

Terms of Service



25 August 2022

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**”, or “**we/us**”). These Terms of Service shall govern your (the “**Customer**” or “**you**”) dealings with us, the Provider, in relation to your use of Workhorse and are incorporated into your Order Form for Workhorse by reference.

By subscribing to Workhorse you agree to be bound by the Agreement. Your attention is particularly drawn to the liability provision at clause 13 of these Terms of Service.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms of Service (in addition to words and expressions defined elsewhere herein):

“**Agreement**” means the agreement between the Customer and the Provider in accordance with the Order Form and these Terms of Service (including any predecessor version thereof or as subsequently amended under clause 18.7);

“**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;

“**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;

“**Customer Functional Requirements**” means any functional requirements for Workhorse specified by the Customer and as are agreed to be provided by the Provider as may exceed the functionality and system performance as set out in the Statement of Standard Service Level;

“**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); (iii) 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; and (iv) any other directly applicable European Union regulation relating to privacy;

“**Defect**” means any failure to meet the Statement of Standard Service Level or to perform to a level which is required for any Customer Functional Requirements and/or for any Extensions to function;

“**Extension**” means any code and/or database changes delivered by the Provider to fulfil specific Customer Functional Requirements commissioned by the Customer either after the Applicable Date or after the Start Date;

“**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 on which the Implementation Services have been fully performed by the Provider as evidenced by the Customer’s ability to access the Provider’s live servers;

“Implementation Fee” means the implementation fee (if any) set out in the Order Form;

“Implementation Services” means the implementation services (if any) to be provided by the Provider set out in the Statement of Standard Service Level and the Customer Functional Requirements;

“Knowledge Base” means the Provider’s guidance notes, tips and update notifications for Workhorse made available to Authorised Users, and any user forum and contributions thereto made by customers;

“Order Form” means the document setting out the Subscription Fee, Start Date and (if applicable) Implementation Fee for Workhorse as signed by the Customer (which will attach a statement of any Customer Functional Requirements and contain a link to the Statement of Standard Service Level), as countersigned by the Provider confirming the Customer’s offer to contract with the Provider on these Terms of Service;

“Privacy & Cookies Policy” means the Provider’s policy on privacy and the use of cookies in respect of Workhorse as published on its website at www.goworkhorse.com or such other website as may be notified to the Customer from time to time, as updated from time to time;

“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 Statement of Standard Service Level and/or the Customer Functional Requirements;

“Service Term” means the period from and including the Start Date up to and including the date on which the Agreement terminates, in accordance with clause 14 of these Terms of Service, and during which the Customer may access Workhorse;

“Service Level” means:

(a) for any Customer who was a user of Workhorse prior to the relationship between the parties becoming subject to these Terms of Service (including any predecessor version thereof or as subsequently amended under clause 18.7) (the **“Applicable Date”**), (i) such functionality and system performance as the Customer was receiving from the Provider immediately prior to the Applicable Date and (ii) as may be supplemented by any Extensions ordered on or after the Applicable Date; and

(b) for any Customer for whom the Start Date falls on or after 1 May 2022, (i) such functionality and system performance as is set out in the Statement of Standard Service Level and (ii) as is required to meet the Customer Functional Requirements (if any) and (iii) as may be supplemented by any Extensions;

“Start Date” means the date of the first onboarding workshop provided by the Provider to the Customer;

“Statement of Standard Service Level” means the version of such document in force on the Applicable Date or the Start Date, as the case may be, describing the key features of Workhorse viewable by the Customer in its then current version by following the link set out in the Order Form, and any revisions of such statement published in accordance with clauses 3.7 and/or 16.5;

“Storage Amount” means the storage amount specified in the Order Form;

“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 in the Order Form, excluding VAT, in accordance with, and as varied by, these Terms of Service (including as set out in clauses 3.2 and 8.5);

“Subscription Month” means any calendar month for which the Subscription Fee has been paid or is due to be collected by direct debit, the first Subscription Month for which the Subscription Fee is due being the month in which the Start Date occurs;

“**Support Hours**” means the hours per Subscription Month specified in the Order Form for which the Customer is able to access Support Services within the Subscription Fee;

“**Support Services**” means the provision of technical support services by email during the Provider’s normal hours of business as defined by the Statement of Standard Service Level;

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

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

“**Workhorse**” means (subject to clause 16.4) the code and database as existing on the Applicable Date constituting the Provider’s business processes management application typically comprising of an order and inventory management system, and any Customer Functional Requirements and any Extensions specified in the Order Form.

- 1.2 Clause, schedule and paragraph headings will not affect the interpretation of the Agreement. Wherever the words “**in particular**”, “**include**” or “**including**” are used in the Agreement, they are to be construed without limitation. A reference to an enacted law, a statute or a statutory instrument in the Agreement 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 the Agreement 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. A reference to a clause is to a clause of these Terms of Service.

2 START DATE

- 2.1 Subject to clause 8, on the Start Date the Provider will provide access to Workhorse to the Customer.
- 2.2 For any Customer who was a user of Workhorse prior to the Applicable Date, clause 2.1 shall apply as from the Applicable Date and other references in these Terms of Service to the Start Date shall similarly be deemed to apply from the Applicable Date.

3 USE OF WORKHORSE

- 3.1 The Customer hereby acknowledges that Workhorse is only for use by businesses, and warrants that it is a business, not a consumer.
- 3.2 Solely from the Start Date until the end of the Service Term, subject to the Customer’s compliance with the provisions of this clause 3 and the other conditions of the Agreement, the Provider grants to the Customer a non-exclusive, non-transferable right to permit such number of Authorised Users as is set out in the Order Form (or as is subsequently agreed as provided below) to use Workhorse and always solely for the Customer’s own business purposes. If the Customer requires additional Authorised Users after the Start Date, the Subscription Fee shall be increased by an amount to be agreed between the parties from time to time.
- 3.3 The Customer’s storage on Workhorse will be capped to the Storage Amount. 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.
- 3.4 The Customer undertakes that:
- 3.4.1 it will procure that each Authorised User will comply with the Agreement, 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;
- 3.4.2 it will not allow or suffer any Credentials to be shared or used by more than one Authorised User; and

- 3.4.3 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 10 (*Confidentiality and publicity*)).
- 3.5 The Customer acknowledges that Workhorse and its underlying plans, programs, databases, schemas, structures, concepts, ideas, technologies, systems and materials relating thereto (in whatever form) 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:
 - 3.5.1 except as may be allowed by applicable law which is incapable of exclusion by agreement between the parties:
 - 3.5.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, translate, transmit or distribute all or any portion of Workhorse in any form and by any means, other than as expressly permitted by the Agreement; or
 - 3.5.1.2 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;
 - 3.5.2 access or use Workhorse in order to build a product or service which competes with it;
 - 3.5.3 permit or suffer Workhorse to be used by any person who is not an Authorised User; or
 - 3.5.4 resell or otherwise provide or make available Workhorse to third parties other than Authorised Users.
- 3.6 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in Workhorse, the Implementation Services and the Support Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of Workhorse, the Implementation Services and the Support Services. Except for the express limited rights granted by this clause 3, all of the Provider's rights in Workhorse, the Implementation Services and the Support Services (including any configuration performed by way of any Implementation Services) are fully reserved. The Customer will promptly inform the Provider of any breach of this clause 3.
- 3.7 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 and the Customer acknowledges that such modifications may result in changes to the Statement of Standard Service Level. The Provider will use commercially reasonable efforts to ensure that such changes do not result in a materially worse Service Level when compared to Workhorse as of the Applicable Date or the Start Date, as the case may be, and will update the Statement of Standard Service Level.
- 3.8 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.

4 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 up the maximum number thereof set out in the Order Form at any time during the Service Term.

5 CUSTOMER DATA

5.1 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:

5.1.1 allow the Provider to provide Workhorse to the Customer and its Authorised Users; and

5.1.2 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.

5.2 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 6.

5.3 Whilst in the on-boarding phase, prior to the Go-Live Date, the Provider will backup the Customer Data for seven (7) days. From the Go-Live Date and during the Service Term, the Provider will backup the Customer Data for thirty (30) days. In the event of a Service Issue 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 with this clause. 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 clause 11.5).

5.4 The Customer will have the right, at any time while it is held by the Provider, to a copy of the Customer Data. 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.

6 SERVICE ABUSE

6.1 The Customer will not, and will procure that no Authorised User will:

6.1.1 upload to Workhorse any content or material:

6.1.1.1 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

6.1.1.2 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;

6.1.2 use or attempt to use or misuse Workhorse in any way that is criminal or otherwise unlawful in any relevant jurisdiction;

- 6.1.3 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;
 - 6.1.4 carry out or attempt performance or penetration testing against Workhorse without the Provider's prior written consent;
 - 6.1.5 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 the Agreement; or
 - 6.1.6 share its set of Credentials with another Authorised User or any other person.
- 6.2 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 6, or to protect the integrity of Workhorse or the legitimate interests of the Provider or the Provider's other customers.

7 SUPPORT SERVICES

- 7.1 Subject to clause 7.3, from the Go-Live Date until the end of the Service Term, the Provider will provide the Support Services to the Customer for the Support Hours.
- 7.2 Nothing in this clause 7 will oblige the Provider to:
- 7.2.1 provide any services to the Customer other than the Support Services;
 - 7.2.2 provide any Support Services or other services for any time that shall exceed the Support Hours;
 - 7.2.3 resolve or work around any Service Issue arising from or caused by:
 - 7.2.3.1 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
 - 7.2.3.2 any equipment or third-party software used in connection with Workhorse; or
 - 7.2.4 make any enhancements or additions to the functionality of Workhorse.
- 7.3 If the Customer has not used all its Support Hours for a Subscription Month following the Subscription Month during which the Go-Live Date occurs, the Customer may carry such hours forward for a maximum of two Subscription Months. Any Support Hours not used but carried forward shall lapse at the end of the second month after the Subscription Month in which they accrued and all unused Support Hours shall automatically lapse at the end of the Agreement.
- 7.4 If, at any time following the Start 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.

8 FEES AND PAYMENT

- 8.1 Unless otherwise specified in the Order Form, the Customer will pay the Subscription Fee, or any instalment of the Subscription Fee, without deduction or set-off to the Provider as and when demanded by monthly direct debits to the bank account specified by the Provider from time to time.
- 8.2 The Customer will pay the Implementation Fee (if any), without deduction or set-off to the Provider as and when demanded by direct debit.
- 8.3 The Provider will add VAT to the Subscription Fee and the Implementation Fee (if any) at the applicable rate, and the Customer will pay such VAT together with the Subscription Fee and the Implementation Fee (if any).
- 8.4 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).
- 8.5 The Provider may increase the Subscription Fee at any time to reflect increases in the Retail Prices Index (or any index replacing it) and/or in its operating costs (and will typically do so once a year) by giving not less than one month's written notice to the Customer. Unless the Customer gives notice to the Provider to terminate the Agreement in accordance with the provisions of clause 14.2 during such notice period, the Customer will pay such increased Subscription Fee from the first Subscription Month following the end of such notice period in accordance with the Agreement.
- 8.6 If the Customer requires any Extensions after the Start Date which the Provider is willing to supply the costs therefor shall be separately agreed between the Customer and the Provider and may consist of an additional Implementation Fee and will result in an increase in the Subscription Fee. Such additional costs shall be recorded by way of a further Order Form.

9 WARRANTIES

- 9.1 The Provider warrants that:
 - 9.1.1 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 in accordance with the Statement of Standard Service Level, the Customer acknowledging that Workhorse may be unavailable from time to time, whether for maintenance or otherwise; and
 - 9.1.2 it will perform the Support Services with reasonable skill and care.
- 9.2 The warranty in clause 9.1.1 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 9.1.1 will be to receive Support Services.
- 9.3 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.
- 9.4 Each party represents and warrants to the other that it has full power, authority and capacity to enter into and perform the Agreement, and that the person signing the Agreement on its behalf has full authority and permission to do so.

10 CONFIDENTIALITY AND PUBLICITY

- 10.1 Each party will keep confidential, and will not use for its own purposes (other than implementation of the Agreement) 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 the Agreement, 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.
- 10.2 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 the Agreement (including press releases) must be agreed in writing by both parties.

11 DATA PROTECTION AND DATA PROCESSING

- 11.1 The Provider shall, in providing Workhorse, comply with the Privacy & Cookies Policy, as such document may be amended from time to time by the Provider in its sole discretion.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.3 The parties acknowledge that:
- 11.3.1 if the Provider processes any personal data on the Customer's behalf when performing its obligations under the Agreement, 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);
 - 11.3.2 the Schedule to the Agreement sets out or references 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; and
 - 11.3.3 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 the Agreement.
- 11.4 Without prejudice to the generality of clause 11.1 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 the Agreement so that the Provider may lawfully use, process and transfer the Personal Data in accordance with the Agreement on the Customer's behalf.
- 11.5 Without prejudice to the generality of clause 11.1 the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Agreement:

- 11.5.1 process that Personal Data only on the written instructions of the Customer unless the Provider is required by law applicable in any part of the United Kingdom or 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;
 - 11.5.2 not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - 11.5.2.1 the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
 - 11.5.2.2 the data subject has enforceable rights and effective legal remedies;
 - 11.5.2.3 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
 - 11.5.2.4 the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data,

in which event the Customer shall be deemed to have agreed to the Privacy & Cookies Policy permitting any such transfer;
 - 11.5.3 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;
 - 11.5.4 notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 11.5.5 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
 - 11.5.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- 11.6 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).
- 11.7 The Provider shall:
- 11.7.1 subject to clause 11.8 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;

- 11.7.2 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 11 (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;
 - 11.7.3 remain fully liable to the Customer under the Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and
 - 11.7.4 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.
- 11.8 The Provider shall notify the Customer (for which email shall suffice) of any Sub-Processors prior to the Start Date or promptly upon any change of Sub-Processor. 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 16.1.3, or terminate (in accordance with clause 14) the Agreement.
- 11.9 Either party may, at any time on not less than 30 days' notice, revise this clause 11 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).

12 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 the Agreement 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 6 (*Service Abuse*).

13 LIMITATION OF LIABILITY

- 13.1 Nothing in this clause 13 will limit or exclude either party's liability for:
- 13.1.1 death or personal injury caused by its negligence;
 - 13.1.2 fraud or fraudulent misrepresentation; or
 - 13.1.3 any other matter for which it is unlawful under English law to limit or exclude liability (as the case may be).
- 13.2 Subject to clause 12, neither party will have any liability arising under or in connection with the Agreement for:
- 13.2.1 any loss of profits or revenue;
 - 13.2.2 any account of the Provider's profits or those of its Affiliates;
 - 13.2.3 any increased costs;
 - 13.2.4 any loss of anticipated savings;

- 13.2.5 any loss of opportunity;
- 13.2.6 any loss, destruction or corruption of data, except to the extent caused by the Provider's breach of its obligations under the Agreement;
- 13.2.7 any loss of goodwill or reputation;
- 13.2.8 any loss of management time or the cost of any increased administrative burden; or
- 13.2.9 any indirect or consequential loss.

13.3 Subject to clauses 13.1 and 13.2, the Provider's total aggregate liability arising under or in connection with the Agreement 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 a series of events) giving rise to liability.

14 TERM, TERMINATION AND RENEWAL

- 14.1 The Agreement will commence on the Start Date and will continue until terminated in accordance with this clause 14.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement on giving written notice to the other party, such notice to expire and to take effect at the end of the Subscription Month following that during which it is received or deemed received in accordance with clause 18.9 (the "**Cessation Month**"). The Customer will be entitled to continue using Workhorse until the end of the Cessation Month provided that they have paid the Subscription Fee in full in respect of that Subscription Month.
- 14.3 Without affecting any other right or remedy available to it, the Provider may terminate the Agreement 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 14 days after the date on which it became due.
- 14.4 Either party may terminate the Agreement immediately by written notice to the other if the other party: (i) commits any material breach of the Agreement and (if the breach can be remedied) it fails to remedy the breach within 7 days; or (ii) commits a material breach of the Agreement which is not capable of being remedied.
- 14.5 Without limitation, any breach by the Customer of clauses 3 or 6 will be a material breach of the Agreement for the purposes of clause 14.4.
- 14.6 Either party may terminate the Agreement 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 CONSEQUENCES OF TERMINATION

- 15.1 Immediately following termination of the Agreement (for any reason), the Customer will immediately cease, and will procure that each Authorised User immediately ceases, all use of and access to Workhorse.
- 15.2 Termination of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of such termination.
- 15.3 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 5.4. 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.

16 SERVICE SUSPENSION & REVISIONS IN SERVICE

- 16.1 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:
 - 16.1.1 the Customer has failed to pay its Subscription Fee by the date falling 14 days after its due date for payment; or
 - 16.1.2 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 the Agreement pursuant to clauses 14.4 or 14.6.
 - 16.1.3 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 11.8 .
- 16.2 Without prejudice to the Provider's right to terminate the Agreement under clause 14.3 and 14.4 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.
- 16.3 This clause 16 is without prejudice to the Customer's rights in respect of the Customer Data under clause 5.4 .
- 16.4 Workhorse is a not a static product or service. The Provider shall throughout the Service Term be entitled to make changes to Workhorse with the objective of improving its service offering to customers and the Customer acknowledges that such a programme of continuous product development may result in the addition or deletion of features and/or functionality ("**Revisions in Service**") which can improve or degrade the Service Level.
- 16.5 Wherever practical, the Provider will introduce Revisions in Service only after providing customers with notice through push notifications sent to Authorised Users whose continued use of Workhorse shall constitute the Customer's acceptance of such Revisions in Service.

17 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 17 will excuse or relieve the Customer's obligation to pay the Subscription Fee.

18 GENERAL

- 18.1 Any provision of the Agreement 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.
- 18.2 The parties are independent contractors. Consequently, the provisions of the Agreement 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 the Agreement.
- 18.3 The Customer will not assign or transfer all or part of its rights and/or obligations under the Agreement to any third party without the Provider's prior written consent, which the Provider will not unreasonably withhold or delay. The Provider may assign the Agreement 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 the Agreement to any person which acquires all or substantially all of the business and/or assets of the Provider by way of any solvent acquisition or amalgamation.
- 18.4 The Provider may subcontract the performance of any of its obligations under the Agreement, provided that (subject to clause 17) the Provider will remain responsible for the acts and omissions of its subcontractors.
- 18.5 The Agreement 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 the Agreement, 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 the Agreement or not) (each, a "Representation") other than as expressly set out in the Agreement. 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 the Agreement. Nothing in this clause 18.5 will limit or exclude any liability for fraud.
- 18.6 The Agreement 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.
- 18.7 The Customer agrees that the Provider may from time to time make changes to these Terms of Service by providing notice to the Customer (a "**Revision Notice**") by email to its main account contact and/or to the recipient of its electronic invoices. Such email(s) shall contain a link to the revised Terms of Service and, to the extent material, set out a brief description of the changes which are being implemented. By using Workhorse at any time more than 48 hours after such email(s) have been sent you accept such changes and agree to observe the revised Terms of Service. If you wish not to accept such changes, please advise us by return email (a "**Rejection Notice**") and we will continue to provide Workhorse on the terms and conditions of the prior version of these Terms of Service until the end of the Subscription Month after that during which the Revision Notice was given, whereupon the Service Term shall end. Any Rejection Notice received by the Provider more than seven days after the day on which the relevant Revision Notice was given by Workhorse shall not be effective.
- 18.8 If any provision of the Agreement 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 the Agreement will not affect the validity and enforceability of any other provision of the Agreement.

- 18.9 Any notice required or permitted to be given under the Agreement (other than for the purposes of clause 18.7) 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 in the United Kingdom notified by that party for such purposes. The Provider's address for notice is 15 Bell Street, Reigate RH2 7AD, or such other address in the United Kingdom as the Provider may notify to the Customer from time to time. The Customer's address for notice shall be the address in the United Kingdom entered by the Customer on the Order Form. 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.
- 18.10 The failure of a party to enforce a provision of the Agreement 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 the Agreement. A waiver of any claim for a breach of the Agreement will not operate to waive any claims in respect of any other breach.
- 18.11 The Agreement 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.
- 18.12 This Agreement will come into effect only upon countersignature by the Provider of the Order Form, except for any Customer who was a user of Workhorse prior to the relationship between the parties becoming subject to these Terms of Service, to whom this Agreement will apply as from the Applicable Date.

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 the Agreement.

1.3 Duration of the processing

The Service Term, and thereafter as provided in paragraph 6 of the Privacy & Cookies Policy .

2. Types of Personal Data

As set out in paragraph 2 of the Privacy & Cookies Policy, including:

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

3. Categories of Data Subject

Individual clients, contacts and employees of the Customer.