

*Last Updated on May 23, 2018*

## Master Services Agreement (also "Master Subscription Agreement ")

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES AND OUR PROFESSIONAL SERVICES. IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, 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 USE THE SERVICES AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, 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 You accepting this Agreement. WorkXpress reserves the right to update this Master Services Agreement and any supplementary Terms and Conditions referenced herein or in an Order Form, Documentation and other Policies from time to time without further notice. When these changes are made, We will make a new copy of the Terms available at <http://www.workxpress.com/legal> (or such successor URLs that We may designate from time to time). You understand and agree that if you use a Service after the date on which the Terms have changed, We will treat Your use as acceptance of the updated Terms. Any reference to this Agreement in an Order Form or other document always references the most recent version of this Agreement at the time it is executed and as may be updated from time to time.

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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 Master Services Agreement.

"Beta Service" means Our services that are not generally available to customers.

"Community Service" means a subset of Our Online Services generally used for providing and enabling the discussion and sharing of information pertaining to software development, systems administration, developer operations and generally referenced while building, deploying and maintaining software applications. For example, Community Services can be found in part at [www.workxpress.com](http://www.workxpress.com), [wiki.workxpress.com](http://wiki.workxpress.com) or [my.workxpress.com](http://my.workxpress.com).

"Content" means information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

"Developer Service" means a subset of Our Online Services generally used for software development, systems administration, developer operations and generally to build, deploy and maintain software applications. For example, Developer Services can be found in part at [platform.workxpress.com](http://platform.workxpress.com).

"Documentation" means Our online user guides, documentation, any sales literature including that provided with Order Forms and with quotations, and help and training materials, as updated from time to time. All Documentation is provided "as-is".

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Marketplace" means an online directory, catalog or marketplace of applications that interoperate with the Services, including any successor websites. This includes any location from which an interoperable product or service or Non-WorkXpress.com Application is secured

by or for You such as at platform.workxpress.com, my.workxpress.com, or as course of development using the WorkXpress Developer Services.

"Non-WorkXpress.com Applications" means a Web-based or offline software application or hardware that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, or a hosting product selected by or for You including but not limited to shared, dedicated and private cloud hosting options, or an integration incorporated into your application by or for You, or is listed on a Marketplace. Some additional examples of Non-WorkXpress Applications include but are not limited to Google Calendars, Facebook authentication, bulk email, SMS, shared hosting, dedicated hosting, and private cloud hosting services.

"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 Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. 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.

"Professional Service" 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.

"Purchased Service" means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Service" means the Online and Professional Services that are ordered by You under a free trial or an Order Form.

"User" means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us" or "Our" means the WorkXpress.com company described in Section 13 (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.

“Your Data” means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services, including Your Application, and excluding Content and Non-WorkXpress.com Applications.

“Your Application” means an online application that You create, deploy and manage in part by submitting Data to the Developer Services.

## 2. FREE TRIAL

If we are offering a free trial, and If You register on our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA YOU ENTER INTO THE ONLINE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE ONLINE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME ONLINE SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED ONLINE SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

Please review the User Guide during the trial period so that You become familiar with the features and functions of the Online Services before You make Your purchase.

## 3. OUR RESPONSIBILITIES

3.1. Provision of Services. We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the Online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-WorkXpress.com Application failure, or denial of service attack.

3.2. Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

3.2.1 Platform. As a part of the Services, the Platform will be used to designate a Data Processor in order to process the Customer Data. Under this Agreement, the Customer is the Data Controller, and WorkXpress merely facilitates selection of a Data Processor. The Data Controller may use the default Data Processor set within Platform, or, the Data Controller may request an alternate Data Processor. Failure to request a Data Processor will result in the selection of the default Data Processor.

3.2.2 Facilities. WorkXpress will take commercially reasonable steps to select Data Processors to store and process Application and Customer Data who adhere to reasonable security standards no less protective than the security standards at facilities where WorkXpress processes and stores its own information of a similar type. Data Processor's will be selected based on their representation that they implement at least industry standard systems and procedures to (i) ensure the security and confidentiality of an Application and Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of an Application and Customer Data, and (iii) protect against unauthorized access to or use of an Application and Customer Data.

3.2.3 Data Location. Customer may select which Data Processor certain Customer Data will be stored with ("Data Location Selection"), and the Platform will store it there in accordance with the Service Specific Terms. If a Data Location Selection is not covered by the Service Specific Terms (or a Data Location Selection is not made by Customer with respect to any Customer Data), WorkXpress may direct the Customer Data to be processed and stored using the default Data Processor. By using the Services, Customer consents to this processing and storage of Customer Data. Under this Agreement, WorkXpress is neither the Data Processor nor the Data Controller, but merely facilitates the selection of a data processor by the data controller.

The Data Processor maintains short term and long term backups of Your Data for disaster recovery purposes. Backups of Data greater than 10 days old is archived such that archived backups may take up to 10 hours to retrieve.

3.3 Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.4 Beta Services. From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered “Services” under this Agreement, are provided “as-is”, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

#### 4. USE OF ONLINE SERVICES AND CONTENT

4.1 Subscriptions. Unless otherwise provided in the applicable Order Form, (a) Online Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 Usage Limits. Online Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Online Service or Content may not be accessed by more than that number of Users, (b) a User’s password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Online Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Online Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment). Applications deployed on a server indicated as a “shared” server are subject to removal by WorkXpress, such removal to be accompanied by notice and by the provision of alternate hosting options.

4.3 Your Responsibilities. You will (a) be responsible for Users’ compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Online Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Online Services and Content only in accordance with the Documentation and applicable laws and government regulations, and (e) comply with terms of service of Non-WorkXpress.com Applications with which You use Online Services or Content.

4.4 Usage Restrictions. You will not (a) make any Online Service or Content available to, or use any Online Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell,

license, sublicense, distribute, rent or lease any Online Service or Content, or include any Online Service or Content in a service bureau or outsourcing offering, (c) use an Online Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use an Online Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Online Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Online Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Online Service or Content in a way that circumvents a contractual usage limit, (h) copy an Online Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Online Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Online Service or Content in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law), (m) create derivative works based on the Developer or Community Services, or (n) access the Online Services in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Services.

4.5 External-Facing Services. If You subscribe to an Online Service for creation and hosting of external-facing websites, You will comply with, and be responsible for Users' compliance with, Our External-Facing Services Policy at <http://www.workxpress.com/legal/> which is hereby incorporated into this agreement and is in full effect upon your acceptance of this Agreement. You will be solely responsible for complying with applicable law in any use of cookies or other tracking technologies on such websites.

4.6. Removal of Content and Non-WorkXpress.com Applications. If We are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such Content from Your systems. If We receive information that a Non-WorkXpress.com Application hosted on an Online Service by You may violate Our External-Facing Services or applicable law or third-party rights, We may so notify You and in such event You will promptly disable such Non-WorkXpress.com Application or modify the Non-WorkXpress.com Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable the applicable Content, Online Service and/or Non-WorkXpress.com Application until the potential violation is resolved.

## 5. NON-WORKXPRESS.COM PROVIDERS, PROFESSIONAL SERVICES AND OTHER INCORPORATED AGREEMENTS

5.1. Acquisition of Non-WorkXpress.com Products and Services. We or third parties may make available (for example, through a Marketplace, or otherwise) third-party products or services, including, for example, Non-WorkXpress.com Applications and implementation and other consulting or professional services. Any acquisition by You of such Non-WorkXpress.com

products or services, and any exchange of data between You and any non-workxpress.com provider, is solely between You and the applicable non-workxpress.com provider. We do not warrant or support Non-Workxpress.com Applications or other non-workxpress.com products or services, whether or not they are designated by Us as “certified” or otherwise, except as specified in an Order Form.

5.2. Non-WorkXpress.com Applications and Your Data. If You install or enable a Non-WorkXpress.com Application for use with an Online Service, You grant Us permission to allow the provider of that Non-WorkXpress.com Application to access Your Data as required for the interoperation of that Non-WorkXpress.com Application with the Online Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-WorkXpress.com Application.

5.3. Integration with Non-WorkXpress.com Applications. The Online Services may contain features designed to interoperate with Non-WorkXpress.com Applications. To use such features, You may be required to obtain access to Non-WorkXpress.com Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-WorkXpress.com Applications. If the provider of a Non-WorkXpress.com Application ceases to make the Non-WorkXpress.com Application available for interoperation with the corresponding Online Service features on reasonable terms, We may cease providing those Online Service features without entitling You to any refund, credit, or other compensation.

#### 5.4 . Additional Terms and Conditions for Professional Services

By Purchasing Professional Services, You hereby accept, will comply with and will be responsible for Users’ compliance with our Professional Services Agreement found at <http://www.workxpress.com/legal> which is hereby incorporated into this Agreement and is in full effect upon your purchase of these Professional Services and your acceptance of this Agreement.

#### 5.5. Additional Terms and Conditions for Non-WorkXpress Applications

Additional Terms and Conditions for some Non-WorkXpress Applications can be found at <http://www.workxpress.com/legal> and are hereby incorporated into this Agreement and are in full effect upon your purchase of these Non-WorkXpress Applications and your acceptance of this Agreement.

##### 5.5.1. Email Services

Supplemental Use Policy for Bulk Email Services are hereby incorporated into this Agreement and can be found at <http://www.workxpress.com/legal>.

Supplemental Anti Spam Policy for Bulk Email Services are hereby incorporated into this Agreement and can be found at <http://www.workxpress.com/legal>.



## 5.6. Other Additional Terms and Conditions

### 5.6.1. Developer Services

Additional Terms and Conditions for use of Developer Services are found at <http://www.workxpress.com/legal> and hereby fully incorporated into this Agreement.

## 6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

6.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or if specified in an Order Form, an alternative payment method. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

6.3 Supplemental Payment Policy is Hereby Fully Incorporated Herein. You hereby accept, will comply with and will be responsible for Users' compliance with the terms and conditions of our Supplemental Payment Policy found at <http://www.workxpress.com/legal>, which are hereby fully incorporated into this Agreement and are in full effect upon Your acceptance of this Agreement.

## 7. PROPRIETARY RIGHTS AND LICENSES

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. License by Us to Use Content. We grant to You a worldwide, limited-term license, under Our applicable intellectual property rights and licenses, to use Content acquired by You

pursuant to Order Forms, subject to those Order Forms, this Agreement and the Documentation.

7.3. License by You to Host Your Data including Your Applications. You grant Us and Our Affiliates a worldwide, limited term license to host, copy, transmit and display Your Data including Your Application, and any Non-WorkXpress.com Applications and program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-WorkXpress.com Application or program code, including any intellectual property rights therein.

7.4. License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the Services.

7.4.1. Optional Marketing Support. Upon mutual agreement, such agreement not to be reasonably withheld by You, You will provide marketing support to WorkXpress including but not limited to quotes, screenshots, photographs and testimonials.

7.5. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## 8. CONFIDENTIALITY

8.1. Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content, nonpublic technologies, methodologies, tools and templates; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical

information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 8.2.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties. We warrant that (a) this Agreement and the Order Forms accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, (d) subject to Section 5.3

(Integration with Non-WorkXpress.com Applications), We will not materially decrease the functionality of the Purchased Services during a subscription term, and (e) the Purchased Services and Content will not introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT, DOCUMENTATION, SERVICES, NON-WORKXPRESS APPLICATIONS, FREE TRIALS AND BETA SERVICES ARE PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING OR NON-WORXKPRESS.COM APPLICATION PROVIDERS.

## 10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-WorkXpress.com Application or Your breach of this Agreement.

10.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content or Non-WorkXpress.com Application in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded

against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 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.

## 11. LIMITATION OF LIABILITY

11.1 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 CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, 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 CUSTOMER 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 CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. 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 AN ACTION IS 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.

## 12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions or other Services hereunder have expired or have been terminated.

12.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in

which case the pricing increase will be effective upon renewal and thereafter. Any such pricing increase pertaining specifically to licensing will not exceed 18% of the pricing for the applicable Purchased Service or Content in the immediately prior subscription term, unless the pricing in the prior term was designated in the relevant Order Form as promotional or one-time.

12.3. Termination. A party may terminate an Agreement for Purchased Services 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.

12.4. Refund or Payment upon Termination. If an Agreement for Purchased Services is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Purchased Services Order Forms, and for after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms irrespective of any cancellation provisions contained therein. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5. Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement and for an additional fee, We will make Your Data including Your Application available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data including Your Application, and will thereafter delete or destroy all copies of Your Data including Your Application in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

12.6. Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

## 13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. The laws of Pennsylvania will apply in any lawsuit arising out of or in connection with this Agreement, and the state and federal courts in Pennsylvania shall have exclusive jurisdiction over any such lawsuit.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second

business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

13.3. Agreement to Governing Law and Jurisdiction. Each party agrees to Pennsylvania as the applicable governing law without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts located in Pennsylvania.

13.4. No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other WorkXpress.com company. Subject to any permitted Assignment under Section 14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

## 14. GENERAL PROVISIONS

14.1. Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legal@workxpress.com](mailto:legal@workxpress.com).

14.3 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of Services, Content, Third Party Applications and Professional Services, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) Additional Terms or Supplementary Policies found at [www.workxpress.com/legal](http://www.workxpress.com/legal), (3) this Master Services Agreement, and (4) the Documentation.

14.4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party must terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all Purchased Service subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

14.6. Third-Party Beneficiaries. Our Content licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

14.7. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

14.9. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.