

## Terms and Conditions for the supply of Eworks Manager Services

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

By accessing our Website or using our Software or App you confirm that you have read, understood and agreed on behalf of the entity specified in Account Activation Form (Customer), to be bound by these terms and conditions and our Acceptable Use Policy, Cookie Policy and Privacy Policy together with any other Mandatory Policies.

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

## BACKGROUND

- (A) Eworks Manager has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of job management including managing your office and field workers to help your leaders keep control of sales, planning, completing jobs and projects, purchasing, assets, inventory, invoicing and your workforce including vehicle tracking services.
- (B) The Customer wishes to use Eworks Manager's Service in its business operations.
- (C) Eworks Manager has agreed to provide, and the Customer has agreed to take and pay for Eworks Manager's Services as set out in the Account Activation Form and subject to these terms and conditions.

## Agreed terms

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

<b>Account Activation Form:</b>		means the pro forma form provided to the Customer online via the Website completed by the Customer listing the Customer details and confirming the Services and the number of Authorised Users selected by the Customer as may be updated by the Customer from time to time .
<b>Additional Services:</b>		means any additional services requested by the Customer by way of a variation to an existing Account Activation Form or any online selection page accessible to the Customer which enables the purchase of additional User Subscriptions or additional Services.

<b>Agreement:</b>	these terms and conditions together with the Account Activation Form as amended from time to time.
<b>App:</b>	the mobile phone application that allows the Authorised User to use the Services on an Android or iPhone mobile device only.
<b>Authorised Users:</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2(d).
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Change of Control</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
<b>Confidential Information:</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:</b>	as defined in the Data Protection Legislation.
<b>Customer:</b>	as set out in the Account Activation Form.
<b>Customer Data:</b>	the data inputted by the Customer, Authorised Users, or Eworks Manager on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>Data Protection Legislation:</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Documentation:</b>	the document made available to the Customer by Eworks Manager online via <a href="http://www.eworksmanager.com">www.eworksmanager.com</a> or such other web address notified by Eworks Manager to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
<b>Effective Date:</b>	the date of this Agreement as set out in the Account Activation Form and or as defined in clause 2.3.
<b>Equipment:</b>	the equipment as set out in the Documentation and the Account Activation Form.

<b>Eworks:</b>	Eworks Manager Limited incorporated and registered in England and Wales with company number 08916129 whose registered office is at 2-4 Euston Grove, Prenton, Birkenhead.
<b>Initial Subscription Term:</b>	the initial term of this Agreement is as set out in the account Activation Form.
<b>Mandatory Policies:</b>	Eworks Manager's business policies made available to the Customer at <a href="http://www.eworksmanager.com">www.eworksmanager.com</a>
<b>Managed Subscription Screen</b>	The online section of the Website for each Customer that details all of the Customer current Services and/or User Subscriptions which is only accessible by the Super Admin User.
<b>Normal Business Hours:</b>	9.00 am to 5.00 pm local UK time, each Business Day.
<b>Renewal Period:</b>	the period described in clause 15.1.
<b>Services:</b>	the subscription services provided by Eworks Manager to the Customer under this Agreement via <a href="http://www.eworksmanager.com">www.eworksmanager.com</a> or any other website notified to the Customer by Eworks Manager from time to time, and via the App as more particularly described in the Documentation.
<b>Software:</b>	the online software applications provided by Eworks Manager as part of the Services.
<b>Super Admin User</b>	The representative nominated by the Customer to have access to the Super Admin and Managed Subscription Screen sections of the Customer's account on the Website who has been granted the access required to change services or Subscription Users and deactivate Services and Subscription Users as required by the Customer but subject always to these terms and conditions.
<b>Subscription Fees:</b>	the subscription fees payable by the Customer to Eworks Manager for the User Subscriptions, as set out in the Account Activation Form.
<b>Subscription Term:</b>	has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
<b>Support Services Policy:</b>	Eworks Manager's policy for providing support in relation to the Services as made available at <a href="http://www.eworksmanager.com">www.eworksmanager.com</a> or such other website address as may be notified to the Customer from time to time.
<b>Trial Period</b>	means any 14-day trial that permits a Customer to use the Services without purchasing a full subscription to the Services.
<b>UK Data Protection Legislation:</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

<b>User Subscriptions:</b>	the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.
<b>Virus:</b>	anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>Website:</b>	our website situated at <a href="http://www.eworksmanager.com">www.eworksmanager.com</a> or any other website owned, managed, used, operated or controlled by Eworks Manager details of which are provided to you from time to time.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. Basis of Agreement**

- 2.1 The Account Activation Form constitutes an offer by the Customer to purchase Services in accordance with this Agreement.
- 2.2 The Account Activation Form shall only be deemed to be accepted when the Customer has pressed the start subscription now button on the Account Activation Form and clicked to accept the Terms and Conditions and Eworks Manager issues written acceptance of the Account Activation Form via a confirmation welcome e mail.
- 2.3 The Agreement will commence once the Account Activation Form is completed and the Customer has pressed the start subscription now button on the Account Activation Form and clicked to accept the Terms and Conditions and the confirmatory e mail is provided by Eworks Manager, or when the Customer commences use of any of the Services whichever is the earlier (Effective Date).
- 2.4 These Terms and Conditions and the Account Activation Form apply to the Agreement 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.
- 2.5 Eworks Manager shall provide the Customer with access to the Software and provide the Services through its cloud-based services via the Website using your browser on a PC or via the App once the Customers application for Services has been accepted by Eworks Manager in accordance with this clause 2.
- 2.6 Where payment of any part of the Subscription Fee is due before access to the Software or use of the Services, Eworks Manager may withhold use or performance of the Service or any part, until such payment has been received.
- 2.7 If Eworks Manager is delayed from performing any of its obligations by reason of any fault or negligence of the Customer, then the Customer shall pay Eworks Manager all reasonable and demonstrable costs attributable to such delay.
- 2.8 If the Customer has elected to take a Trial Period, then any Services provided during the Trial period shall be subject to these Terms and Conditions.

## **3. User Subscriptions**

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Eworks Manager hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Eworks Manager within 5 Business Days of Eworks Manager's written request at any time or times;
- (e) it shall permit Eworks Manager or Eworks Manager's designated auditor to audit the Services in order to establish the name and password of each Authorised User and Eworks Manager's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Eworks Manager's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Eworks Manager's other rights, the Customer shall promptly disable such passwords and Eworks Manager shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 3.2(e) reveal that the Customer has underpaid Subscription Fees to Eworks Manager, then without prejudice to Eworks Manager's other rights, the Customer shall pay to Eworks Manager an amount equal to such underpayment as calculated in accordance with the process set out in the Account Activation Form within 7 Business Days of the date of the relevant audit; and
- (h) each Authorised User must always use the correct operating software, ensure that location services are always switched on at all times on any mobile device and ensure stable network connections at all times.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;

- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Eworks Manager reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative Works Manager from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Eworks Manager.

3.6 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

#### **4. Additional User Subscriptions and Additional Services**

- 4.1 Subject to clause 4.2 and clause 4.4 and clause 4.4, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and/or additional Services in excess of the number and type set out in the initial Account Activation Form and Eworks Manager shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 4.2 If the Customer wishes to purchase additional User Subscriptions and/or additional Services, the Customer shall select the number of additional User Subscriptions and/or additional Services via the Account Activation Form or any other such selection page on the website. Eworks Manager shall then automatically upon receipt of such request activate the additional User Subscriptions and/or access to additional Services and update the details on the Customer's account.
- 4.3 All additional Users and/or additional Services will automatically show on the Customer's Account and details shall be provided in the Managed Subscription Screen section of the Website. The Customer shall be responsible and liable for the monitoring and selection of any Additional Users and/or additional Services by any Authorised User or employee or other representative of the Customer. It is the responsibility of the Customer and the Super Admin User to monitor the User Subscriptions and Services included in the Managed Subscription Screen section of the Website and take active steps to deactivate any User Subscriptions or Services no longer required by the Customer.
- 4.4 The Customer shall, pay to Eworks Manager the relevant fees for such additional User Subscriptions and/or additional Services as set out in the account Activation Form and Managed Subscription Screen and the Website.

#### **5. Services**

- 5.1 Eworks Manager shall, during the Subscription Term, provide the Services and make available the Documentation and Equipment to the Customer on and subject to the terms of this Agreement.
- 5.2 Eworks Manager shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of which you will be notified; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Eworks Manager has used reasonable endeavours to give the Customer at least as much notice as possible in advance.
- 5.3 Eworks Manager will, as part of the Services and in consideration of the fees set out in the Account Activation Form, provide the Customer with Eworks Manager's standard customer support services during Normal Business Hours in accordance with Eworks Manager's Support Services Policy in



effect at the time that the Services are provided. Eworks Manager may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Eworks Manager's then current rates.

## **6. Customer Data**

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 Eworks Manager shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at [www.eworksmanager.com](http://www.eworksmanager.com) or such other website address as may be notified to the Customer from time to time, as such document may be amended by Eworks Manager in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Eworks Manager shall be for Eworks Manager to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Eworks Manager in accordance with the archiving procedure described in its Back-Up Policy. Eworks Manager 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 Eworks Manager to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 6.9).
- 6.3 Eworks Manager shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at [www.eworksmanager.com](http://www.eworksmanager.com) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Eworks Manager in its sole discretion.
- 6.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 6.5 The parties acknowledge that:
- (a) if Eworks Manager processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and Eworks Manager is the processor for the purposes of the Data Protection Legislation.
  - (b) Eworks Manager's privacy policy sets out the scope, nature and purpose of processing by Eworks Manager, the duration of the processing and the types of personal data and categories of data subject.
  - (c) 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 carry out the Services and Eworks Manager's other obligations under this Agreement.

- 6.6 Without prejudice to the generality of clause 6.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Eworks Manager for the duration and purposes of this Agreement so that Eworks Manager may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.
- 6.7 Without prejudice to the generality of clause 6.4, Eworks Manager shall, in relation to any personal data processed in connection with the performance by Eworks Manager of its obligations under this Agreement:
- (a) process that personal data only on the documented written instructions of the Customer unless Eworks Manager is required by the laws of any member of the European Union or by the laws of the European Union applicable to Eworks Manager and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Eworks Manager is relying on Applicable Laws as the basis for processing personal data, Eworks Manager shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Eworks Manager from so notifying the Customer;
  - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (i) the Customer or Eworks Manager has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) Eworks Manager complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) Eworks Manager complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (c) 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;
  - (d) notify the Customer without undue delay on becoming aware of a personal data breach;
  - (e) subject to clause 15.3 (c) 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 for these purposes the term "delete" shall mean to put such data beyond use); and

- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 6\_ and immediately inform the Company if, in the opinion of Eworks Manager, an instruction infringes the Data Protection Legislation.

- 6.8 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).
- 6.9 The Customer consents to Eworks Manager appointing a named third-party processor as a third-party processor of personal data under this Agreement. Eworks Manager confirms that it has entered or (as the case may be) will enter with the third-party processor into a written Agreement substantially on that third party's standard terms of business and in either case which Eworks Manager confirms shall reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Eworks Manager, Eworks Manager shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.
- 6.10 Either party may, at any time on not less than 30 days' notice, revise this clause 6 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 this Agreement).
- 6.11 The Customer Data obtained via use of the vehicle tracking service shall only be retained by Eworks Manager for a period of 12 months from the date of collection unless the Customer requests a longer storage period and which Eworks Manager agrees to in writing.

## **7. Third Party Providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Eworks Manager makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Eworks Manager. Eworks Manager recommends that the Customer

refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Eworks Manager does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **8. Eworks Obligations**

- 8.1 Eworks Manager undertakes that the Services will be performed substantially in accordance with the Documentation , as set out on the Website and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Eworks Manager's instructions, or modification or alteration of the Services, the Software or the App by any party other than Eworks Manager or Eworks Manager's duly authorised contractors or agents or as a result of any issues encountered with network connections, utility connections, GPS systems, IT systems or computer programmes. If the Services do not conform with the foregoing undertaking, Eworks will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, Eworks Manager:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation or Equipment and/or the information obtained by the Customer through the Services or Equipment will meet the Customer's requirements; and
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, any delays or failures arising out of third-party GPS systems and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 This Agreement shall not prevent Eworks Manager from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 8.4 If the Eworks Manager's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Eworks Manager shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Eworks Manager's performance of any of its obligations;

- (b) the Eworks Manager shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Eworks Manager's failure or delay to perform any of its obligations as set out in this clause 8.4; and
- (c) the Customer shall reimburse the Eworks Manager on written demand for any costs or losses sustained or incurred by the Eworks Manager arising directly or indirectly from the Customer Default.

## **9. Customer's Obligations**

The Customer shall:

- (a) provide Eworks Manager with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by Eworks Manager; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services and any Equipment installation;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Eworks Manager may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation and Equipment in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) shall be responsible for the selection and monitoring of any Services or additional User Subscriptions by any employee, Authorised User or representative of the Customer and for the payment of additional Subscription Fees;
- (f) shall ensure that they provide and maintain a valid form of payment on the Works Manager system at all times and the Customer acknowledges that any failure to do so may result in cancellation of the Services and deactivation of your Customer account;
- (g) obtain and shall maintain all necessary licences, consents, and permissions necessary for Eworks Manager, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services or the installation of the Equipment;
- (h) ensure that its network and systems comply with the relevant specifications provided by Eworks Manager from time to time and be fully responsible for all applications, data, interfaces, hardware and equipment within its control;

- (i) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Eworks Manager's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet or any GPS systems and in the case of mobile devices ensuring the App works on such devices;
- (j) be responsible for configuring their information technology, internet connection, computer programmes and platform to access the Website and use the App and must use their own up to date virus protection software;
- (k) use Eworks Manager approved installers for any Equipment used in the provision of the Services; and
- (l) not misuse the Website or the Software by knowingly introducing Viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Website, the server on which the Website is stored, or any server, computer or database connected to the Website. The Customer must not attack the Website via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, the Customer would commit a criminal offence. Eworks Manager will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, the Customer's right to use the Website will cease immediately.

## **10. Charges and Payment**

- 10.1 The Customer shall pay the Subscription Fees to Eworks Manager for the User Subscriptions and the Services in accordance with this clause 10 and as set out in and in accordance with the details set out in the Account Activation Form.
- 10.2 The Customer shall on or before the Effective Date provide to Eworks Manager valid, up-to-date and complete credit card details or complete the Direct Debit Mandate provided by Eworks Manager to the Customer or approved purchase order information that is acceptable to Eworks Manager and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
- (a) its credit card details to Eworks Manager, the Customer hereby authorises Eworks Manager to bill such credit card:
    - (i) on the 15th day of the month for the Subscription Fees payable in arrears respect of the Initial Subscription Term; and
    - (ii) subject to clause 15.1, on the 15<sup>th</sup> day of each month for the Subscription Fees payable in respect of the next Renewal Period;

- (b) a completed Direct Debit Mandate the customer hereby authorises Eworks Manager to collect the Subscription Fees in accordance with the Direct Debit mandate in arrears on the 15<sup>th</sup> day of each month; and
- 10.3 If Eworks Manager has not received payment or in the event of a default payment under clause 10.2 above, and without prejudice to any other rights and remedies of Eworks Manager:
  - (a) Eworks Manager may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Eworks Manager shall be under no obligation to provide any or all of the Services while the Subscription Fees concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Eworks Manager's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
  - (c) If Subscription Fees remain outstanding before the end of the calendar month in which such Subscription Fees are due then the Customers user profile and Customer Data shall be deleted from EWorks Manager system.
- 10.4 All amounts and fees stated or referred to in this Agreement:
  - (a) shall be payable in pounds sterling or such other currency as set out in the account Activation Form;
  - (b) are, subject to clause 14.3(b), non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to Eworks Manager's invoice(s) at the appropriate rate.
- 10.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Eworks Manager shall charge the Customer, and the Customer shall pay, Eworks Manager's the current excess data storage fees. Eworks Manager's excess data storage fees current as at the Effective Date, are set out in the Account Activation Form.
- 10.6 Eworks Manager shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.2 and clause c4.4, the support fees payable pursuant to clause 5.3 and/or the excess storage fees payable pursuant to clause 10.5 at the start of each Renewal Period upon 30 days' prior notice to the Customer and the Account Activation Form shall be deemed to have been amended accordingly.
- 10.7 Eworks Manager operate a 7-day countdown online warning system for each Customer notifying the Customer when there is no current valid form of payment on the Eworks Manager system and requesting the Customer contacts Eworks Manager to resolve the payment issue otherwise the Customer account will be deactivated and daily contact thereafter showing the number of days remaining before Customer account deactivation will occur. On the 7th day without any liability to

the Customer Eworks Manager shall deactivate the Customer account and the Services and access by the Authorised Users and the licence granted at clause 3.1 shall terminate with immediate effect. If payment of outstanding Subscription Fees or any other sums due to Eworks Manager from the Customer are not received all Customer Data will be removed from the Eworks Manager Website and system.

## **11. Proprietary Rights**

- 11.1 The Customer acknowledges and agrees that Eworks Manager and/or its licensors own all intellectual property rights in the Software, Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or the Documentation.
- 11.2 Eworks Manager confirms that it has all the rights in relation to the Software, Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement save for any parts of the Services that include or rely upon software, services or documentation or any Equipment provided or owned by any third party

## **12. Confidentiality and compliance with policies**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.



- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Eworks Manager's Confidential Information.
- 12.7 Eworks Manager acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.9 The above provisions of this clause 12 shall survive termination of this Agreement, however arising.
- 12.10 In performing its obligations under this Agreement, the Customer shall comply with the Mandatory Policies.

### **13. Indemnity**

- 13.1 The Customer shall defend, indemnify and hold harmless Eworks Manager against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software, Services, App and/or Documentation and/or the Equipment, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) Eworks Manager provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense.
- 13.2 Eworks Manager shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services, App or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) Eworks Manager is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to Eworks Manager in the defence and settlement of such claim, at Eworks Manager's expense; and
  - (c) Eworks Manager is given sole authority to defend or settle the claim; and
- 13.3 In the defence or settlement of any claim, Eworks Manager may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Eworks Manager, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation or Equipment by anyone other than Eworks Manager; or
  - (b) the Customer's use of the Services or Documentation or Equipment in a manner contrary to the instructions given to the Customer by Eworks Manager; or
  - (c) the Customer's use of the Services or Documentation or Equipment after notice of the alleged or actual infringement from Eworks Manager or any appropriate authority; or
  - (d) the use by the Customer of any Software, App, Services or Documentation or Equipment or any part thereof that includes or relies upon any software, services or documentation or equipment provided or owned by any third party.
- 13.5 The foregoing and clause 14.3(b) states the Customer's sole and exclusive rights and remedies, and Eworks Manager's (including Eworks Manager's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

#### **14. Limitation of liability**

- 14.1 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Software, Services, App and the Documentation and the Equipment by the Customer, and for conclusions drawn from such use. Eworks Manager shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Eworks Manager by the Customer in connection with the Services, Software, App, Documentation or Equipment, or any actions taken by Eworks Manager at the Customer's direction or any failure or delays in any internet services, mobile or App services, GPS systems, operating software or network or utility connections or any failure or malfunction of or arising out of or in connection with the Equipment or its use;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services, Software, App and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in this Agreement excludes the liability of Eworks Manager:

- (a) for death or personal injury caused by Eworks Manager's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) Eworks Manager shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement even if foreseeable and Eworks Manager has been notified of this possibility;
- (b) Eworks Manager's total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement, the Software, the Services, the Equipment or the App shall be limited to the total Subscription Fees, paid by the Customer for the User Subscriptions during the month immediately preceding the date on which the claim arose in respect of one incident or any series of connected incidents; and
- (c) all advice, support or recommendations provided to the Customer by Eworks Manager is made on the basis of information provided to Eworks Manager or generally available in the public domain. It does not form part of the Services nor amount to any warranty by Eworks Manager and shall not give rise to any claim or liability for loss and damage arising out of or in connection with the provision of such advice, support or recommendation.

## 15. Term and Termination

15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 30 days (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2 Without affecting any other right or remedy available to it, Eworks Manager may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the Customer fails provide a valid form of payment in accordance with clause 10 or fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (b) The Customer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (c) the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against,

the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(d) to clause 15.2(j) (inclusive);
- (l) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) there is a change of control of the Customer only

15.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, Software, Equipment and/or the Documentation;
- (b) the Customer shall return and make no further use of any Equipment, property, Documentation and other items (and all copies of them) belonging to Eworks Manager;
- (c) Eworks Manager may destroy or otherwise dispose of any of the Customer Data in its possession within 60 days of termination for whatever reason and it is the Customers responsibility to download or retrieve any Customer Data upon termination; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

**16. Force majeure**

Eworks Manager shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Eworks Manager or any other party), failure of a utility service or transport or telecommunications or GPS network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Eworks or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**17. Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the documents referred to, the provisions in the main body of this Agreement shall prevail.

**18. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**20. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**21. Severance**

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.2 If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**22. Entire Agreement**

22.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**23. Assignment**

- 23.1 The Customer shall not, without the prior written consent of Eworks Manager, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 23.2 Eworks Manager may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**24. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**25. Third party rights**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**26. Notices**

- 26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am 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. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

**27. Governing law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**28. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).