



Please take time to read and understand these terms and conditions carefully. They explain a number of things, including the rules covering our provision of services to you and other information regarding your rights and obligations.

By accessing our Website or Software you confirm that you have read, understood and agree, on behalf of the entity specified in the Order (you), to be bound by these terms and conditions and our Acceptable Use Policy which forms part of these terms and conditions.

We provide a range of electronic services including this Website and use of the Software through this Website (Electronic Services) to assist you and your business in managing your office and field workers.

To keep up with regulatory, technical and organisational change, we may vary these terms of use from time to time by publishing the updated terms on our Website or by notifying you in any other way. Please be sure to visit our Website regularly to keep up to date with any changes. You may wish to print or save a copy of these terms and conditions for your records.

**THIS AGREEMENT** is made today **BETWEEN:**

- (1) Eworks Manager Limited a company incorporated in *England and Wales* whose registered office is at 2-4 Euston Grove, Prenton, Birkenhead (Supplier); and
- (2) You (Client).

(Each of the Supplier and the Client being a Party and together the Supplier and the Client are the Parties).

**BACKGROUND:**

A The Supplier wishes to grant to the Client a licence to Eworks Manager Limited software applications and provide support services on the terms of this Agreement.

**THE PARTIES AGREE:**

1. Definitions, interpretation and scope
- 1.1 In this Agreement, unless otherwise provided:

**‘Agreement’** means the terms in the main body of this agreement, the appendices and the Schedule;

**‘Acceptance Date’** means the date we provide you with access to use the Software

**‘Associates’** means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;

**‘Business Day’** means any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;

**‘Charges’** means any agreed or reasonable charges in addition to the Licence Fee and Support Fee which will be calculated (unless otherwise agreed) in accordance with the Supplier’s current standard rates notified to the Client from time to time;

**‘Control’** means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly;

**‘Equipment’** means the equipment specified in the Schedule;

**‘Error’** means a verifiable and repeatable failure of the Software to conform with the Specification;

**‘Good Industry Practice’** means in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

**‘Helpdesk’** means a manned telephone line and email account;

**‘Initial Term’** means the initial period for the provision of Support Services specified in the Schedule;

**‘Intellectual Property Rights’** means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

**‘Licence’** means the licence granted by the Supplier to the Client in respect of the Software subject to the terms of the Agreement;

**‘Licence Fee’** means the fees due by the Client to the Supplier in respect of the Licence as set out in the Schedule;

**‘Licence Period’** means the duration of the Licence specified in the Schedule;

**‘Modifications’**

means any correction, modification, enhancement, update or other change made by the Supplier to the Software as part of providing the Services;

**‘Renewal Term’** means the twelve-month period after expiry of the Initial Term and each subsequent twelve-month period;

**‘Representatives’** means the employees, agents, contractors or representatives of the Client (including its Associates) and other persons duly authorised on its behalf in the using of the Software and receiving the Services pursuant to the Agreement;

**‘Resolution Time’** means the estimated time for providing a workaround, patch or by-pass for any Error specified in Appendix A;

**‘Response Time’** means the estimated time in which the Supplier is to confirm receipt of a request to the Helpdesk for Support Services, as set out in Appendix A;

**‘Schedule’** means the Schedule to this Agreement;

**‘Services’** means the provision of the Support Services and any other services under this Agreement;

**‘Software’** means the package of computer programs specified in the Schedule and documentation provided by or made generally available to the Supplier’s clients in connection with the Software;

**‘Specification’** means the specification of the Software set out in the Schedule as it may be agreed to be amended in writing;

**‘Supplier’s Licensor’** means any licensor of the Supplier to including a provider software or third party libraries in object code or otherwise;

**‘Support Fee’** means the fees due by the Client to the Supplier in respect of the Support Services as set out in the Schedule;

**‘Support Services’**

means the provision of the support services as set out in Appendix A;

**‘Territory’** means the geographical area the Software is licensed to use in as specified in the Schedule;

**‘Update’** means a maintenance release, correction, amendment or update of the Software provided without additional charge to the Client as part of the Support Services;

**‘Upgrade’** means any enhancement or new version of the Software that is not required to cause the Software to comply with the Specification for which there may be an additional charge at the discretion of the Supplier;

**‘Use’** means accessing the Software or any part of its functionality or accessing data that is generated by the Software; and

**‘Working Hours’** means the hours between 0800 and 1700 local time in GMT.

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the others;

1.2.2 the singular includes the plural and vice versa;

1.2.3 references to clauses, schedules and appendices mean to clauses, Schedules or Appendices of this Agreement;

1.2.4 references to this Agreement include its Schedules and Appendices;

1.2.5 references to persons include individuals, unincorporated bodies, government entities, companies and corporations; and

1.2.6 the words ‘including’ and ‘includes’ means including or includes without limitation.

1.3 If the Software is provided to a Customer in any country listed in Schedule 2, then that schedule shall also apply. In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in that schedule, the provision contained in the schedule shall prevail, but only in respect of the Customer's use of the Software in that country.

## **2. Grant of licence**

2.1 Subject to the payment of the applicable Licence Fee, the Supplier grants to the Client a non exclusive and non transferable limited Licence to use the Software in the Territory in accordance with the terms of this Agreement.

2.2 The Licence will commence on the Acceptance Date and will continue for the Licence Period and continue thereafter from year to year unless or until terminated under clause 13 or any other clause in this Agreement.

2.3 If use of the Software outside the United Kingdom is authorised by the Supplier, the Client shall be responsible at its expense for complying with all applicable laws and

regulations and obtaining any applicable licences and consents, relating to the import, export, installation, or use of the Software.

2.4 The Client shall not:

2.4.1 sub-licence, assign or novate the benefit or burden of this licence in whole or in part

2.4.2 allow the Software to become the subject of a charge, lien or encumbrance; and

2.4.3 deal in any other manner with any or all of its rights and obligations under this agreement

without the prior written consent of the Supplier, such consent not to be unreasonably withheld.

### **3. Fees and payment**

3.1 The Client shall pay to the Supplier the Licence Fee and Support Fee and Charges which fall due under this Agreement in the amounts and at the times specified in the Schedule.

3.2 The Client shall reimburse the Supplier for any reasonable and demonstrable expenses incurred in the course of providing the Services provided those expenses have been approved in advance by the Client in writing.

3.3 If any sum due to the Supplier under the Agreement (other than one which is the subject of a genuine dispute which is notified to the Supplier in accordance with clause 3.4 below) is in arrears for more than 30 days after the due date, the Supplier may without prejudice to any other right or remedy:

3.3.1 charge interest on such overdue sum on a day-to-day basis from the original due date until paid in full at the County Court rate; and

3.3.2 suspend (without liability on the Supplier's part) the provision of the Services on 2 Business Days' prior written notice.

3.4 The Client must notify the Supplier in writing within 7 Business Days of receipt of an invoice if the Client considers such invoice incorrect or invalid for any reason and the reasons for withholding payment failing which the Client will raise no objection to any such invoice and will make full payment in accordance with it.

3.5 After the Initial Term, the Supplier shall have the right to vary the Support Fee with effect from the anniversary of Acceptance Date by giving to the Client not less than 30 Business Days' prior written notice of such variation.

- 3.6 If the Supplier increases the Support Fee by an amount exceeding the Permitted Increase the Client shall have the right to terminate this Agreement in so far as it relates to the Support Services by giving to the Supplier not less than 30 Business Days' prior written notice of such termination to expire at the end of the Initial Term or any Renewal Term.
- 3.7 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Client shall be responsible.
- 3.8 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then without limiting the Supplier's remedies in this agreement the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

#### **4. Use**

- 4.1 The Supplier shall provide you with access to use the software through its cloud based Eworks Manager Limited website once it accepts your application.
- 4.2 Where payment of any part of the Licence Fee is due before access to or installation of the Software or performance of any of the Services, the Supplier may withhold delivery or installation or performance until such payment has been received.
- 4.3 Unless otherwise specified in the Schedule, the Client is responsible for installation of the Software on the Equipment, and any Updates or Upgrades.
- 4.4 If the Supplier is delayed from performing its obligations by reason of any fault or negligence of the Client, then the Client shall pay to the Supplier all reasonable and demonstrable costs attributable to such delay.

#### **5. Permitted Use**

- 5.1 The Client may use the Software for its own internal purposes and those of its Associates for the normal business purposes of the Client.
- 5.2 The Client shall not use or attempt to use the Software (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party to do so:
  - 5.2.1 to distribute or resell the Software;

- 5.2.2. contrary to any restriction stated in the Agreement; or
- 5.2.3 unless otherwise expressly permitted by the Agreement.
- 5.3 The Client, at its sole risk and expense, may for the purposes of testing disaster or contingency recovery procedures, use the Software temporarily on other equipment of the same type as the Equipment provided it is under the Client's direct control. Such temporary use must not be more than once a year, unless otherwise agreed by the Parties in writing, and the Client shall promptly notify the Supplier of its commencement and cessation.
- 5.4 The Licence shall include the right of the Client's Representatives to use and have access to the Software to the extent that the Client may use and have access to the Software provided that:
  - 5.4.1 such use is controlled by the Client; and
  - 5.4.2 such use is otherwise subject to and in accordance with the terms of the Agreement.
- 5.5 The Client shall procure that its Representatives:
  - 5.5.1 are aware of the obligations or restrictions imposed on the Client under the Agreement; and
  - 5.5.2 shall use its reasonable endeavours to ensure that they comply with the provisions of the Agreement.
- 5.6 The Client undertakes to be responsible and liable for all acts, omissions, fault, default or negligence of, or by, its Representatives arising in respect of, or in connection with, the obligations or restrictions imposed on the Client pursuant to the Agreement, to the extent that it would be liable had such act, omission, fault, default or negligence been caused by Client under this Agreement, and to indemnify the Supplier in respect of all losses, damages or expenses incurred by the Supplier as a result of any use of the Software in breach of this Agreement.

## **6. Restrictions on use**

- 6.1 Except to the extent required to be permitted by applicable law or as expressly allowed in this Agreement, the Client shall not:
  - 6.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Software, nor arrange or create a derivative works based on the Software;

- 6.1.2 make for any purpose including (without limitation) error correction, any modifications, additions or enhancements to the Software;
- 6.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;
- 6.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;
- 6.1.5 use the Software on behalf of or make it available to any third party nor allow or permit a third party to do so; or
- 6.1.6 remove or alter any copyright or other proprietary notice on any of the Software.

## **7. Proprietary rights**

- 7.1 The Client shall not acquire in any way any title, rights of ownership, Intellectual Property Rights of whatever nature in the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of the Supplier or the Supplier's Licensor as applicable.
- 7.2 The Intellectual Proprietary Rights and all other proprietary rights in any materials developed under this Agreement in connection with the Services including the Modifications will remain vested in and be the absolute property of the Supplier or the Supplier's Licensor. The Client will do all such acts and things as the Supplier may reasonably require for the purpose of preserving or perfecting such vesting.
- 7.3 Those Modifications supplied for use as part of the Software will be deemed to form part of the Software and be subject to the Licence.
- 7.4 The Client agrees not to conceal, modify, remove, or destroy in any way any proprietary markings of the Supplier or the Supplier's Licensor on or in the Software including without limitation any copyright notices or confidential legends placed upon or contained within the Software or any related materials and documentation. The Client shall incorporate or reproduce such proprietary markings in any permitted back- up or other copies.
- 7.5 The Client acknowledges and understands that the Software contains confidential and proprietary information and the Client shall:
  - 7.5.1 not provide or otherwise make any of the Software available for any reason to any other person except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of the Supplier;



- 7.5.2 keep confidential the Software and limit access to the same to those of its Representatives who either have a need to know or who are engaged in the use of the Software;
  - 7.5.3 maintain an accurate and up-to-date record of the number of instances of the Software installed which are in use by the Client and of users and Representatives in each environment;
  - 7.5.4 use its reasonable endeavours to ensure that all relevant Representatives are advised that the Software constitutes confidential and proprietary information of the Supplier and/or the Supplier's Licensors and that all Intellectual Property Rights therein are the property of the Supplier and/or the Supplier's Licensor and that they owe a duty of confidentiality to the Supplier and/or the Supplier's Licensor.
- 7.6 The Client shall effect and maintain adequate security measures to safeguard the Software from unauthorised access, use or copying by any person.
  - 7.7 The Client shall notify the Supplier as soon as reasonably practicable if the Client becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.
  - 7.8 The Client shall, at reasonable times during Working Hours on being given reasonable written notice allow the Supplier to check on the use by the Client of the Software and all materials and information belonging to or under the control of the Supplier to which the Client is given access or receives directly or indirectly as a result of the operation of the Agreement. The Supplier shall comply with the Client's reasonable policies on confidentiality, security, health and safety at work, entry times and conduct of visitors to the Client's premises which have been notified in writing to the Supplier.

**8. IPR indemnity**

- 8.1 The Supplier undertakes to defend the Client from and against any action or claim that the use or possession of the Software, or any part of it infringes the Intellectual Property Rights of any third party (IPR Claim) and shall indemnify the Client from and against any losses, damages, costs (including legal fees) and expenses incurred by the Client as a result of or in connection with any such IPR Claim which are agreed in settlement of any IPR Claim or awarded by a court of competent jurisdiction against the Client as a result of, or in connection with, that IPR Claim. The Supplier shall have no liability under the foregoing indemnity to the Client if the Client:

- 8.1.1 does not notify the Supplier in writing of any IPR Claim of which it has notice as soon as reasonably practicable;
  - 8.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier (which shall not be unreasonably withheld or delayed);
  - 8.1.3 does not let the Supplier, at its request and own expense have the conduct of or settle all negotiations and litigation arising from the relevant IPR Claim; or
  - 8.1.4 does not, at the Supplier's request and cost, give the Supplier all reasonable assistance in the circumstances described in subclause 8.1.3.
- 8.2 If any IPR Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Client, then the Supplier promptly and at its own expense either:
- 8.2.1 procure for the Client the right to continue using and possessing the Software; or
  - 8.2.2 modify or replace the infringing part of the Software and without diminishing or curtaining any of the functions and facilities of the Software as specified in the Specification so as to avoid the infringement or alleged infringement. If, having used all reasonable endeavours, neither clause 8.2.1 nor 8.2.2 can be accomplished on reasonable terms, the Supplier shall refund 5% of the Licence Fees paid by the Client in respect of the remaining Licence Period.
- 8.3 The undertaking and indemnity given by the Supplier under clause 8.1 shall not apply to any infringement arising from any modification to the Software made by the Client or any employee, agent or service provider of the Client without the authorisation in writing of the Supplier.

## **9. Warranties**

- 9.1 Subject to the exceptions set out in this clause and the limitation upon its liability in this clause 9, the Supplier warrants that:
- 9.1.1 it has the right, power and authority to Licence the Software upon the terms of the Agreement;
  - 9.1.2 from the Acceptance Date;
    - (a) the software when used on the Equipment in the manner directed or recommended by the Supplier in writing or in response to a call to the Helpdesk shall provide the facilities and functions as described in, and perform in all material respects in accordance with, the Specification;

- (b) the Software documentation will provide adequate instructions to enable users to use and receive full benefit of the Software's facilities and functions;
- 9.1.3 all personnel engaged in the provision of Services shall have the appropriate qualifications, training and experience and that it will provide the Services in accordance with Good Industry Practice;
- 9.1.4 it has taken all reasonable commercial precautions to ensure that at the time of delivery to the Client no virus or other malicious software or code capable of causing damage to the Client's software or systems are contained or introduced into the Software or any Modification, Update or Upgrade.
- 9.2 The Client acknowledges that:
  - 9.2.1 the Supplier is not and cannot be aware of the extent of any potential loss or damage to the Client resulting from any failure of the Software to conform to the Specification or any failure by the Supplier to discharge its obligations under the Agreement;
  - 9.2.2 the Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.
- 9.3 The Supplier does not warrant that the operation of the Software shall be uninterrupted or error-free.
- 9.4 The Client acknowledges that the Software has not been prepared to meet the Client's individual requirements and that it is the Client's responsibility to ensure that the facilities and functions of the Software described in the Specification meet the Client's requirements.
- 9.5 In respect of the warranties specified in clause 9.1.2 such notice must be given within 12 months from the Acceptance Date. When notifying the Supplier of such a breach, the Client shall use its reasonable endeavours to provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.
- 9.6 To the extent permitted by applicable law, the Supplier disclaims all other warranties and conditions as to the Software and Services including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result.

- 9.7 Without prejudice to the Client's right to terminate this Agreement for material breach the Client's sole remedy against the Supplier for any failure on the part of the Software to conform to the applicable Specification as at the date of delivery shall be to require the Supplier to use all reasonable endeavours to correct such failure, free of additional charge, and within a reasonable time [as part of the Support Services].
- 9.8 The Supplier undertakes to use all reasonable endeavours to remedy free of charge to the Client any faulty work arising from a breach of the warranty in Clause 9.1.2 which is reported to the Supplier in writing within 30 Business Days after performance by the Supplier of such work. If the Supplier rectifies such faulty work by the provision of the Supplier's option of replacement and additional materials or services within a reasonable period of time, then the Supplier will have no other liability of any kind in respect of or arising from such faulty work.
- 9.9 To the extent a problem is found upon investigation not to be the Supplier's responsibility under the provisions of clause 9.1.2 the Client shall pay all reasonable and demonstrable costs and expenses incurred by the Supplier in the course of or in consequence of such investigation.
- 9.10 The Supplier will not be liable under clause 9.1.2 to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) by person other than Supplier without its express prior written consent.
- 9.11 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **10. Limitation of liability**

- 10.1 Nothing in the Agreement shall exclude or restrict either Party's liability for:
- 10.1.1 fraud;
  - 10.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or
  - 10.1.3 any other liability that cannot be limited or excluded by law.
- 10.2 Subject to clause 10.1, the Supplier's liability to the Client in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty

or otherwise arising out of or in connection with the Software, and the Services, or other performance or non-performance of the Supplier's obligations under the Agreement shall:

10.2.1 be limited to 50% of the aggregate of all Licence Fees, Support Fees and Charges paid by the Client under the Agreement for the preceding 30 Days in respect of any one incident or any series of connected incidents;

10.2.2 not extend to any:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of business;
- (d) loss of goodwill;
- (e) loss of contracts;
- (f) loss of anticipated savings;
- (g) loss of production;
- (h) loss of or corruption to date; or
- (i) any other special, indirect or consequential loss or damage

whatsoever, whether sustained by the Client or any other person and even if foreseeable or if the Supplier has been advised of their possibility.

10.3 All advice and recommendations given by the Supplier and its representatives shall be made in good faith and in accordance with Good Industry Practice and on the basis of information provided to the Supplier and otherwise generally available. Where a piece of advice or commendation does not form part of the Services, that advice or recommendation shall in no circumstances constitute a warranty by the Supplier as to the accuracy of such advice or recommendation and the Supplier shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Client acting upon such advice or recommendation.

## **11. Client's obligations**

11.1 The Client undertakes to:

11.1.1 provide the Supplier with all necessary information, facilities, support and services reasonably required by the Supplier for the performance of its obligations to the Client under the Agreement including without limitation at no charge to the Supplier adequate office accommodation, a secure work space,

telephone services, access to the applicable computers, software, hardware and systems of the Client at the Client's premises, and full access to the areas in which the Services are to be performed at the Client's premises;

- 11.1.2 take all reasonable steps to ensure the health and safety of the Supplier's representatives while they are at the Client's premises;
- 11.1.3 ensure that the computer and operating system and any other hardware or software which the Supplier is asked to use or modify for the purpose of the Services are either the property of the Client or are legally licensed to the Client;
- 11.1.4 ensure that its Representatives co-operate fully with the Supplier in relation to the provision of the Services;
- 11.1.5 provide or arrange at its expense for any specialist training in the Client's methods, business practices, applications or products which it is required to reasonably undertake by the Supplier or which the Supplier considers reasonably necessary for the proper performance of its obligations under the Agreement.
- 11.1.6 ensure that the Software is used in a proper manner by competent trained employees only or by persons under their supervision;
- 11.1.7 not request or permit or require anyone other than the Supplier to provide any Support Service in respect of the Software; and
- 11.1.8 be fully responsible for all applications, data, interfaces, hardware and equipment within its control unless agreed otherwise.

## **12. Software support services**

- 12.1 The Supplier shall only be obliged to provide Support Services if specified in the Schedule.
- 12.2 Subject to receipt of the applicable Support Fee, the Supplier shall provide the Support Services to the Client in relation to the Software during the Initial Term and each subsequent Renewal Term unless or until the provision of Support Services is terminated in accordance with the terms of this Agreement.
- 12.3 The Supplier will provide the Support Services in accordance with the Appendix A and will use its reasonable endeavours to provide and meet any Response Times and target Resolution Times quoted from commencement or completion of any part of the Support Services, but time will not be of the essence.

- 12.4 Without prejudice to the warranties set out in clause 9.1, provision of the Support Services does not imply any guarantee that the Supplier will be successful in correcting Errors or that the Supplier will be able to assist the Client in achieving any results from the Software which are not technically feasible.
- 12.5 To enable the Supplier to provide the Support Services the Client shall:
- 12.5.1 notify the Helpdesk as soon as is reasonably practicable on becoming aware of an Error in the Software or of any proposed material change to the operating system or of any other circumstances which might materially affect the operation of the software;
  - 12.5.2 use the Software in accordance with the Supplier's reasonable directions as to the operation and protection of the Software and comply at all times with clause 11;
  - 12.5.3 ensure that all its Representatives who use the Software or the Services are properly trained in respect of such use;
  - 12.5.4 ensure that remote access as specified by the Supplier is installed and operated in conjunction with the Client's operating system by the Client at its own expense, for the purpose of assisting the Supplier in its provision of the Support Services;
  - 12.5.5 ensure that all applications, data, interfaces, tools, software, hardware and equipment within its control is used in conjunction with the Software is properly maintained.
- 12.6 If the Client fails to comply with any of the provisions set out in clause 11.1, then the Supplier may on written notice requiring the Client to remedy the same within ten Business Days, suspend the provision of Support Services after such notice period until such failure has been remedied.
- 12.7 The Supplier shall be under no obligation to provide services in relation to the Software additional to the Support Services, or which do not qualify under or are excluded from the Support Services but if it does so at the Client's request, the Client shall pay the Supplier the Charges and expenses (if any) in accordance with clause 3.2 for those Services.
- 12.8 If a reported problem is found upon investigation to be due to incorrect operation or unauthorised changes of the Software, the Client is liable to the Supplier for the Charges and expenses (if any) in accordance with clause 3.2 for the Services in connection with that investigation.

12.9 The Supplier agrees to comply with the security standards or policies of the Client notified to the Supplier in writing.

### **13. Termination**

13.1 The Client may terminate the provision of Support Services for any Renewal Term by giving the Supplier at least 30 Business Days' written notice prior to the commencement of the applicable Renewal Term.

13.2 The Supplier may terminate the provision of Support Services for any subsequent Renewal Term by giving the Client at least 90 days' written notice prior to the commencement of the applicable Renewal Term.

13.3 Each Party may (without prejudice to its other rights) terminate the Agreement at any time forthwith by notice in writing to the other if:

13.3.1 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the other Party's assets or undertaking or resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or making a winding up order; or

13.3.2 the other Party defaults in due performance or observation of any of its material obligations under the Agreement, and (in the case of remedial breach) fails to remedy the breach within 30 days of receipt of a written notice to do so; or

13.3.3 are in breach of any of the obligations of confidentiality specified in clause 15 of this Agreement.

13.4 The Supplier may terminate this Agreement at any time forthwith by notice in writing to the Client if the Client, its Associates or Representatives:

13.4.1 infringe the Supplier's or the Supplier's Licensor's Intellectual Property Rights; or

13.4.2 are in breach of any of the obligations of confidentiality specified in clause 15 of this Agreement;

And (where capable of remedy) such breach has not been remedied within 30 Business Days of the Supplier having given written notice to the Client in writing specifying the breach and requiring its remedy within such 30-day period.



- 13.5 Termination of this Agreement for any reason, shall be without prejudice to the rights and liabilities of either Party which may have accrued on or at any time up to the date of termination nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.6 The provision of clauses 1, 3, 5.2, 5.5, 5.6, 6, 7, 8, 9.5, 10, 13.5, 13.6, 15, 16, 17, 19, 20, 22, 24, 25 and 26 shall continue in full force after termination of this Agreement.
- 13.7 Upon termination of this Agreement by the Supplier under clause 13.3.2 and 13.3.3 then the Licence granted under clause 2.1 will terminate and the Client shall forthwith cease using the Software and shall remove or destroy forthwith all copies of the Software or, at the Supplier's request, return all copies of the same to the Supplier.

#### **14. Force Majeure**

- 14.1 Force Majeure means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.
- 14.2 A Party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 14.2.1 promptly notifies the other of the Force Majeure event and its expected duration;
- and
- 14.2.2 uses reasonable endeavours to minimise the effects of that event.
- 14.3 If, due to Force Majeure, a Party:
- 14.3.1 is or is likely to be unable to perform a material obligation; or
- 14.3.2 is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than 20 Business Days OR a total of more than 40 Business Days in any twelve months of operation of this Agreement; the other Party may within 20 Business Days terminate this Agreement on notice or the Parties will, within 20 Business Days, renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

## **15. Confidentiality**

- 15.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with this Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential including but not limited to each Specification, the Software and the Services. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, subcontractors, suppliers and other representatives who need to know it) or use such confidential information [for purposes other than the Support Service] without the other Party's prior written consent. This clause will not extend to information which:
- 15.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it;
  - 15.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause);
  - 15.1.3 is independently developed by the recipient Party without access to or use of such information;
  - 15.1.4 is required to be disclosed by law or regulatory authority.
- 15.2 Each Party will ensure that all persons to whom it discloses any confidential information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party. These obligations of confidentiality will survive any termination of this Agreement.
- 15.3 Each Party will establish and maintain adequate security measures to safeguard information and data of the other Party in its possession from unauthorised access use or copying.

## **16. Dispute resolution**

- 16.1 Without prejudice to the termination provisions in clause 13, if a Party believes in good faith that the other Party (Other Party) has breached any material term of this Agreement, that Party (Aggrieved Party) shall notify the Other Party, in writing setting forth in reasonable detail the nature of the alleged breach (Notice of Breach). If the Other Party does not dispute the validity of the Notice of Breach, it shall promptly undertake to cure the breach described therein. If, the Other Party disputes the validity of the Notice of Breach, then the Parties shall comply with the following provisions in order to expedite the review, verification, cure and remedy of any such breach.
- 16.2 Any dispute to be resolved under this clause 16 shall first be submitted for resolution to the representatives of each Party then charged with the administration of this

Agreement. If such representatives are unable to resolve the dispute within 20 Business Days after the date on which the Notice of Breach is received by the Other Party, then, the dispute shall be submitted to the Directors (or persons of comparable authority) of each Party for resolution. If such Directors are unable to resolve the dispute within 20 Business Days after the date on which the Notice of Breach is received by the Other Party, then each Party shall be free to pursue whatever remedies hereunder, at law or in equity, may be available to it in respect of the subject matter of the dispute.

- 16.3 Notwithstanding anything herein to the contrary, the cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution in accordance with this clause will be suspended during foregoing dispute resolution procedures and commence to run on the day after the dispute has been resolved in favour of the Aggrieved Party or the dispute resolution procedures have been exhausted, whichever is applicable.

## **17. Mediation**

Before resorting to legal proceedings, the Parties may (but shall not be obliged to) attempt to settle by negotiations between them in good faith all disputes or differences between them out of or in connection with this Agreement. The Parties further agree that (provided that both Parties consider that such negotiations will be assisted thereby), they will appoint a mediator by mutual agreement, or failing mutual agreement each Party will appoint a mediator of their choice and the two appointed mediators will appoint a third mediator to assist them and the Parties in such negotiations. Mediation shall take place in Liverpool or such other place as the Parties mutually agree. Both Parties agree to co-operate fully with the appointed mediator (or mediators), provide such assistance as necessary to enable the mediators to discharge their duties, and to bear equally between them the fees and expenses of the mediators, but otherwise each Party shall bear their own costs. Unless the Parties otherwise agree in writing, if mediation is unable to resolve the dispute within 30 Business Days from the Notice of Breach above then the dispute shall be determined by the courts of England and Wales.

## **18. Assignment**

- 18.1 Neither Party shall be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without the other Party's prior written consent.
- 18.2 The Supplier shall be entitled to assign or sub-contract its rights and obligations under this Agreement to any person, but the Supplier shall give notice of such assignment or sub-contracting in writing to the Client.

**19. Severability**

If any part, term or provision of the Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of the contract shall not be affected.

**20. Entire agreement**

20.1 This Agreement is the entire agreement between the Parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply.

20.2 Without prejudice to clause 20.1, or to liability for fraudulent misrepresentation, each Party acknowledges that has not relied on any statement or representation given by or for the other in entering into this Agreement.

**21. No waiver**

Unless otherwise agreed in writing, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**22. Notice**

Notices under this Agreement will be in writing and sent to the Party's address above. This may be given, and will be deemed received:

22.1 by first-class post: two Business Days after posting;

22.2 by airmail: seven Business Days after posting;

22.3 by hand: on delivery;

22.4 by facsimile: on receipt of a successful transmission report from the correct number;

22.5 by email: on receipt of a delivery return mail from the correct address.

**23. Variation**

The Agreement may be amended only in writing signed by both Parties.

**24. Relationship of the parties**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement.

**25. Rights of third parties**

A person who is not a Party to this Agreement has no right to benefit or to enforce any term of this Agreement.

**26. Governing law**

The Agreement shall be governed by and construed and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.

AS WITNESS the hands of the Parties the day and year first above-written.

## **SCHEDULE 1.**

### Software

Eworks Manager -

2. Licence period  
Rolling 30 Day contract unless otherwise specified.  
30 days' notice period from the 1<sup>st</sup> of each calendar month.
3. Territory  
Worldwide
4. Licence fee  
You can see your pricing structure for your country via  
Payment in Dollars - [www.eworksmanager.com/pricing](http://www.eworksmanager.com/pricing)  
Payment in GBP - [www.eworksmanager.co.uk/pricing](http://www.eworksmanager.co.uk/pricing)  
Payment in SA Rand – [www.eworksmanager.co.za/pricing](http://www.eworksmanager.co.za/pricing)  
or you can speak to your local sales person
5. Support services – Ticket support, email and telephone support in normal business hours
6. Initial term – 30 Days unless specified differently in contract
7. Support fee – Remote support included in monthly fee
8. Equipment  
Eworks Manager Limited works on Android and Iphone devices. Please check the app works on your device as some older models won't work with all the latest features.
9. Charges  
The Supplier reserves the right to charge a fee for any update which may be required.

**SCHEDULE 2**

**Privacy Policy**

By agreeing to these terms of business you are also agreeing to our Privacy Policy which can be found at URL – [www.eworksmanager.co.uk/privacy-policy](http://www.eworksmanager.co.uk/privacy-policy)

Signed by ...Samuel Kenwright..... for and on behalf of Eworks Manager Limited

Signed by [Name of Authorised Person] ..... for  
and on behalf of [Name of Company] .....

**APPENDIX 1**

**SUPPORT SERVICES**

The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

**ACCEPTABLE USE POLICY**

1. You must only use the Electronic Services for their intended purpose.
2. You must not use the Electronic Services to:
  - (a) post, upload or otherwise make material available that is illegal or obscene, defamatory, harassing, abusive, tortious, hateful, invasive of a person's privacy, or racially or otherwise objectionable, discriminatory or offensive;
  - (b) fraudulently or otherwise misrepresent yourself to be another person or a representative of another entity including, but not limited to, us, or fraudulently or otherwise misrepresent that you have an affiliation with a person, entity or group;

- (c) disguise the origin of any material transmitted through the Electronic Services (whether by foregoing message/packet headers or otherwise manipulating normal identification information);
- (d) post, upload or otherwise make material available which infringes any intellectual or industrial property right of ours or any third party (such as material that infringes copyright, trade marks, patents, or trade secrets, or other proprietary rights of any party);
- (e) post, upload or otherwise make material available containing or associated with spam, junk mail, advertising for pyramid schemes, chain letters, virus warnings (without first confirming the authenticity of the warning), or any other form of unauthorised advertising or promotional material or collect information, including web pages, image views, e-mail messages or new posts from unsolicited mail;
- (f) send multiple copies of the same or substantial similar messages, large message or files, to a recipient with the intent of disrupting a server, account, or service or to post a large number of messages or amounts of text in newsgroups or chatrooms with the intent of disrupting discussion or the service of other users.



- (g) post, upload or otherwise make material available containing viruses, trojans or any other material designed to impair, destroy or interrupt the performance of any hardware or software;
- (h) obtain unauthorised access to or interfere with the performance of the servers which provide the Electronic Services or any servers on any associated networks or otherwise fail to comply with any policies and procedures relating to the use of those servers;
- (i) collect, whether aggregated or otherwise, data about users of the Electronic Services other than your Users;
- (j) violate any applicable laws, whether intentionally or otherwise, or post, upload or otherwise make material available which you are not entitled to make available by law (whether by legislation or under a contractual, or fiduciary obligation or otherwise);
- (k) harass or stalk another person or harm, purport to harm or seek to harm another person (including minors) or encourage those or other illegal activities;
- (l) provide advice on illegal activities (for example, the creation of bombs, the infringement of intellectual property rights and gaining unauthorised access to computer systems); or
- (m) do anything else which may impact operation or performance of the Electronic Services or its use by others.

3. You acknowledge that while we do not generally review material uploaded by Users to an Electronic Service prior to it being made available through the Electronic Service, we or our agent may remove any information available through the Electronic Services, including information that we consider (in our sole opinion) violates this Acceptance Use Policy, applicable laws, or is otherwise objectionable. You are responsible for maintaining your own backup of information you upload to an

Electronic Service.

4. We strive to ensure that our Software is secure and that your Data is safe, however we cannot guarantee the security of your Data. You accept responsibility for the protection and backup of your Data in relation to which the Electronic Services are used and acknowledge that we have no liability for any loss or damage you may suffer as a result of or arising out of any failure by you to do so.
5. To the full extent permitted by law, we may monitor the content of any traffic over the Electronic Services for any reason permitted or required by law, including for the purpose of ensuring compliance with this policy. We will usually attempt to contact you before taking any corrective action if we believe you are in breach of this policy. Notwithstanding this, any breach by you of this policy may result in the suspension or termination of the Electronic Services.
6. We may amend this Acceptable Use Policy from time to time without notice by posting the amended version on our Website. We suggest that you visit our Website regularly to keep up to date with any changes.