

Workbooks Online Limited

Terms 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 the nominated customer contacts as defined in Section 5.3 and as detailed on the Order or subsequently changed from time to time by the Customer in writing.

"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 data 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 Section 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 our fair usage policy, which the Customer may access online at 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 the "Subscription Fees" as agreed between the Customer and Workbooks, or the Customer and a Workbooks' Partner, as appropriate, any "Excess Usage Charges" as set out in the Fair Usage Policy, together with any "Consultancy Fees".

"Order" means the Workbooks order form executed by the Customer or submitted to Workbooks by a Workbooks Partner in relation to the purchase of the Services by the Customer and accepted by Workbooks and which specifies the Services to be provided by Workbooks subject to the terms of this Agreement.

"Permitted Users" means the permitted number of users which 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. For the avoidance of doubt a Permitted User must be one unique person; multiple people must not share user credentials.

"Privacy Policy" means our privacy policy, which the Customer may access online at www.workbooks.com/privacypolicy

"Security Policy" means our data policy, which the Customer may access online at www.workbooks.com/securitypolicy

"Service Documentation" means any supporting documentation relating to the use of the Service made available to the Customer by Workbooks from time to time, including help and documentation, user guides and videos, together with a knowledge base which can be accessed online at www.workbooks.com/community/kb.

"Services" means the services Workbooks shall provide including (a) the online software applications owned and delivered as an on-demand service by Workbooks (the "Workbooks Service") in accordance with the Service Documentation any associated Technical Support and (b) training including scheduled Workbooks Admin Training Courses, private training courses, implementation consultancy, data migration, script writing, Administration Credits, Quickstart Points or other professional services ("Consultancy Services") which the Customer may have ordered which may form part of a defined scope of work ("Consultancy Project").

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

"Subscription Term" means the term of the subscription for the Workbooks Service as set out in an Order.

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

"User Subscriptions" means the number of subscriptions purchased by the Customer as set out on the Order which entitles Permitted Users to access and use the Workbooks Service in accordance with this Agreement.

"Workbooks" means Workbooks Online Limited, company registration number 6393851 trading from Unit 9, Suttons Park Avenue, Reading, Berkshire, RG6 1AZ

"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, Value Added Resellers, System Integrators, Consultants and Service Providers.

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.

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 shall continue in full force and effect for Services for the entire Subscription Term. Thereafter this Agreement shall terminate in accordance with the provisions of Section 10 (Termination) unless the Customer places an Order with Workbooks or a Workbooks' Partner for a further period (the "Extended Term")

3. Terms of Service

- 3.1. Upon Workbooks' acceptance of the 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. The Customer may use the Workbooks Service during the Subscription Term provided the Customer has paid the Subscription Fees, which are non-refundable. The Customer may allow the Customer's agents and contractors to use the Workbooks Service for the Customer's internal business operations and the Customer is responsible for their compliance with this Agreement in such use. 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 allowed under this Agreement.
- 3.3. Subject to the terms and conditions of this Agreement, Workbooks will use its all reasonable efforts to provide the Workbooks Service for the Subscription Term in accordance with the agreed service levels in Schedule I.
- 3.4. Workbooks will use its best endeavours to provide Technical Support to the Customers' Authorised Customer Support Contacts in accordance with Schedule II. The Customer is limited to two (2) Authorised Customer Support Contacts per Subscription Term, with one (1) additional Authorised Customer Support Contact for each fifty (50) Permitted Users of the Service.
- 3.5. Workbooks may at any time audit the number of Permitted Users on the Workbooks Service. If at any time provision of the Workbooks Service to the Customer compromises the security of the Workbooks Service generally as a result of, without limitation, hacking, denial of service attacks or other malicious activities originating from the Customer's network, Workbooks may suspend all or part of the Workbooks Service immediately and until the problem has been resolved. In such an event, 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.
- 3.6. Workbooks may modify, enhance, replace, or make additions to the Workbooks Service in any way whatsoever as Workbooks may in its sole discretion decide as long as the quality of the service is not materially degraded. Service Documentation may be accessed online at www.workbooks.com/community/kb. Workbooks Services are provided based on Workbooks' policies for the services ordered, which are subject to change.
- 3.7. 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.

4. Fees and Payment

- 4.1. Unless agreed otherwise in writing all Fees:
 - 4.1.1. shall be invoiced in accordance with the following: (a) Subscription Fees for the Workbooks Service will be invoiced annually in advance at the commencement of the Subscription Term, and (b) 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.
- 4.2. The provisions of Section 4.1 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. If the Customer believes that it may be exceeding the number of Permitted Users it has an obligation to inform Workbooks and a) reduce the number of Permitted Users, or b) purchase additional User Subscriptions.
- 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 agrees to 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 agrees that they have not relied on the future availability of any functionality or software updates in entering into the payment obligations on the Order.
- 5.5. Customers must have an Internet connection and an Internet browser which supports Javascript to access the service. The customer understands that an ADSL or other high speed Internet connection is required for proper performance of the service.

- 5.6. The Customer agrees to abide by the Workbooks Fair Usage Policy available at www.workbooks.com/fairusagepolicy and in the event of a breach of the Fair Usage Policy the Customer may be subject to an additional Fees calculated in accordance with the Fair Usage Policy. 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. Unless specifically authorised in writing in advance by Workbooks, 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.
 - 5.8. Any source code provided to the Customer by Workbooks is subject to the terms of this Agreement. Any other use of the Workbooks Service by any person, business, corporation, government organisation or any other entity is strictly forbidden and is a violation of this Agreement.
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, the Customer agrees:
 - 6.1.1. that 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. to nominate a ("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. to 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 from 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 from 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. that 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. that at any unused Quickstart Points or Administration Credits will lapse at the end of the Subscription Term on the Order.
 - 6.2. The Customer and Workbooks agree that 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 Admin Credits, QuickStart Points or Professional 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 the Workbooks consultant shall notify the Primary Contact as provided in accordance with Clause 5.3 and the Customer Project Manager in writing. Workbooks reserves the right to raise Fees for any Consultancy Services work performed 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 will be forfeited by the Customer. Admin Credits and QuickStart Points will continue to be available for use until the end of the Customer's licence term.
 - 6.4. In the event of Where 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 or their agents or subcontractors.
7. Customer Data and Data Protection
- 7.1. Workbooks acknowledges that all title and intellectual property rights to the Customer Data is owned exclusively by the Customer.

- 7.2. Workbooks and Customer acknowledge that for the purposes of the Data Protection Act 1998, 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 section 1(1) of the Data Protection Act 1998 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 Section processing and process shall have the meaning set out in section 1(1) of the Data Protection Act 1998 (as amended).
- 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. process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments;
 - 7.4.3. take appropriate organisational, physical and technical safeguards against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, Personal Data to ensure compliance with the seventh data protection principle, including but not limited to those measures as set out at www.workbooks.com/securitypolicy;
 - 7.4.4. shall promptly comply with any request from the Customer requiring Workbooks to amend, transfer or delete the Personal Data;
 - 7.4.5. 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;
 - 7.4.6. take reasonable steps to ensure the reliability of any of Workbooks' employees who have access to the Personal Data;
 - 7.4.7. not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in this Agreement;
 - 7.4.8. notify the Customer immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data., Workbooks will use commercially reasonable efforts to correct the Customer's Data or restore the Customer's Data as quickly as possible;
 - 7.4.9. comply with Workbooks' Privacy Policy and Security Policy relating to the privacy and security of Customer Data available at www.workbooks.com/privacypolicy and www.workbooks.com/securitypolicy. Workbooks shall have the right to 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.
- 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.
- 7.7. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data.
- 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 or as otherwise specified on the Order such as 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 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 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 to the Workbooks Service, will be permanently deleted unless you purchase a Subscription for the same Workbooks Services as covered by the trial, or export the data prior to the end of the trial. If you downgrade from the trial version 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 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 sections 3.3, 3.4, 4, 13.1 and 13.2 shall not apply.

9. Suspension

- 9.1. Workbooks reserves the right to suspend Customer's access to and use of the Workbooks Service for any accounts (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) for which the Customer has not placed an Order with Workbooks or via a Workbooks Partner for an Extended Term and has not notified Workbooks of its desire to renew the Service by the End Date of the then Subscription Term, or (c) for Free Edition subscribers who are in breach of section 5.6 or 7.9.
- 9.2. The Customer agrees that Workbooks may with reasonable notice (both email and telephonic) to the Customer suspend the Customer's access to the Workbooks Service if Workbooks reasonably concludes that Customer's Service is being used to engage in denial of service attacks, illegal activities, or the Customer's use of the Service is causing immediate and material harm to Workbooks or others. In the extraordinary event that Workbooks suspends the Customers access to the Service, Workbooks will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with the Customer to resolve issues causing suspension of the Service. Customer agrees that Workbooks shall not be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this section 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 Section 5.3 ("Notice"). Upon termination or expiration of this Agreement the Customer shall have no rights to continue to use the Service. 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 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 paid by a Customer or by a Partner in respect of a Customer for the terminated portion of the Subscription Term.
- 10.4. Handling of Customer Data in the event of Termination: The Customer agrees and acknowledges that following termination in accordance with this Section 10,
 - 10.4.1. 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
 - 10.4.2. during this 90 day period and upon the Customer's reasonable request, Workbooks will grant Customer limited access to the Workbooks Service for the sole purpose of permitting the Customer to retrieve Customer Data, provided that the Customer has paid in full all amounts unpaid for Services plus related taxes and expenses. 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.
- 10.5. 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. Workbooks or its licensors retain all ownership and intellectual property rights to the Services. Workbooks retains all ownership and intellectual property rights to anything developed by Workbooks and delivered to the Customer under this Agreement resulting from the Services.
- 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 trademarks of Workbooks Online Limited. The Workbooks logo is copyright Workbooks Online Limited, 2008.
- 11.4. Third party technology that may be appropriate or necessary for use in the Workbooks Service is specified in the Service Documentation. Such third party technology is licensed to the Customer under the terms of any third party technology licence agreement specified in the Service Documentation and not under the terms of this Agreement.
- 11.5. Workbooks acknowledges that all intellectual property rights in the Customer Data are and will remain the property of the Customer and Workbooks shall have no rights in or to the Customer Data other than the licence to use them for the purposes in accordance with this Agreement.

12. Third Party Intellectual Property Rights

- 12.1. In the event that the Workbooks Service infringes any third party intellectual property rights, Workbooks will defend and/or settle any third party claim, provided that the Customer:
 - 12.1.1. promptly on becoming aware of the same, notifies Workbooks of any such claim in writing;
 - 12.1.2. gives Workbooks the sole control of any such action or proceedings;
 - 12.1.3. fully co-operates with Workbooks and provides such assistance as it may reasonably require to settle and/or defend such action or proceedings (at the cost of Workbooks); and
 - 12.1.4. any award of costs and/or damages shall belong to Workbooks.
- 12.2. In the event that the Workbooks Service infringes any third party intellectual property rights, Workbooks shall, firstly use all reasonable efforts to make the Workbooks Service available without infringing so far as Workbooks is aware any third party intellectual property rights or if that is not possible 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 Section 12 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 product and/or service or modification undertaken by the Customer without the prior written consent of Workbooks.

13. Warranties, Disclaimers, and Exclusive Remedies

- 13.1. Workbooks warrants that during the Subscription Term (a) the Workbooks Service will achieve in all material respects the functionality described in the Service Documentation applicable to the Services purchased by the Customer, and (b) such functionality will not be materially decreased during the Subscription Term. Workbooks does not warrant that the Workbooks Service will be error-free. 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.
- 13.2. 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.
- 13.3. Workbooks warrants that: (a) subject to Section 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.
- 13.4. 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.
- 13.5. Except as stated in Section 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. WORKBOOKS' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CUSTOMER'S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE SUBSCRIPTION FEES THE CUSTOMER PAID WORKBOOKS FOR THE DEFICIENT SERVICES UNDER THIS AGREEMENT AS SPECIFIED IN THE CUSTOMER'S ORDER. IN NO EVENT SHALL WORKBOOKS' LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID UNDER THE CUSTOMER'S ORDER.

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 Section 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 agree 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. 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. 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.

21.2. 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 Section 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://www.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. Workbooks hereby provides notice that 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, 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 5:00pm 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
One	<p>Critical Priority:</p> <p>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.</p>	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.
Two	<p>Urgent Priority:</p> <p>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.</p>	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.
Three	<p>Normal Priority:</p> <p>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.</p>	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.
Four	<p>Minor Priority:</p> <p>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.</p>	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.
Five	<p>Low Priority:</p> <p>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.</p>	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 can be logged by any one of the Authorised Customer Support Contacts . They can contact Workbooks Customer Support either by telephone or email or by registering a support case at www.workbooks.com/support

Workbooks' current support contact details are: support@workbooks.com Support Line: +44 (0) 118 3030 101

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.