

Professional Services Agreement

THIS AGREEMENT GOVERNS YOUR PURCHASE AND RECEIPT OF OUR PROFESSIONAL SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A STATEMENT OF WORK (“SOW”) OR ORDER FORM THAT REFERENCES THIS AGREEMENT OR THAT REFERENCES THE MASTER SERVICES AGREEMENT WHICH IS FOUND AT WWW.WORKXPRESS.COM/LEGAL, AND IN WHICH THIS AGREEMENT IS WHOLLY INCORPORATED, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

You may not receive Professional Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not receive Professional Services for purposes of evaluating or monitoring their quality or performance, or for any other benchmarking or competitive purposes.

This Agreement was last updated on December 9, 2015. It is effective between You and Us as of the date of Your accepting this Agreement.

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1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Professional Services Agreement, the Master Services Agreement, any Order Forms and any exhibits, schedules and addenda. Any reference to “this Agreement” herein refers specifically to the Professional Services component of what could possibly be a broader agreement between the parties.

“Change Order” means any change to an SOW or Order Form, as applicable, as described in the “Change Orders” section below. Change Orders will be deemed incorporated by reference into the applicable SOW or Order Form, as applicable in the absence of an SOW.

“Deliverable” means a deliverable under an SOW or Order Form.

“Online Service” means the products and services, including Developer Services and Community Services, that are ordered by You under a free trial or an Order Form and made available online by Us, including associated offline components, as described in the Documentation. “Online Services” exclude Content and Non-WorkXpress.com Applications, and Professional Services.

“Order Form” means an ordering document specifying the Professional Services in the form of one or multiple SOW to be provided hereunder and that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. Order Forms governed, in whole or in part, by this Agreement must have at least one SOW attached thereto or expressly state that the Order Form or certain Professional Services provided thereunder are governed by this Agreement. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Notwithstanding any language to the contrary in the Order Form, all Professional Services purchased under an Order Form are purchased separately from the Online Services and all references to “Order Form” herein shall not apply in any way to any Online Services, including without limitation, with respect to payment obligations and termination rights.

“Professional Services” means work performed by Us, Our Affiliates, or Our or their respective permitted subcontractors under an SOW or Order Form, including Our provision of any Deliverables specified in such SOW or Order Form.

“Project Budget” is the specific hours budget set aside by WorkXpress to deliver a specific Statement of Work.

“SOW” means a statement of work describing Professional Services to be provided hereunder, that is entered into between You and Us or any of Our Affiliates or which is incorporated into an

Order Form, Design Document or Change Order that is entered into between You and Us or any of Our Affiliates. An Affiliate of Ours that executes an SOW with You will be deemed to be “Us” as such term is used in this Agreement. SOWs, Change Orders or Order Forms will be deemed incorporated herein by reference. Note that a SOW may be detailed within or as a part of a “Task”, and that sometimes the task name or number may be used to reference or identify it’s SOW.

“We,” “Us” or “Our” means the WorkXpress.com company described in Section 13 of the Master Services Agreement (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

“You” or “Your” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. PROFESSIONAL SERVICES

2.1. Scope of Professional Services. We will provide to You the Professional Services specified in each SOW or Order Form (as applicable), subject to Your payment of all applicable fees as set forth in the Section 5 “Fees and Payment for Professional Services” section of this Agreement.

2.2. Relationship to Online Services. A Professional Services Agreement is limited to Professional Services and does not convey any right to use Online Services. Any use of Online Services by You will be governed by a separate agreement. You agree that Your purchase of Professional Services is not contingent on the delivery of any future Online Service functionality or features, other than Deliverables, subject to the terms of the applicable SOW or Order Form, or on any oral or written public comments by Us regarding future Online Service functionality or features.

2.3. You are not Purchasing a Result, You are Purchasing our time and professional efforts. This Professional Services Agreement entitles you to our commercially reasonable efforts to produce a set of features described in the corresponding SOW. There is no assurance or representation that the final result will perform in any manner other than as explicitly stated in the SOW.

2.4 Data Importation

Data You provide for importation can include a wide range of qualities and completeness, and any inconsistency in that data that results in the need for data remediation not specifically detailed within the SOW is outside of the scope of that SOW. Unless otherwise specified in a SOW, all data importation will require You to provide Your Data in a format supplied by Us, We will make a single pass at importing Your Data, and We do not represent or warrant that Your Data will be imported with any particular level of quality or completeness.

2.5. Design Document may be Required

At Our discretion and as detailed in the SOW, some projects may require a Design Document to be created by Us and mutually agreed upon by the parties. This Document will provide the sole and final description of the Deliverables and will replace each original SOW including but not limited to those SOW found in an Order Form. Features requested to be included in the Design Document may be treated as “in-scope” or “not in-scope” according to their definitions herein, and “not in-scope” features may require a Change Order for inclusion.

2.6. Replicating Existing Applications, Screenshots, or Other Material

We do not replicate existing materials, and any request by You to replicate an existing Work does not constitute a specific SOW, and will not be delivered. Inasmuch as the Client has supplied drawings and/or screenshots or other concept art and such is included in a SOW, WorkXpress will make a reasonable effort within the Project Budget to produce the look and feel of these supplied images and to replicate their functionality. However, there is never an assurance that any such images or functionality will be reproduced exactly as provided, and in no case will WorkXpress reproduce “hidden” functionality that is not superficially, obviously and literally apparent from the supplied materials incorporated into a SOW.

3. COOPERATION

3.1. Cooperation. You will cooperate reasonably and in good faith with Us in Our performance of Professional Services by, without limitation: (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Us to perform Our obligations under each SOW or Order Form; (b) timely delivering any materials and other obligations required from You under each SOW or Order Form; (c) timely responding to Our inquiries related to the Professional Services; (d) assigning an internal project manager for each SOW or Order Form to serve as a primary point of contact for Us; (e) actively participating in scheduled project meetings; (f) providing, in a timely manner and at no charge to Us, office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, access to Your appropriate and knowledgeable employees and agents, and continuous administrative access to Your Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by Us; (g) complete, accurate and timely information, data and feedback all as reasonably required; (h) utilizing Our required tools and communication methods including our customer self service portal at my.workxpress.com; and (i) adhering to our required processes as outlined in the respective SOW's or Order Forms, our Documentation and this Agreement, (j) following a provided project plan that includes Your tasks and their specific SOW's, the actions they require You to take and what constitutes “timely” completion by You.

3.2. Delays. Any delays in the performance of Professional Services or delivery of Deliverables caused by You may result in additional applicable charges for resource time. Additionally, any delays caused by You can result in delays to Your overall project schedule that are significantly greater than Your original delay.

3.2.1. Time is of the Essence. You agree to fulfill each of Your obligations for a task in the time allotted for the task, and You will certify that you are finished with Your task. If you have not completed a task nor requested additional time for a task within the time allotted, We may at our discretion deem a task as having been completed by You.

3.3. Specific Actions You Must Take. According to Your project plan, it's tasks and the various SOW's, You will be provided opportunities to perform a range of tasks critical to the success of your project. Your performance according to these terms is essential to Our ability to provide you with the highest quality Deliverables at the lowest possible cost, and as such Your performance herein and in this Section 3 is material to this Agreement. You hereby agree that each such task described in your project plan will be your sole and exclusive opportunities within this Order Form to perform that task and that failure to perform each task according to its SOW and within the time provided can be considered by Us as a completion of that task and/or a forfeiture of the opportunity to complete it. You agree to submit materials and/or complete each task using the vehicle or tool specified by Us. You hereby acknowledge that Your submissions could include "Not In-Scope" and/or "non-specific" or "out of process" information and We reserve the right to classify Your submissions as such.

3.3.1. Initial Submission. During the phase of your project called "Application Design", you will be provided the opportunity to submit design information, typically through an "initial submission" task or similar. You are encouraged to comprehensively provide all relevant materials during this submission task. You hereby acknowledge that many of these submissions may be considered "Not In-Scope" and We reserve the right to classify them as such. You hereby agree that new information You wish to submit after the submission task and/or new design consultations that You request after this task are Out of Process and will require a Change Order.

3.3.2. Design Round of Revision. During any Design Round of Revision, you will be provided an opportunity to suggest specific refinements to Your Design Document. "Specific" in this context shall mean specific requests to modify the writing or images within the Design Document from a specified current state to a specified future state. You agree that all feedback provided by you that is not "specific" may automatically and without further analysis be classified as "Not In-Scope", and that we are not obligated to process it. During Your Submission task, We will take no action of any kind on Your project, other than to await completion of Your submission task, at which point we will begin to process all of your submissions from Your previous task.

3.3.3. Clarification. From time to time throughout the project, You will be asked to provide "specific" clarification on various topics. "Specific" in this context shall mean written or pictorial feedback that directly and unambiguously answers the question asked. You agree that all feedback provided by you that is not "specific" may automatically and without further analysis be classified as "Not In-Scope" as can the underlying subject matter for which the clarification was originally sought, and that we are not obligated to process it.

3.3.4. Design Document Signature. For projects in which We require a Design Document, it will be necessary for you to provide your signature on the final version of the Design Document indicating your review and acceptance of the Design and any additional Terms and Conditions provided for therein. Absent this mutual agreement to proceed in the form of Your Design Document signature, You acknowledge that we will not be able to proceed forward in the project plan including with application development.

3.3.5. UI Round of Revision. During any UI Round of Revision, you will be provided an opportunity to suggest specific refinements to Your User Interface. "Specific" in this context shall mean requests to modify specified colors, shapes, sizes, font or placement of a specified interface object from a specified current state to a specified future state. You agree that all feedback provided by you that is not "specific" may automatically and without further analysis be classified as "Not In-Scope", and that we are not obligated to process it. During Your Submission task, We will take no action of any kind on Your project, other than to await completion of Your submission task, at which point we will begin to process all of your submissions from Your previous task.

3.3.6. Bug Submission. During any Bug Submission Round of Revision, you will be provided an opportunity to submit specific "bugs" in Your application. "Specific" in this context refers to a single bug that is defined as consisting of three distinct elements; (1) description of a set of steps leading up to the bug including URL and user account (the "steps to reproduce"); (2) description of a specific intended result of the bug (the "fixed" behavior); and (3) description of a specific actual result of the bug (the "not fixed" behavior). You hereby acknowledge that all three elements are necessary to define a single bug, and that if one of the elements can vary while the other two elements remain the same, then the varying element will actually represent different bugs and therefore requires additional bug submissions. You agree that all feedback provided by you that is not "specific" may automatically and without further analysis be classified as "Not In-Scope", and that we are not obligated to process it. You further acknowledge that, if we are unable to reproduce the "not fixed" behavior using your "steps to reproduce", then we may classify the bug as "fixed". During Your Submission task, We will take no action of any kind on Your project, other than to await completion of Your submission task, at which point we will begin to process all of your submissions from Your previous task.

3.3.7 Bugs of type "Blocker". From time to time WorkXpress may in its Documentation define the criteria for classifying a bug as a sub-type of bug called a "Blocker". WorkXpress may also provide for accelerated and/or in-scope processing of a properly submitted and classified Blocker regardless of whether the submission would normally have qualified as an Out of Process Submission and regardless of the current step in the project plan.

3.3.8. Bug Certification. During any Bug Certification Task, you will be provided an opportunity to review each Bug Submission, its current status, and for each Bug Submission either accept the bug as "fixed" or indicate that the bug is "not fixed". Note that for either "fixed" or "not fixed",

the definition of such shall be determined by considering on a literal basis the three elements of the specific bug submission detailed in 3.3.6. Bug Submission above. Your failure to provide a certification result within the allotted time frame will be deemed as Your Acceptance that the bug is “fixed”, and We may update your Bug Certifications to “fixed” accordingly.

3.3.9. Alpha, Beta and Production Acceptance. At certain points in Your project, it will be necessary or desired to release your application into either a testing environment for Alpha or Beta testing, or a production environment that was exclusively licensed by You for Your Use. You hereby agree that We may require you to sign and agree to the additional terms and conditions of an Alpha or Beta Testing or Production Acceptance document prior to that release; such document will confirm the mutual understandings of the parties at that time, and will authorize us to release Your application to the designated environment. Without a mutually agreed upon Testing or Production Acceptance document, You understand that we may not conduct a Testing or Production Release.

3.3.10. Payment. At certain points in Your project, a payment from you will be required, due and payable as agreed upon in Your Order Form or SOW and subject to Section 5 below, in order for work on your project to continue forward.

3.4 Adherence to Development Schedules and Non-Responsive Clients.

WorkXpress will develop according to a tightly managed development schedule. Clients who do not attend scheduled meetings, who do not adequately review deliverables, who do not communicate requests and bugs thoroughly and in a timely manner or who generally are not “cooperative” as described in this Section 3 may be placed in a “non-responsive” status and their project will become unscheduled. Should You become non-responsive there is no assurance that Your project can be immediately rescheduled after the period of non-responsiveness ends. Furthermore, delays caused by You due to being non-responsive may result in project delays that are materially greater than the time frame within which You were non-responsive.

3.5 Use of Tools. WorkXpress provides an online portal at my.workxpress.com and other tools for communications and You agree under this Agreement to first utilize those methods when they are available. Delays to the project schedule or additional project management costs may be incurred if these tools are not utilized.

3.6 Out of Process Submissions. Should Client choose to submit materials, UI, feature or other bug reports, or other communications that are (a) not Specific as defined herein, (b) in a format not prescribed by WorkXpress standard processes or a Statement of Work, (c) submitted at a time in the project plan that is not the prescribed time for submissions of that type, or (d) in some other way generally outside of the prescribed and standard tools and processes, WorkXpress may label such submission as “Out of Process”. WorkXpress is not required to process any Out of Process submissions, and Client’s sole remedy is to contract WorkXpress on a retainer basis to process the otherwise Out of Process submission. Should WorkXpress

choose, in its sole discretion, to process an otherwise Out of Process submission in the course of delivering an otherwise proper Statement of Work, that processing will be done entirely on an "as-is" basis, and Client hereby forfeits any additional dispute resolution or warranty rights that are derived from the original Out of Process submission.

3.7 Breach of Agreement. You understand that failure to Cooperate according to this Section 3 including but not limited to placement into a "non-responsive" or "non-payment" status, providing "out of process" or "non-specific" submissions or being "non-cooperative" as a result of violating this Section 3 or as described in Section 4 below represents a material breach of this agreement. Should You breach this Agreement We may, without limiting Our other rights and remedies, Accelerate Your Unpaid Fee obligations under such agreements so that all such obligations become immediately due and payable. We will give You at least 10 days' prior notice that You are in breach, in accordance with Section 13.2 of the MSA (Manner of Giving Notice), before accelerating your payment obligations.

3.8 Professionalism. You understand that professional behavior is provided and required at all times, and that failure to behave professionally towards WorkXpress employees constitutes a material breach of this agreement. Non-professional behavior includes but is not limited to making threats, foul language, hate speech, inappropriate innuendo, derogatory or inflammatory remarks or disparaging remarks or narratives.

4. DELIVERY, ACCEPTANCE AND CHANGE ORDERS

4.1. Delivery of Professional Services. We will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs or Order Forms.

4.2. Acceptance. Upon completion of each Deliverable under an SOW or Order Form, We may, as applicable: (a) submit a complete copy to You; and/or (b) release the functionality to You. You are responsible for reviewing, testing, certifying, disputing and generally reporting your Acceptance of all Deliverables in accordance with our standard tools and processes as provided for in the SOW or Order Form or alternatively as mutually agreed upon in writing by the parties for such Deliverable.

You will provide Us with written notification of Acceptance for each Deliverable promptly upon Acceptance; however, failure to reject a Deliverable, as set forth below, will be deemed Acceptance.

If You, in Your reasonable and good faith judgment, determine that any submitted Deliverable does not satisfy the agreed-upon Acceptance criteria as specified in the applicable SOW or as mutually agreed upon in writing by the parties for such Deliverable, You must follow Our standard procedure and use our standard tools for filing a "Dispute" within the timeframe of the task or if unspecified, within 10 business days after Our submission of the Deliverable by specifying the deficiencies in detail. We will use commercially reasonable efforts to determine

whether the Dispute you specified is “in-scope” or “not in-scope” according to the definitions below, and if “in-scope” to correct such deficiencies and resubmit the Deliverable to You as soon as practicable (You agree that Disputes classified as “not in-scope” will require a Change Order in order to receive additional consideration). You will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Us using Our standard procedures and tools within the timeframe of the task or if unspecified, within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the functional requirements specified in the applicable SOW or Order Form after its second resubmission to You, You may either, as Your sole and exclusive remedy: (i) again reject the Deliverable and return it to Us for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Your executive sponsor for the project associated with the SOW or Order Form and Our Engagement Manager) or, if Your dispute remains classified as “in-scope”, (ii) terminate the specific deficient SOW immediately upon written notice and recover all Professional Services fees pre-paid under such SOW for that specific, deficient Deliverable (such amount to be calculated based on the “Refund Calculation” below). If We determine that the functional requirements specified in a Dispute are “not in-scope” and therefore require modification of a current SOW (for example, due to incorrect assumptions or changed requirements), You will cooperate in good faith to execute a Change Order for such revised requirements.

4.3. No Effect on Warranty Remedies. Acceptance of Professional Services, including a Deliverable, will not affect Your rights or remedies under the “Warranty” section below.

4.4. Change Orders.

Changes to a SOW or Order Form will require a written Change Order executed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the SOW, time frame or timing, and any corresponding changes to the estimated fees and schedule.

4.5 Definition and Classification of “In-Scope” and “Not In-Scope”

You agree that any request by You for Our Professional Services time or activity (for example feature development, meetings, consultations, etc.) will be classified by Us as either “in-scope” or “not in-scope”, and that “not in-scope” requests will require an executed Change Order in order for the request to be fulfilled. To determine whether such a request is in-scope or not in-scope, You will provide specific text or images for the new request (the “dispute text”) and will direct us to an current SOW that You feel describes and covers that request (the “contract text”). We will then perform a simple comparison of the written description of Your new request against the text or images of the current SOW. If We determine that the language or image is a match and that the current SOW was not previously completed, the request will be “in-scope”, and if the language or image does not match or the current SOW was previously completed, the request will be “not in-scope”. In other words, Any concepts, ideas, designs, images, details, sites, requests, documentation or otherwise that are not explicitly detailed in a current SOW, regardless of when or how they were presented to Us, can be labeled by Us as “not in-scope”.

You hereby agree to abide fully and reasonably with any determination that Your request is classified as “not in-scope”, and any unwillingness by You to abide by that determination will be considered “non-cooperative” and may result in additional charges at Our standard rates. Not In-Scope requests can be processed using a Change Order as detailed above.

4.6. Your Right to Dispute a “Not In-Scope” Classification. We will provide you with a vehicle to reasonably dispute most classifications that We make based on submissions or certifications provided by You. In all cases, a dispute will be reasonably and in good faith decided by Us according to the Definition of “In-Scope” and “Not In-Scope” provided above.

4.6 Provision of Features Classified as Not In-Scope

You agree that any request by You and subsequent agreement by Us to provide “Not In-Scope” features as if they were “In-Scope” (or on any other unpaid basis) hereby authorizes us, without further notification to You, to in turn limit Our ability to provide other Deliverables including those that are “In-Scope”, with any such substitution of Deliverables to be made by Us on a 1:1 hour substitution basis using the original budgets for the respective SOW’s to determine value.

4.7 Special Provision for Retainer Services

From time to time You may enter into an agreement referred to as a “Retainer Agreement” or whose SOW identifies it as a “Retainer” or for “Retainer Time”. You hereby acknowledge that in a Retainer Agreement, a resource works solely at Your discretion, and that We are only responsible for providing a quantity of hours of a resource according to Your direction and the applicable SOW. As such, no other provisions for Warranty, Acceptance, definition of Scope, or similar provision will apply. All Retainer Agreement services are delivered on a time and materials basis and “as-is” without exception. You hereby acknowledge that ANY requested modification to work delivered during the course of Retainer Services will require a Change Order. WORKXPRESS SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES WHETHER EXPRESS OR IMPLIED AND ALL OTHER REMEDIES FOR RETAINER SERVICES UNLESS OTHERWISE SPECIFIED UNDER THIS AGREEMENT.

4.8 Special Provision for Non-Specified Deliverables

We may elect at our discretion to provide features that are not in-scope and/or are not specifically detailed in a SOW, either in an Order Form, a Design Document, a Change Order or other. Any such Non-Specified deliverable provided by Us is provided as a courtesy and will be delivered As-Is without exception. You hereby acknowledge that ANY requested modification to Non-Specified Deliverables will require a Change Order. WORKXPRESS SPECIFICALLY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED AND ALL OTHER REMEDIES FOR NON-SPECIFIED SERVICES UNLESS OTHERWISE SPECIFIED UNDER THIS AGREEMENT.

4.9 Breach of Agreement. You understand that failure to cooperate according to this Section 4 including but not limited to unreasonably failing to provide Acceptance where it is reasonably merited, failing to follow the dispute process or an unwillingness to honor not-in-scope

determinations represents a material breach of this agreement. Should You breach this Agreement We may, without limiting Our other rights and remedies, Accelerate Your Unpaid Fee obligations under such agreements so that all such obligations become immediately due and payable. We will give You at least 10 days' prior notice that You are in breach, in accordance with Section 13.2 of the MSA (Manner of Giving Notice), before accelerating your payment obligations.

5. FEES AND PAYMENT FOR PROFESSIONAL SERVICES

You hereby accept, will comply with and will be responsible for Your Users compliance with the Terms and conditions of our Supplementary Payment Policy found at <http://www.workxpress.com/legal> which is hereby incorporated into this Agreement and is in full effect upon your acceptance of this Agreement.

5.1 Payments Not Tied to a SOW

Payments that are not directly associated with a specific SOW, a specific Service, or a specific Deliverable, including but not limited to initial payments and payments that become due solely on the arrival of a specific date, are always payments made as compensation for project setup, project management, scheduling, provision of tools and/or general overhead purposes. These payments are not compensation for delivery of any specific milestone or deliverable. A Payment Not Tied to a SOW is always due on the date specified regardless of circumstance, is always consumed immediately upon receipt, and is always non-refundable.

5.2 Payments Tied to a SOW. Sometimes referred to as "milestone payments", these payments are always due upon completion of a specifically identified Statement of Work.

5.3 Acceptance Payments. Some payments are specifically identified as "Acceptance Payments" and constitute Acceptance in full for work performed and Deliverables provided up to the receipt of payment. Payments Tied to a SOW are Acceptance Payments, and once made constitute Acceptance in full of work performed and Deliverables provided up to the receipt of payment.

6. PROPRIETARY RIGHTS AND LICENSES

6.1. Your Intellectual Property. You do not grant to Us any rights in or to Your intellectual property except such licenses as may be required for Us to perform Our obligations hereunder.

6.2. Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information.

6.3. License and Ownership of Contract Property.

6.3.1 This Agreement is for Professional Services required to effect the creation and modification of the software Application as detailed in a SOW and developed using the WorkXpress platform as a service development and systems administration tool. All such

creation and modification, collectively and hereinafter referred to as a “Deliverable”, will only consist of “Your Data” that is “submitted to the Service” as the terms are used in the Master Services Agreement and as such will afford any rights and protections associated thereto. Deliverables will not include any additions to the “Engine” or platform as a service that (i) expand its capacity as a system administration and application development tool or (ii) increases its integration between third-party software and the Engine. You shall retain all ownership in the Deliverables and We shall retain all ownership in its Engine. For the sake of clarity, the platform as a service PaaS that combines an application platform with managed cloud infrastructure services, shall not be part of the Professional Services, but may be licensed pursuant to the Master Services Agreement and any Order Forms.

6.3.2 “Work” shall mean any and all literary work, any and all pictorial or graphic works, any and all audio visual works and all copies thereof (as each of the following is defined in Section 101 of the US Copyright Act of 1976, as amended), created or caused to be created by Us in connection with the Deliverables including but not limited to; all application customization submitted to Us in order to deploy the feature sets outlined in the requirements and exhibits and all writings, photographs, designs, and drawings incidental thereto.

6.3.3 “Intellectual Property Rights” means any patent, copyright, trademark, trade secret, trade dress, inventions, discoveries, technology, know-how, confidentiality and proprietary information, or other intellectual or industrial property rights or proprietary rights arising under the laws of any jurisdiction.

6.3.4 Inventions. We acknowledge and agree that all contributions made by Us to the Deliverables shall be made as work-made-for-hire as contemplated and defined in Section 101 of the US Copyright Act of 1976, as amended and shall be owned exclusively by You. To the extent such contributions to the Deliverables are not deemed to be works-for-hire, We, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assign to You and Your successors and assigns, all of Our right, title, and interest, in and to the copyrights and other proprietary rights in the Work (and/or Deliverables) and all renewals and extensions thereof that may be secured under the laws now or hereafter in force and effect in the USA or any other country or countries. We shall execute, verify, acknowledge, deliver, and file any and all formal assignments, recordations, and any or all documents which You may prepare and reasonably call for to give effect to the provisions of this Agreement. With regard to assisting You in documenting the rights granted hereunder, at Your expense, We shall execute and deliver to You any documents necessary to evidence or perfect any of the rights granted to You pursuant to this Agreement, and agree to provide such cooperation necessary or desirable to procure such rights.

7. CONFIDENTIALITY

Confidentiality is as provided for in the Master Services Agreement found at www.workxpress.com/legal which is fully incorporated herein.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

8.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so. We represent that We are the sole author of the Work and the Work is an original Work of authorship or that if We are not the sole author of the Work, We have the right to assign use of or ownership of that portion of the Work owned or created by a third party, to You; Except as indicated to You and exclusive of any information or other materials provided by You in connection with this Agreement or the Deliverables, neither the Work, the Professional Services, the Deliverables nor this Agreement infringes, misappropriates or otherwise conflicts or interferes with any rights whatsoever of any other person or party; including, without limitation, any intellectual property or other proprietary right;

8.2. Warranty. We warrant that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For clarity, note that we specifically do not warrant that any particular piece of functionality, user experience, interface, data operation or other performance will achieve any particular result or benchmark or satisfy any particular industry standard that is not specifically detailed in a SOW; only that we will deliver Professional Services, according to a specific SOW, in a professional and workmanlike manner. For any breach of the above warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable Professional Services. If We are unable to re-perform the Professional Services as warranted, You will be entitled to recover the portion of Professional Services fees paid to Us for the specific Statement of Work that describes the deficient Professional Services (such amount to be calculated based on the "Refund Calculation" below as applied only to the specific, deficient SOW). You must make any claim under the foregoing warranty to Us in writing within 60 days of performance of such Professional Services in order to receive warranty remedies.

8.3. Disclaimer. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

9.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding ("Claim") made or brought against You by a third party arising out of death, personal injury or damage to tangible property to the extent caused by Our personnel in their performance of the Professional Services, and will indemnify You for any damages, attorneys fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, any such Claim, all of the foregoing to the extent caused by Our personnel, provided that You: (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (except that We may not settle any Claim unless it

unconditionally releases You of all liability); and (c) give Us all reasonable assistance, at Our cost.

9.2. Mutual Indemnity. Each party (the "Provider") will defend the other party (the "Recipient") against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder ("Material") infringes or misappropriates such third party's intellectual property rights, and will indemnify the Recipient from any damages, attorneys fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a court-approved settlement of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider's cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient's use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it no longer infringes or misappropriates, (B) obtain a license for the Recipient's continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient.

9.3. Exclusive Remedy. This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU FOR PROFESSIONAL SERVICES UNDER THE APPLICABLE ORDER FORM OR STATEMENT OF WORK, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT FOR PROFESSIONAL SERVICES" SECTION ABOVE.

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR

INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER OR PUNITIVE DAMAGES, WHETHER IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1. Term. This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section.

11.2. Termination for Convenience. You may only terminate an individual SOW or Order Form for convenience to the extent set forth in such SOW or Order Form. In all cases, Termination for convenience may only be accomplished by the execution of the standard WorkXpress Contract Cancellation Agreement that is in use at that time.

11.3. Termination for Cause. A party may terminate this Agreement and/or any SOW or Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A material breach can be but is not limited to non-payment, lack of cooperation under Section 3, lack of cooperation under Section 4, disparagement under Section 15, and harassment of or other unprofessional behavior towards Our employees. Note that an alleged deficiency in a deliverable, deficiency in a performance of a Statement of Work, or deficiency of a performance against an Order Form, by WorkXpress as alleged by Client, does not rise to the level of a material breach of this Agreement if Client has not first followed the proper procedures for filing disputes or warranty claims or allowing remediation as detailed herein.

11.4. Payment Upon Termination. Upon any termination of an SOW or Order Form, You will pay, in accordance with the Fee's and Payment section of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate, with such calculations excluding and not considering any "Payments not tied to a SOW" that have already been received by Us, which are non-refundable. See "Refund Calculation" section below.). In the event that You terminate an SOW or Order Form for cause and You have pre-paid any fees for Professional Services not yet received, We will refund such pre-paid fees according to the "Refund Calculation" below. In the event that We terminate an SOW or Order Form for cause, any pre-paid fees for Professional Services are non-refundable, unless expressly stated otherwise in an SOW or Order Form.

11.4.1 Refund Calculation

Payments tied to a SOW that must be refunded will be refunded on a prorated basis against all hours budgeted for the current phase of work on the project as follows; (1) the hours budgeted

for the SOW being refunded will be divided among the total hours budgeted for the current phase of the project to determine the proration percentage; (2) that proration percentage will be applied against the total amount of payments to be made on the current phase of the project (excluding "Payments Not Tied to a SOW" from that total) to determine the maximum refund amount for that SOW. The maximum refund amount then will be adjusted by the ratio of Payments made to Payments outstanding on the current phase of the project (in both cases excluding "Payments Not Tied to a SOW" from their respective totals) to determine the actual Refund due. Note that the current phase of the project is established based on a review of the Project Plan for the phase of effort that this SOW is found in.

11.5. Surviving Provisions. The sections titled "Contract Property," "Confidentiality," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Indemnification," "Limitation of Liability," "Term and Termination", "Non-Disparagement" and "General" will survive any termination or expiration of this Agreement.

12. INSURANCE

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker's compensation insurance as required by applicable law.

13. NO-HIRE

For a period of twelve (12) months following any termination of this Agreement, neither party shall, directly or indirectly, hire, solicit, or encourage to leave the other party's employment, any employee, consultant, or contractor of the other party or hire any such employee, consultant, or contractor who has left the other party's employment or contractual engagement within one (1) year of such employment or engagement.

14. SUBCONTRACTORS

We may, in Our reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. We will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

15. NON-DISPARAGEMENT

Both parties expressly acknowledge and agree that neither party will make, or induce or assist others in making, either directly or indirectly, any public or private statements, comments or communications in any form that would constitute libel, defamation, slander, or disparagement of the other party, its employees, officers or directors. This prohibition includes any negative statements, comments or communications that are either derogatory or detrimental to the

business reputation of the other party. However, this prohibition shall not apply to any truthful testimony provided under oath in connection with a legal proceeding arising under this Agreement. Failure to adhere to the terms of this Section 15 constitutes a material breach of this Agreement. In the event that either party violates the provisions of this Section 15, the non-breaching party shall be entitled to injunctive relief because damages for a violation of this Section would be too difficult to accurately measure and in any litigation over the breach the non-breaching party shall be reimbursed by the breaching party for all of its costs and reasonable attorney fees in connection with said breach.

16. PUBLICITY

Customer acknowledges and agrees that during and after the term of this Agreement, Company shall have the right to use Customer's name, logo, URL, Web site screen captures, and description in Company's marketing, publicity, and promotional activities and materials, including, but not limited to, press releases, marketing collateral, white papers and print, radio and television advertisements, without further consent or approval of Customer. The parties understand and agree, however, that nothing in this Agreement shall obligate Company to actually use Customer's name, statements or testimonials in connection with Company's marketing.