

# Terms of Service

## 27th March 2019



We are Bespoke Business Software Ltd, a limited company registered in England and Wales with registered number 10689291 and its registered office at 15 Bell Street, Reigate RH2 7AD (the “**Provider**”). These Terms of Service shall govern your (the “**Customer**”) dealings with us, the Provider, in relation to your use of Workhorse.

By subscribing to Workhorse via the Micro, Pro or Business Plus plans you agree to be bound by these Terms of Service. Your attention is particularly drawn to the liability provision at clause 14 of these Terms of Service.

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In these Terms of Service:

“**Affiliate**” means, in respect of a party, any entity directly or indirectly controlling, controlled by or under common control with that party, where “**control**” has the meaning given to it in section 1124 of the Corporation Tax Act 2010;

“**Authorised User**” means a natural person who is an officer, employee, agent or worker of, or individual contractor to, the Customer;

“**Business Day**” means a day which is not a Saturday, a Sunday or a public holiday in England;

“**Business Plus**” means the Plan described as “Business Plus” on the Website;

“**Credentials**” means the username and password or other access credentials issued by the Provider to the Customer to enable a particular Authorised User to access Workhorse;

“**Customer Data**” means the Customer’s business data which it uploads (or causes to be uploaded) to Workhorse;

“**Data Protection Legislation**” means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation: (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK); (ii) the General Data Protection Regulation ((EU) 2016/679); and (iii) any other directly applicable European Union regulation relating to privacy;

“**Defect**” means, in respect of Workhorse, failure to conform with the functionality for a particular Plan set out in these Terms of Service, the Scope of Works, the Documentation and/or on the Website;

“**Documentation**” means the Provider’s user manual for Workhorse, as updated from time to time;

“**Force Majeure Event**” means an event occurring or a set of circumstances arising after the Start Date which is beyond the reasonable control of the affected party;

“**Go Live Date**” means the date, pursuant to clause 3.2, when Workhorse is live and accessible for the Customer;

“**Implementation Services**” means the configuration services to be provided by the Provider in relation to Pro and Business Plus in accordance with the Scope of Works;

“**Micro**” means the Workhorse plan entitled “Micro” on the Website;

“**Plan**” means the particular Workhorse plan (being Micro, Pro or Business Plus) the Customer has agreed to take and the Provider has agreed to supply pursuant to clause 3.1;

“**Privacy and Cookies Policy**” means the Provider’s document describing the security measures in place in respect Workhorse, as updated from time to time;

“**Pro**” means the Workhorse plan entitled “Pro” on the Website;

“**Scope of Works**” means the written statement of works which clearly describes the particulars and requirements of the Implementation Services to be provided in relation to Pro and Business Plus in accordance with clause 2.2;

“**Service Issue**” means any of: (i) unscheduled unavailability of Workhorse; or (ii) a material deviation of the behaviour of Workhorse from the expected behaviour described in the Documentation and/or the Scope of Works;

“**Service Term**” means the period from and including the Go Live Date up to and including the date on which these Terms of Service terminate, in accordance with clause 15.1 and/or clause **Error! Reference source not found.**, and during which the Customer may access Workhorse;

“**Start Date**” means the date on which the Customer signs up online to Workhorse and has access to the relevant Plan via Workhorse;

“**Sub-Processor**” means any agent, subcontractor or third party (excluding its employees) engaged by the Provider for carrying out any processing activities on behalf of the Customer in respect of Personal Data;

“**Subscription Fee**” means the subscription fee specified on the Website for the relevant Plan, excluding VAT, in accordance with, and as varied by, these Terms of Service;

“**Support Hours**” means 9am to 5pm local UK time, each Business Day;

“**Support Services**” has the meaning given to it in clause 8 (*Support Services*);

“**VAT**” means value added tax or any comparable sales tax chargeable on the Subscription Fee;

“**Website**” means the Provider’s website for the time being hosted at <https://goworkhorse.com>; and

“**Workhorse**” means the Provider’s online business process application platform, as made available by the Provider from time to time, including the relevant Plan.

- 1.2 Clause, schedule and paragraph headings will not affect the interpretation of these Terms of Service. Wherever the words “**in particular**”, “**include**” or “**including**” are used in these Terms of Service, they are to be construed without limitation. A reference to an enacted law, a statute or a statutory instrument in these Terms of Service is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it. Any obligation in these Terms of Service on a person not to do something includes an obligation not to agree or allow that thing to be done. A reference to a person means either or both of a natural and a legal person, as the context requires.

## **2 IMPLEMENTATION SERVICES FOR PRO AND BUSINESS PLUS**

- 2.1 Before any Authorised User can use Pro or Business Plus, they must be configured via the Implementation Services to reflect the Customer's business processes and requirements.
- 2.2 The Customer will provide the Scope of Works to the Provider and the Provider shall agree the Scope of Works as soon as reasonably possible and in any event before the Implementation Services commence.
- 2.3 The Implementation Services shall be undertaken by the Provider in accordance with the information provided by the Customer in the Scope of Works. To that end, the Provider will perform the Implementation Services, and the Customer will (subject always to clause 11 (*Confidentiality and publicity*)) give the Provider all reasonable information, co-operation and assistance in so doing.
- 2.4 In its provision of the Implementation Services the Provider will be entitled to assume that:
  - 2.4.1 the information and descriptions which the Customer gives or has given to the Provider about its business processes, its systems and its requirements in respect of Workhorse are correct, complete and not misleading;
  - 2.4.2 the Customer (subject always to clause 11 (*Confidentiality and publicity*)) will promptly provide all information and access to personnel, records and systems as the Provider may reasonably require in the course of performing the Implementation Services; and
  - 2.4.3 the Customer will not, following the acceptance of the Scope of Works by the Provider in accordance with clause 2.2, materially change its requirements or business processes, nor introduce or disclose to the Provider for the first time additional requirements or business processes, which are likely to result in the Provider incurring additional time, effort or costs in order to deliver the Implementation Services.
- 2.5 The Provider will use reasonable efforts to perform the Implementation Services within two (2) weeks of the Start Date or such other time scale as agreed in the Scope of Works. However, all such time periods are intended to be indicative only, do not represent binding commitments, and time for performance will not be of the essence to the Implementation Services.
- 2.6 The Provider's time spent on the Implementation Services will be capped at twenty (20) Support Hours for Pro and forty (40) Support Hours from Business Plus. The Provider shall not spend any time in excess of these caps without the Customer's consent and any such additional time may be charged to the Customer at a rate to be agreed between the parties from time to time.

## **3 GO LIVE DATE**

- 3.1 Subject to clause 9, on the Go Live Date the Provider will provide access to the Documentation and access to Workhorse to the Customer.
- 3.2 The Go Live Date for:
  - 3.2.1 Micro shall be the Start Date; and
  - 3.2.2 Pro or Business Plus shall be the date on which the Provider notifies the Customer that it has completed the Implementation Services.

- 3.3 If, at any time following the Go Live Date, the Customer believes that Workhorse has a Defect, the Customer will inform the Provider of it, providing reasonable detail and assistance so as to enable the Provider to reproduce the Defect itself, in which case the Provider will then take all appropriate steps to correct the Defect.

#### **4 USE OF WORKHORSE**

- 4.1 The Customer hereby acknowledges that Workhorse is only for use by businesses, and warrants that it is a business, not a consumer.
- 4.2 Solely from the Go Live Date until the end of the Service Term, subject to the Customer's compliance with the provisions of this clause 4 and the other conditions of these Terms of Service, the Provider grants to the Customer a non-exclusive, non-transferable right to permit Authorised Users to use Workhorse and always solely for the Customer's own business purposes.
- 4.3 The Customer's storage on Workhorse will be capped to 10 GB for Micro, 50GB for Pro and 200GB for Business Plus. If the Customer requires any additional storage above these caps, such additional storage may be charged to the Customer at a rate to be agreed between the parties from time to time.
- 4.4 The Customer undertakes that:
- 4.4.1 it will procure that each Authorised User will comply with these Terms of Service, and the Customer will therefore be liable for the acts and omissions of each Authorised User as if they were the acts or omissions of the Customer itself;
- 4.4.2 it will not allow or suffer any Credentials to be shared or used by more than one Authorised User; and
- 4.4.3 it will keep secure and confidential, and will procure that the Authorised Users keep secure and confidential, all Credentials (and all Credentials will be the confidential information of the Provider for the purposes of clause 11 (*Confidentiality and publicity*)).
- 4.5 The Customer acknowledges that Workhorse and its underlying plans, programs, databases, schemas, structures, concepts, ideas, technologies, systems, the Documentation and other materials are the valuable intellectual property of the Provider and/or its licensors (as the case may be), and that the Subscription Fee permits a limited level of access only and does not represent the full economic value of that intellectual property. Therefore the Customer will not, and will procure that no Authorised User will:
- 4.5.1 except as may be allowed by applicable law which is incapable of exclusion by agreement between the parties:
- 4.5.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, translate, transmit or distribute all or any portion of Workhorse or the Documentation in any form and by any means, other than as expressly permitted by these Terms of Service; or
- 4.5.1.2 attempt to reverse compile, reverse engineer, disassemble, or gain any unauthorised access to or privileges in Workhorse or any of the technologies, programs and systems comprising it or supporting its operation;

- 4.5.2 access or use Workhorse in order to build a product or service which competes with it;
  - 4.5.3 permit or suffer Workhorse to be used by any person who is not an Authorised User; or
  - 4.5.4 resell or otherwise provide or make available Workhorse to third parties other than Authorised Users.
- 4.6 Except for the express limited rights granted by this clause 4, all of the Provider's rights in Workhorse (including any configuration performed by way of Implementation Services) are fully reserved. The Customer will promptly inform the Provider of any breach of this clause 4.
- 4.7 The Provider may make changes to Workhorse from time to time during the Service Term, for example to add or modify Workhorse features, to reflect changes in applicable law or to comply with a legal requirement. The Provider will use commercially reasonable efforts to ensure that such changes do not result in a materially worse Service when compared to Workhorse as of the Start Date.
- 4.8 As between the Provider and the Customer, the Customer is responsible for obtaining and operating all of the equipment, software and network connections and services necessary to access and use Workhorse, and the Provider has no liability in respect of any failure or incompatibility in any Customer or Authorised User equipment, software or network connections.

## **5 AUTHORISED USERS**

Each set of Credentials is personal to the relevant Authorised User and may not be transferred to or shared with any other Authorised User. The Customer may remove or add Credentials for Authorised Users at any time during the Service Term.

## **6 CUSTOMER DATA**

- 6.1 As between the Customer and the Provider, the Customer retains all of its right, title and interest in all of the Customer Data, and grants to the Provider a non-exclusive, royalty-free, worldwide licence to store, copy, process, distribute and otherwise deal in the Customer Data solely to the extent necessary to:
- 6.1.1 allow the Provider to provide Workhorse to the Customer and its Authorised Users; and
  - 6.1.2 derive anonymised statistical information relating to usage of Workhorse, including (but not limited to) statistics on usage patterns, types of transactions and volumes and types of data stored.
- 6.2 The Customer is solely responsible for the legality, reliability, integrity, accuracy and quality of all Customer Data, and (in particular) will ensure that it does not contain or transmit any malware, and that it does not contain anything which would breach clause 7.
- 6.3 The Provider will backup the Customer Data for thirty (30) days. In the event of a Service failure resulting in loss of or damage to Customer Data, the Customer's sole and exclusive remedy against the Provider shall be for the Provider to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by the Provider in accordance this clause. The Customer acknowledges that Workhorse offers a facility whereby the Customer can take its own

backups and that, therefore, primary responsibility for backups rests with the Customer. The Provider shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Provider to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under 12.5).

- 6.4 The Customer will have the right, at any time while it is held by the Provider, to download a copy of the Customer Data through the applicable facility in Workhorse, or as the Provider may otherwise reasonably make it available. The Provider will not withhold such copy of the Customer Data from the Customer for any reason, except to the extent that it is required to do so by law.

## **7 SERVICE ABUSE**

- 7.1 The Customer will not, and will procure that no Authorised User will:
- 7.1.1 upload to Workhorse any content or material:
    - 7.1.1.1 that is unlawful, defamatory, obscene, pornographic, abusive, harassing, or which tends to promote discrimination against any person or class of persons on the basis of a characteristic protected by applicable law; or
    - 7.1.1.2 which infringes or is reasonably likely to infringe the intellectual property rights or other rights of any person, or misappropriates or misuses the trade secrets of any person, or which is likely to result in a breach of any obligation of confidence owed to any person;
  - 7.1.2 use or attempt to use or misuse Workhorse in any way that is criminal or otherwise unlawful in any relevant jurisdiction;
  - 7.1.3 damage, disable or impair Workhorse, attack it, or use it as an attack vector or means of attack against any other system, computer or network;
  - 7.1.4 carry out or attempt performance or penetration testing against Workhorse without the Provider's prior written consent; or
  - 7.1.5 circumvent or attempt to circumvent any technical measures or restrictions controlling access to or use of Workhorse, or gain or attempt to gain any greater level of access to Workhorse than is permitted by these Terms of Service; or
  - 7.1.6 share its set of Credentials with another Authorised User or any other person.
- 7.2 Without prejudice to its other rights and remedies, the Provider reserves the right to remove any Customer Data and/or suspend the access of any Authorised User if the Provider reasonably believes that it is necessary to stop or to prevent breach of this clause 7, or to protect the integrity of Workhorse or the legitimate interests of the Provider or the Provider's other customers.

## **8 SUPPORT SERVICES**

- 8.1 From the Go Live Date until the end of the Service Term, the Provider will provide, at no additional cost to the Customer, technical support services by telephone and email, during the Support Hours ("**Support Services**").
- 8.2 Nothing in this clause 8 will oblige the Provider to:

- 8.2.1 provide any services to the Customer other than the Support Services;
- 8.2.2 resolve or work around any Service Issue arising from or caused by:
  - 8.2.2.1 any modification (whether by way of configuration, alteration, deletion, addition or otherwise) made to any part of Workhorse or the Customer Data by anyone other than the Provider, or use of Workhorse contrary to the Provider's instructions; or
  - 8.2.2.2 any equipment or third party software used in connection with Workhorse; or
- 8.2.3 make any enhancements or additions to the functionality of Workhorse.

## **9 FEES AND PAYMENT**

- 9.1 There will be no Subscription Fee payable by the Customer in relation to its use of Micro.
- 9.2 When subscribing or upgrading to Pro or Business Plus the Customer shall pay the Subscription Fee in the amount(s) and at the times agreed between the Customer and the Provider on the Website, being either in one lump sum or monthly instalments, and by credit card or direct debit.
- 9.3 The Customer will pay the Subscription Fee, or any instalment of the Subscription Fee, without deduction or set-off by a one off credit card payment or monthly direct debits.
- 9.4 The Provider will add VAT to the Subscription Fee at the applicable rate, and the Customer will pay such VAT together with the Subscription Fee.
- 9.5 Any refund to the Customer in accordance with clause 15.3 will be paid into the Customer's account (details of which the Customer shall provide as soon as reasonably practicable upon request by the Provider) as soon as reasonably practicable by the Provider.
- 9.6 Without prejudice to its other rights and remedies, the Provider will be entitled to charge late payment interest on any payments or invoices which are due but unpaid at a rate of two per cent (2%) per annum above the Provider's standard lending rate from its bank from time to time, from the due date for payment until payment is received (whether before or after judgment).

## **10 WARRANTIES**

- 10.1 The Provider warrants that:
  - 10.1.1 during the Service Term, it will operate Workhorse with reasonable skill and care and will use commercially reasonable efforts to ensure its availability during the Service Term, the Customer acknowledging that Workhorse may be unavailable from time to time, whether for maintenance or otherwise; and
  - 10.1.2 it will perform the Support Services with reasonable skill and care.
- 10.2 The warranty in clause 10.1.1 will not apply to the extent of any non-conformance which is caused by use of Workhorse contrary to the Provider's instructions, or by any modification, alteration or configuration of Workhorse by any person other than the Provider or its authorised representatives. The Customer's sole and exclusive remedy in respect of the warranty in clause 10.1.1 will be to receive Support Services.

- 10.3 The Provider gives no other warranties in respect of Workhorse or the Support Services. All representations, warranties, conditions and other terms, whether express or implied by law, by trade custom or otherwise, are hereby excluded to the fullest extent permitted by law.
- 10.4 Each party represents and warrants to the other that it has full power, authority and capacity to enter into and perform these Terms of Service, and that the person signing these Terms of Service on its behalf has full authority and permission to do so.

## **11 CONFIDENTIALITY AND PUBLICITY**

- 11.1 Each party will keep confidential, and will not use for its own purposes (other than implementation of these Terms of Service) without the prior written consent of the other, or disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority), any and all information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless that information is already public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms of Service, or subsequently comes lawfully into the possession of such party from a third party. Each party will use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 11.2 The Provider may refer to the Customer by name in its sales pitches and publicity material, provided that in doing so it does nothing to damage or bring into disrepute the Customer's reputation, brand or goodwill. Any more detailed public statements relating to these Terms of Service (including press releases) must be agreed in writing by both parties.

## **12 DATA PROTECTION AND DATA PROCESSING**

- 12.1 The Provider shall, in providing Workhorse, comply with its Privacy and Cookies Policy on its Website relating to the privacy and security of the Customer Data available on the Website or such other website as may be notified to the Customer from time to time, as such document may be amended from time to time by the Provider in its sole discretion.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.3 The parties acknowledge that:
- 12.3.1 if the Provider processes any personal data on the Customer's behalf when performing its obligations under these Terms of Service, the Customer is the data controller and the Provider is the data processor for the purposes of the Data Protection Legislation (where "Data Controller" and "Data Processor" have the meanings as defined in the Data Protection Legislation).
- 12.3.2 the Schedule to these Terms of Service sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, "Personal Data") and categories of Data Subject.
- 12.3.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to use Workhorse and for provision of the Provider's other obligations under these Terms of Service.

- 12.4 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of these Terms of Service so that the Provider may lawfully use, process and transfer the Personal Data in accordance with these Terms of Service on the Customer's behalf.
- 12.5 Without prejudice to the generality of clause 12.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under these Terms of Service:
- 12.5.1 process that Personal Data only on the written instructions of the Customer unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider to process Personal Data ("**Applicable Laws**"). Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;
  - 12.5.2 not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - 12.5.2.1 the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
    - 12.5.2.2 the data subject has enforceable rights and effective legal remedies;
    - 12.5.2.3 the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 12.5.2.4 the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 12.5.3 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 12.5.4 notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - 12.5.5 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - 12.5.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 12.
- 12.6 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include,

where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

12.7 The Provider shall:

12.7.1 subject to clause 12.8, not permit any processing of Personal Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Personal Data) without the prior written authorisation of the Customer;

12.7.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 12 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Provider and ensure each such Sub-Processor complies with all such obligations;

12.7.3 remain fully liable to the Customer under these Terms of Service for all the acts and omissions of each Sub-Processor as if they were its own; and

12.7.4 ensure that all persons authorised by the Provider or any Sub-Processor to process Personal Data are subject to a binding written contractual obligation to keep the Personal Data confidential.

12.8 The Provider shall notify the Customer (for which email shall suffice) of any Sub-Processors prior to the Go Live Date. Whereby the Customer may object in writing to any addition of a new Sub-Processor within five (5) days of such notice, provided that the Customer's objection is based on reasonable grounds relating to data protection. In such event, the parties shall discuss such concerns in good faith with a view to achieving resolution. If this is not possible, the Customer may suspend (in accordance with clause 17.2), or terminate (in accordance with clause 15) these Terms of Service.

12.9 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Terms of Service).

## **13 INDEMNITY**

The Customer will indemnify the Provider against any losses, damage, liability, costs (including reasonable legal fees) and expenses incurred by the Provider as a result of any claim brought against the Provider, its agents, subcontractors or consultants for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt or use in the performance of these Terms of Service of the Customer Data, or any other claim by any third party which arises out of or in connection with any Customer Data or any breach of clause 7 (*Service Abuse*).

## **14 LIMITATION OF LIABILITY**

14.1 Nothing in this clause 14 will limit or exclude either party's liability for:

14.1.1 death or personal injury caused by its negligence;

14.1.2 fraud or fraudulent misrepresentation; or

- 14.1.3 any other matter for which it is unlawful under English law to limit or exclude liability (as the case may be).
- 14.2 Neither party will have no liability arising under or in connection with these Terms of Service for:
  - 14.2.1 any loss of profits or revenue;
  - 14.2.2 any account of the Provider's profits or those of its Affiliates;
  - 14.2.3 any increased costs;
  - 14.2.4 any loss of anticipated savings;
  - 14.2.5 any loss of opportunity;
  - 14.2.6 any loss, destruction or corruption of data, except to the extent caused by the Provider's breach of its obligations under these Terms of Service;
  - 14.2.7 any loss of goodwill or reputation;
  - 14.2.8 any loss of management time or the cost of any increased administrative burden; or
  - 14.2.9 any indirect or consequential loss.
- 14.3 Subject to clauses 14.1 and 14.2 above, the Provider's total aggregate liability arising under or in connection with these Terms of Service will be limited to the higher of £3,750 and an amount equal to 125% of the Subscription Fee paid to the Provider by the Customer in the 12 months preceding the event (or last of the series of events) giving rise to liability.

## **15 TERM, TERMINATION AND RENEWAL**

- 15.1 These Terms of Service will commence on the Start Date and will continue until terminated in accordance with this clause 15.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate these Terms of Service on giving written notice to the other party. The Customer will be entitled to continue using Workhorse until the end of the calendar month such notice to terminate is received in, provided that they have paid the Subscription Fee in respect of that month.
- 15.3 If the Customer has pre-paid for Workhorse for a year, the Customer shall retain access to Workhorse in accordance with clause 15.2 and the Provider shall refund to the Customer the part of the Subscription Fee for the remaining months of the year.
- 15.4 Without affecting any other right or remedy available to it, the Provider may terminate these Terms of Service immediately by written notice to the Customer if the Customer fails to pay any invoice of the Provider which is due and payable by the date falling 7 days after the date on which it became due.
- 15.5 Either party may terminate these Terms of Service immediately by written notice to the other if the other party: (i) commits any material breach of these Terms of Service and (if the breach can be remedied) it fails to remedy the breach within 7 days; or (ii) commits a material breach of these Terms of Service which is not capable of being remedied.

- 15.6 Without limitation, any breach by the Customer of clauses 4 or 7 will be a material breach of these Terms of Service for the purposes of clause 15.5.
- 15.7 Either party may terminate these Terms of Service immediately if the other party ceases carrying on business in the normal course, or calls a meeting of its creditors or makes a proposal for a voluntary arrangement within the meaning of Part 1 of the Insolvency Act 1986 or for any other composition or scheme of arrangement with (or assignment for the benefit of) its creditors, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or other similar officer is appointed or a meeting is convened for the purpose of considering a resolution for its winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or it is the subject of an administration order, or is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.
- 15.8 The amount of the Subscription Fee shall be the amount indicated on the Website for the relevant Plan on the Start Date. Subject to any such agreement, the Provider may increase the Subscription Fee at any time by giving not less than three months' written notice to the Customer. Unless the Customer gives notice to the Provider to terminate these Terms of Service in accordance with the provisions of clause 15.2, the Customer will pay such increased Subscription Fee in accordance with these Terms of Service.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1 Immediately following termination of these Terms of Service (for any reason), the Customer will immediately cease, and will procure that each Authorised User immediately ceases, all use of and access to Workhorse, and will return all Documentation to the Provider.
- 16.2 Termination of these Terms of Service will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of such termination.
- 16.3 The Provider will retain a copy of the Customer Data as of the effective date of termination for 30 days from that date, in order to give the Customer an opportunity to exercise its right under clause 6.4. After such 30 day period, the Provider will, as soon as reasonably practicable, delete all copies of the Customer Data in its possession or control.

## **17 SERVICE SUSPENSION**

- 17.1 Without prejudice to its other rights and remedies, the Provider may suspend access to Workhorse (either entirely, or in respect of particular Authorised Users) if:
- 17.1.1 the Customer has failed to pay its Subscription Fee by the date falling 7 days after its due date for payment; or
- 17.1.2 the Customer or any Authorised User has done or failed to do any thing, or any circumstance has arisen, which would entitle the Provider to terminate these Terms of Service pursuant to clauses 15.5 or 15.7.
- 17.2 Without prejudice to its other rights and remedies, the Customer may suspend its access to Workhorse (either entirely, or in respect of particular Authorised Users) if it does not agree to the addition of any Sub-Processor in accordance with clause 12.8.
- 17.3 Without prejudice to the Provider's right to terminate these Terms of Service under clause 15.4 and 15.5, the Provider will reinstate access to Workhorse reasonably promptly following the Customer's rectification, to the Provider's reasonable satisfaction, of the cause of suspension.

- 17.4 This clause 17 is without prejudice to the Customer's rights in respect of the Customer Data under clause 6.4.

## **18 FORCE MAJEURE**

Neither party will be liable for failures, delays or reduced performance caused by any Force Majeure Event provided that it uses reasonable endeavours to perform regardless of the advent of the Force Majeure Event. Only those obligations of the affected party that are affected by the Force Majeure Event will be excused. Nothing in this clause 18 will excuse or relieve the Customer's obligation to pay the Subscription Fee.

## **19 GENERAL**

- 19.1 Any provision of these Terms of Service that expressly, by implication or by its nature is intended to come into or continue in force on or after termination will remain in full force and effect following such termination.
- 19.2 The parties are independent contractors. Consequently, the provisions of these Terms of Service will not, under any circumstances, be interpreted as creating any association or partnership between the parties. Neither party may bind the other in any manner whatsoever or in favour of anyone whomsoever, except in accordance with these Terms of Service.
- 19.3 The Customer will not assign or transfer all or part of its rights and/or obligations under these Terms of Service to any third party without the Provider's prior written consent, which the Provider will not unreasonably withhold or delay. The Provider may assign these Terms of Service to any of its Affiliates without the Customer's consent. The Customer will not unreasonably withhold or attach conditions to its consent to any novation of these Terms of Service to any person which acquires all or substantially all of the business and/or assets of the Provider by way of solvent acquisition or amalgamation.
- 19.4 The Provider may subcontract the performance of any of its obligations under these Terms of Service, provided that (subject to clause 18) the Provider will remain responsible for the acts and omissions of its subcontractors.
- 19.5 These Terms of Service contains the whole agreement between the parties, and supersedes all prior agreements, arrangements and understandings between the parties, relating to its subject matter. Each party acknowledges that, in entering into these Terms of Service, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to these Terms of Service or not) (each, a "**Representation**") other than as expressly set out in these Terms of Service. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation will be for breach of these Terms of Service. Nothing in this clause 19.5 will limit or exclude any liability for fraud.
- 19.6 These Terms of Service applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In particular, any terms or conditions attached to or forming part of any purchase order or other documentation issued by the Customer will be null and void and of no effect.
- 19.7 No variation of these Terms of Service will be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.8 If any provision of these Terms of Service is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties.

The nullity or adjustment of any provision of these Terms of Service will not affect the validity and enforceability of any other provision of these Terms of Service.

- 19.9 Any notice required or permitted to be given under these Terms of Service must be in writing and be delivered personally or sent by courier or pre-paid first class post or recorded delivery post to the other party at its address notified by that party for such purposes. The Provider's address for notice is 613 Kingsgate, Redhill RH1 1SG, or such other address as the Provider may notify to the Customer from time to time. The Customer's address for notice shall be the address entered by the Customer on the Website on the Start Date. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Support Hours, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 19.10 The failure of a party to enforce a provision of these Terms of Service or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision or right, or in any way affect the validity of these Terms of Service. A waiver of any claim for a breach of these Terms of Service will not operate to waive any claims in respect of any other breach.
- 19.11 These Terms of Service and all non-contractual obligations arising out of or in connection with it are governed by English law and subject to the exclusive jurisdiction of the English courts.

## **Schedule**

### **Processing, Personal Data and Data Subjects**

#### **1. Processing by the Provider**

##### **1.1 Scope and Nature**

Processing of personal data in order to provide the Customer with Workhorse.

##### **1.2 Purpose of processing:**

Delivery of services by the Provider to the Customer under these Terms of Service.

##### **1.3 Duration of the processing**

The Service Term.

#### **2. Types of Personal Data**

- First name
- Surname
- Gender
- Address
- Telephone
- Email address
- Date of Birth
- Driving Licence
- Vehicle Registration number(s)

#### **3. Categories of Data Subject**

Individual clients of the Customer.