any Third Party Application.
- 12.4.** The Customer shall defend Workbooks against any claim made against the Workbooks for actual or alleged any use by you of the Workbooks Service which does not comply with the use permitted under this Agreement ("**Claim Against Us**"). The Customer shall indemnify Workbooks for all costs, expenses and damages suffered or incurred by Workbooks arising out of or in connection with a Claim Against Us, provided that Workbooks shall:
- 12.4.1. promptly on becoming aware of a claim, or a potential claim by a third party, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
  - 12.4.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed);
  - 12.4.3. give the Customer the sole control of any such action or proceedings;
  - 12.4.4. fully co-operates with the Customer and provides such assistance as it may reasonably require to avoid, dispute, compromise, settle and/or defend such action or proceedings (at the cost of the Customer);

## **13. Representations, Warranties, Disclaimers, and Exclusive Remedies**

- 13.1.** Both Parties represent that they have the legal power to enter into this Agreement.
- 13.2.** Workbooks warrants that during the Subscription Term, subject to limitations in Clause 3.9, (a) the Workbooks Service will perform materially in accordance with the Service Documentation applicable to the Services purchased by the Customer, and (b) such functionality will not be materially decreased during the current Subscription Term. Customer's sole and exclusive remedy for Workbooks' breach of this warranty shall be that Workbooks shall be required to use commercially reasonable efforts to modify the Workbooks Service to achieve in all material respects the functionality described in the Service Documentation. If Workbooks is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and shall be entitled to a pro-rata refund of the Subscription Fees paid under the Agreement, for the terminated portion of the Subscription Term.
- 13.3.** Workbooks warrants that during the Subscription Term the Workbooks Service will meet the service levels specified in the Service Level Agreement listed in Schedule I. In the event Workbooks fails to achieve the applicable service level in any month, Customer will be entitled, as its sole and exclusive remedy, to a service credit in accordance with the terms set forth in Schedule I. Customer agrees that Workbooks system logs and other records shall be used to calculate service levels.
- 13.4.** Workbooks warrants that (a) subject to Clause 6.1 the Consultancy Services will be provided in a timely and professional manner and Workbooks shall use its reasonable endeavours to comply with any time schedules agreed in writing between the parties and (b) the Consultancy Services will be provided with reasonable skill and care and will conform to the standards generally observed in the industry for similar services. For any breach of this warranty, the Customer's exclusive remedy and Workbooks' entire liability shall

be the re-performance of the deficient services, or, if Workbooks cannot substantially correct a breach in a reasonable manner, the Customer may end the relevant Consultancy Services and recover the Consultancy Fees paid for the deficient services.

**13.5.** Workbooks shall have no obligation with respect to any claim under the above warranties unless notified of such a claim within sixty (60) days of the first instance of the performance of the deficient Services. Such notice must be sent to [finance@workbooks.com](mailto:finance@workbooks.com).

**13.6.** Except as stated in Clause 13, Workbooks does not represent that the Customer's use of the Service will be secure, timely, error free or uninterrupted, or that the Services will meet Customer's requirements, or that errors in the Services or Service Documentation will be corrected. To the extent permitted by law, these warranties are exclusive and all other warranties or conditions or terms whether express or implied are expressly excluded, including warranties or conditions of merchantability, satisfactory quality, and fitness for a particular purpose. The Customer assumes all responsibility for determining whether the Service or the information generated thereby is accurate or sufficient for Customer's purposes.

#### **14. Limitation of Liability**

**14.1.** NOTHING IN THIS AGREEMENT SHALL LIMIT WORKBOOKS' LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF WORKBOOKS, OR WORKBOOKS' LIABILITY IN THE TORTS OF DECEIT OR FRAUDULENT MISREPRESENTATION.

**14.2.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE.

**14.3.** SUBJECT TO CLAUSES 14.1 AND 14.2 WORKBOOKS' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CUSTOMER'S ORDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO THE SUBSCRIPTION FEES PAID TO WORKBOOKS UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

#### **15. Confidential Information**

**15.1.** For the purposes of the Agreement "**Confidential Information**" means the terms of this Agreement including the pricing and other terms reflected in quotations and Orders, Customer Data, business processes, Workbooks' technology and technological information, product designs, business and marketing plans and all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") whether orally or in writing, that is clearly identified in writing or verbally at the time of disclosure as confidential.

**15.2.** Confidential Information shall not include information which is (1) known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party.

**15.3.** Receiving Party agrees: (a) to keep confidential all Confidential Information disclosed to it by the Disclosing Party; (b) not to use or disclose the Confidential Information of the Disclosing Party except to the extent necessary to perform its obligations or exercise rights under the Agreement, except with the Disclosing Party's prior written consent; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own and to make Confidential Information available to authorised persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements with them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Clause will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

#### **16. Linking to and from our Site**

**16.1.** The Customer may link to the Site, provided the Customer do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but the Customer must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.

**16.2.** The Customer must not establish a link from any website which is not owned by the Customer. The Site must not be framed on any other site, nor may the Customer create a link to any part of the Site other than the home page. Workbooks reserves the right to withdraw linking permission without notice.

**16.3.** Where the Site contains links to other sites and resources provided by third parties, these links are provided for the Customer's information only. Workbooks has no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from the Customer's use of them.

#### **17. Publicity**

**17.1.** The Customer and Workbooks agree that each party may disclose that they share a business relationship and the Customer subscribes to the Workbooks Service. Further details of the business relationship shall not be disclosed without the express consent of both parties.

#### **18. Assignment**

**18.1.** The Customer may not assign this Agreement or give or transfer the Subscription and/or the Services or an interest in them to another individual or entity, without prior written consent from Workbooks, such consent not be reasonably withheld. Workbooks may assign, subcontract or sublet its rights and interest in this Agreement on part thereof.

#### **19. Third Party Rights**

**19.1.** A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act, 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party that exists or is available apart from that Act.



## 20. Force Majeure

**20.1.** The obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying with them by any cause beyond its reasonable control including events such as, but not limited to: strikes, lock-outs and labour disputes (other than by its own work force); acts of God; war; terrorism; riot; civil commotion; malicious damage; compliance with any law or governmental order, regulation or direction; accident; fire; flood; or storm.

## 21. Entire Agreement

**21.1.** The Customer agrees that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the Order, are the complete agreement for the Services ordered by the Customer, and that this Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

**21.2.** It is expressly agreed that the terms of this Agreement and any Order shall supersede the terms in any purchase order or other non-Workbooks ordering document and no terms included in any such purchase order or other non-Workbooks ordering document shall apply to the Services ordered.

**21.3.** Clause 21.1 shall not apply if the Order is an Upgrade Order, in which case the Agreement as applying to the prevailing Initial Subscription Term or Renewal Subscription Term shall take precedence.

**21.4.** If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this Agreement.

**21.5.** This Agreement may be amended by Workbooks in its discretion, as long as the quality of the Service is not materially degraded, by providing thirty (30) days notice to the registered email address provided for the Primary Contact of the Customer, as advised under Clause 5.3. This Agreement and any Order may not be modified by the Customer and the rights and obligations may not be altered or waived by the Customer except in a writing signed by the authorised representatives of the Customer and of Workbooks.

## 22. Jurisdiction

**22.1.** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its intellectual property rights or Confidential Information.

## SCHEDULE I

### Service Level Agreement

Workbooks commits to provide 99.5% service availability for the Workbooks Service during each month of the service ("**Service Availability Guarantee**"). Service availability is defined as the Customer's ability to login to the Service and is measured by the availability of the login page.

Only Workbooks' production systems will be measured against the Service Level Agreement. Production systems are defined as those residing at <https://secure.workbooks.com/login>

If in any month the Service Availability Guarantee is not achieved by Workbooks and the Customer was negatively impacted by the unavailability, Workbooks shall provide as the sole and exclusive remedy, a service credit equal to one month's usage of the Workbooks Service.

#### **Maintenance Periods**

Maintenance periods are excluded from the Service Availability Guarantee. Maintenance of the Workbooks Service is required from time-to-time to ensure the continued reliability of the Service. Scheduled maintenance will occur every Saturday between 03:00 and 09:00 GMT. Additional maintenance periods may be scheduled from time to time and the Customer will be notified at least 2 days in advance. Workbooks aims to conduct maintenance in the evening and at weekends to minimise the impact on Customers.

#### **Service Credit Request**

In order to receive a service credit under this Service Level Agreement, Customers must request a service credit by emailing [finance@workbooks.com](mailto:finance@workbooks.com), within 15 days of the month for which the service credit is being requested. Customers who are part due or in default, or in breach of the Agreement are not eligible for any service credit under the terms of this Agreement.

Following the successful acknowledgement of the service credit by Workbooks, the Customers current Subscription Term will be extended to include the additional service credit period.

## SCHEDULE II

### Technical Support

Workbooks will endeavour to provide Technical Support for Customers between 9:00am until 5:30pm GMT weekdays, excluding Public Bank Holidays in England & Wales.

When the Customer logs a Technical Support case, Workbooks will prioritise the call and respond as defined in the table below.

Level	Description	Working Hours	Out of Hours	Target Resolution
<b>One</b>	<b>Critical Priority:</b> A problem in which the customer's production Workbooks systems are down or not functioning, or where there is a major feature failure or production data loss or corruption, or where there is a security breach which exposes customer data to third-parties.	Respond to all calls within 1 hour.	Respond to all calls within 1 hour.	As soon as possible but no later than within one Day of the call.
<b>Two</b>	<b>Urgent Priority:</b> A problem which seriously affects the customer's use of their production Workbooks system for necessary business-level operations such that the customer's business is significantly disrupted. A workaround may exist but it is inconvenient or impractical.	Respond to all calls within 2 hours.	Respond to all calls within the next working day.	As soon as practicable but within two Normal Working Days or as otherwise agreed between Workbooks and the Customer.
<b>Three</b>	<b>Normal Priority:</b> Medium-to-low business impact problem which causes partial non-critical functionality loss. A problem has been identified but the resolution is not critical to the service being provided. This kind of problem impairs some operations but allows the customer to continue to function.	Respond to all calls within same working day.	Respond to all calls within the next working day.	At the time of response or as soon as practicable thereafter or as otherwise agreed between Workbooks and the Customer.
<b>Four</b>	<b>Minor Priority:</b> Minor impact. The customer has a minor loss of operational functionality caused by a minor feature or partial service failure. This may be a minor issue with limited loss or no loss of functionality or impact to the customer's operation or where there is an easy circumvention or avoidance by the end user; a convenient workaround exists.	Respond to all calls within three Normal Working Days.	Respond to all calls within three Normal Working Days.	At the time of response or as soon as practicable thereafter or as otherwise agreed between Workbooks and the Customer.
<b>Five</b>	<b>Low Priority:</b> Includes general usage questions, recommendations for future service enhancements or modifications, or where the service functionality does not match documented specifications or the customer would benefit from a new feature. There is no impact on the quality or performance of the customer production system.	Respond to all calls within five Normal Working Days.	Respond to all calls within five Normal Working Days.	At the time of response or as soon as practicable thereafter or as otherwise agreed between Workbooks and the Customer.

In addition Workbooks will endeavour to categorise & prioritise each case item within one hour of its receipt.

### Support Procedures

A Support Case must be logged by any one of the Customer's Authorised Customer Support Contacts, who can contact Workbooks Customer Support either by telephone, or emailing [Support@workbooks.com](mailto:Support@workbooks.com) or by registering a support case at [www.workbooks.com/support](http://www.workbooks.com/support)

The Customer should endeavour to provide as much information as possible relating to the case, including the name of the user experiencing the issue, date/time, screen/view/report.

Workbooks' reserves the right to email Authorised Customer Support Contacts with information about the Workbooks service, such as upgrade notifications, service improvements or service incidents.

If you have purchased your Workbooks Subscription via a Workbooks Partner, any support cases need to be raised with the Partner in the first instance.