

## WORKPATH MASTER SERVICES AGREEMENT

*This Master Services Agreement includes the terms and conditions that govern the Services offered by Workpath (the "Agreement"). The Party purchasing the Services ("Customer") accepts this Agreement by committing to an Order issued by Workpath, which references the Agreement. Capitalized terms have the meaning as set forth below in the Definitions section.*

### 1. Provision of the Services

- 1.1. Workpath will provide Customer with a) access to the Subscription Services and a right to use as described in this Agreement, b) applicable standard Support Services for the Subscription Services at no additional charge, and c) if agreed, Professional Services. Customer agrees that Workpath has the right to use Affiliates and subcontractors in order to provide Customer with the aforementioned Services, provided that Workpath will remain responsible for the acts and omissions of such entities as if they were Workpath owns.
- 1.2. Workpath will provide the Subscription and Support Services in accordance with the applicable Service Level Addendum and any unavailability caused by circumstances beyond Workpath's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Workpath's employees), Internet service provider failure or delay, or denial of service attack is not in Workpath's responsibility. Workpath reserves the right to modify the Subscription Services, provided that (a) such modification shall not result in a material decrease of the overall functionality of the Subscription Services, (b) such modification is necessary for Workpath to comply with changes in the Laws or a court decision, or (c) such modification is necessary in order to eliminate a software vulnerability. If a modification is not justified according to the aforementioned requirements, Workpath will announce such modification to all customers with a two (2) months prior notification before such modification takes effect and Customer has to object to such modification within one (1) month from the receipt of the change notification by sending its objection to Workpath.
- 1.3. Workpath will maintain appropriate administrative, physical and technical safeguards as documented in the Security Addendum for the protection of the security, confidentiality and integrity of Customer Data. During the Term of the Agreement, Workpath will not decrease these safeguards. In addition, the terms of the Data Processing Addendum are hereby incorporated by reference.
- 1.4. During the Term of the Agreement and upon request by Customer made within thirty (30) days after the effective date of the termination or expiration of this Agreement, Workpath will make Customer Data available to Customer for download in a usual machine readable format, for example CSV. After such 30-day period, Workpath will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in Workpath's systems, unless prohibited by the Laws.

### 2. Customer's Rights and Use Restrictions

- 2.1. **Customer's Rights to Access and Use the Services.** During the Term and subject to this Agreement, Workpath grants Customer a simple, non-exclusive, non-transferable, worldwide right to access and to use the Subscription Services for Customer and Customer's Affiliates' internal business purposes. Customer has no right to claim access to any source code of the Subscription Services. Customer may provide Users with a login and password to access and use the Subscription Services. Customer is responsible for all actions taken by Users or by anyone using a login and password administered by Customer.
- 2.2. **Customer's Responsibilities.** Customer will (a) be responsible for Customer Users' compliance with this Agreement and the terms stated on the Order, (b) be responsible for the accuracy, quality and legality of Customer Data and Customer's use of Customer Data with the Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify Workpath promptly of any unauthorized access or use, (d) use the Services only in accordance with this Agreement and applicable Laws, and (e) be responsible for Customer's internet connection to access the Subscription Services through the latest version of a web browser such as MS Edge, Google Chrome or Mozilla Firefox which enables cookies. Any use of the Services in breach of the foregoing by Customer or Customer's Users that in Workpath's judgment threatens the security, integrity or availability of the Services, may result in an immediate suspension of the Services, however Workpath will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.
- 2.3. **Usage Limits.** The Services are subject to the usage limits specified in the Order. Workpath may review Customer's compliance with usage limits and Customer shall provide reasonable cooperation where so required. If Customer exceeds such contractual usage limit, Workpath may work with Customer to seek to reduce Customer's usage so that it conforms to that usage limit. If Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order for the additional quantities of the applicable Services promptly upon Workpath's request, and/or pay any invoice for excess usage in accordance with this Agreement.
- 2.4. **Usage Restrictions.** Customer shall not (a) make any of the Services available to anyone other than Customer or Users, or use any of the Services for the benefit of anyone other than Customer or Customer Affiliates, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or include any Services in a service bureau or outsourcing offering, (c) use the Subscription Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party intellectual or privacy rights, (d) use the Subscription Services to upload or store Malicious Code, (e) interfere with or disrupt the integrity or performance of the Subscription Services, (f) attempt to gain unauthorized access to the Subscription Services or its related systems or networks, (g) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit, or use the Services to access, copy or use any of Workpath's intellectual property except as permitted under this Agreement, (h)

modify, copy, or create derivative works of the Subscription Services or any part, feature, function or user interface thereof, (i) frame or mirror any part of the Subscription Services, other than framing on Customer own intranets or otherwise for Customer's own internal business purposes or as permitted by Workpath, (j) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Subscription Services or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Services, (3) copy any ideas, features, functions or graphics of the Services, or (4) determine whether the Subscription Services are within the scope of any patent, or (k) use the Subscription Services in violation of applicable Laws, including, without limitation, Export Control Laws and Laws regulating data processing, data transfers and data protection.

- 2.5. License by Customer to Workpath.** Customer grants Workpath and Workpath's Affiliates and applicable subcontractors a worldwide, limited-term license to host, copy, use, transmit and display Customer Data as necessary for Workpath to provide the Services to Customer in accordance with this Agreement. Subject to the limited license granted herein, Workpath acquires no right, title or interest from Customer under this Agreement in or to any of Customer Data. In addition, Customer grants Workpath and Workpath's Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose and make available and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Services.

### 3. Fees and Payment

- 3.1. Fees.** The applicable Fees are indicated on the Order. Unless otherwise stated there, all Fees shall be payable in Euro.
- 3.2. Payment.** Customer agrees to pay all Fees annually in advance at the time of the Order within thirty (30) days from the date of the invoice unless otherwise stated in the Order. Workpath shall have the right to send invoices to Customer electronically to an email address provided by Customer. Unless otherwise stated in the Order, Customer agrees to pay by bank transfer to Workpath's bank account stated on the invoice sent by Workpath.
- 3.3. Taxes.** All Fees are net and do not include Taxes. Customer is responsible for paying all Taxes associated with the Order. If Workpath has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Workpath will invoice Customer and Customer will pay that amount unless Customer provides Workpath with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required to withhold or deduct any Taxes from the Fees or expenses, Customer then agrees to increase the amount payable to Workpath by the amount of such Taxes so that Workpath receives the full amount of all Fees. All Fees, expenses and other amounts paid under this Agreement are non-refundable unless otherwise agreed in the Agreement.
- 3.4. Overdue Charges.** Any undisputed Fees that are not paid within the aforementioned payment terms are subject to late payment fees including the applicable legal interest rate for late payment and any reasonable collection cost.
- 3.5. Suspension of Services.** If Customer does not pay Workpath undisputed Fees within the agreed payment terms, Workpath may, without limiting Workpath's other rights and remedies, suspend the Services to Customer until such amounts are paid in full, provided that Workpath will give Customer at least 10 days' prior notice that Customer's payment is overdue before suspending the Services.

### 4. Confidential Information

- 4.1.** The Receiving Party (a) will not disclose Confidential Information of the Disclosing Party to any third party unless the Disclosing Party approves the disclosure in writing or the disclosure is otherwise permitted under this Section 4, (b) will use the same degree of care to protect Confidential Information of the Disclosing Party as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care, and (c) may disclose Confidential Information of the Disclosing Party only to its employees, Affiliates and contractors with a need to know, and to its accountants, auditors and legal counsel, in each case, who are under a written obligation or other professional obligation to keep such information confidential using standards of confidentiality no less restrictive than those required by this Section 4. Both Parties agree that obligations of confidentiality will survive the termination or expiration of this Agreement. Upon written request of the Disclosing Party, the Receiving Party will promptly return or destroy all Confidential Information, except for Confidential Information stored in routine back-up media not accessible during the ordinary course of business.
- 4.2.** Information is not Confidential Information, if (a) the information is or becomes publicly available other than as a result of the Receiving Party's breach of this Agreement, (b) the Receiving Party, at the time of disclosure, knows or possesses the information without obligation of confidentiality or thereafter obtains the information from a third party not under an obligation of confidentiality, (c) the Receiving Party independently develops the information without use of the Disclosing Party's Confidential Information, or (d) the information is generally known, is or later becomes publicly available without breach of this Agreement or is easily developed by someone with ordinary skills in the business of the Receiving Party without use of the Confidential Information.
- 4.3.** The Receiving Party may disclose Confidential Information if it is required to do so by applicable law, regulation or court order but, where legally permissible and feasible, will provide advance notice to the Disclosing Party to enable the Disclosing Party to seek a protective order or other similar protection.

### 5. Mutual Indemnification for Third Party Claims

- 5.1. Indemnification by Workpath.** a) Workpath will defend Customer against any claim, suit or proceeding made or brought against Customer by a third party alleging that the Subscription Services infringe such third party's valid U.S. or EU patent, copyright or trademark, or other intellectual proprietary right (a "Claim Against Customer"), and Workpath will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Workpath in writing of, a Claim Against Customer, provided

that Customer: (i) promptly gives Workpath written notice of the Claim Against Customer, (ii) gives Workpath sole control of the defense and settlement of the Claim Against Customer, and (iii) gives Workpath all reasonable assistance, at Workpath's expense. b) If Workpath receives information about an infringement or misappropriation claim related to the Subscription Services, Workpath may in Workpath's sole discretion and at no cost to Customer (i) modify the Subscription Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for Customer's continued use of the Subscription Services in accordance with this Agreement, or (iii) if the aforementioned options (i) and (ii) are not commercially reasonably available, terminate Customer Subscription Services upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the Term of the terminated Subscription Services. c) The above defense and indemnification obligations do not apply if (i) the allegation does not specifically state that the Subscription Services are the basis of the Claim Against Customer; (ii) a Claim Against Customer arises from the use or combination of the Subscription Services or any part thereof with software, hardware, data, or processes not provided by Workpath, if the Subscription Services or use thereof would not infringe without such combination; (iii) a Claim Against Customer arises from Subscription Services which Customer receives for free with no charge; or (iv) a Claim Against Customer arises from Customer Data, a third party application or Customer's breach of this Agreement or other provisions agreed between Customer and Workpath.

**5.2. Indemnification by Customer.** a) Customer will defend Workpath against any claim, suit or proceeding made or brought against Workpath by a third party arising from (i) Customer's use of the Subscription Services in an unlawful manner or in violation of this Agreement or other provisions agreed between Customer and Workpath, (ii) any Customer Data or Customer's use of Customer Data with the Subscription Services, or (iii) a third party application provided by Customer (each a "Claim Against Workpath"), and Customer will indemnify Workpath from any damages, attorney fees and costs finally awarded against Workpath as a result of, or for any amounts paid by Workpath under a settlement approved by Customer in writing of, a Claim Against Workpath, provided that Workpath: (I) promptly gives Customer written notice of the Claim Against Workpath, (II) gives Customer sole control of the defense and settlement of the Claim Against Workpath, and (III) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Workpath arises from Workpath's breach of this Agreement or other provisions agreed between Customer and Workpath.

**5.3. Exclusive Remedy.** This Section 5 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against the other Party for any third-party claim described in this Section. For the purpose of clarification, this exclusivity provision shall not limit each Party's potential right to terminate the Agreement for cause and to claim damages according to this Agreement.

## 6. Limitation of Liability

**6.1. Unlimited Liability.** The Parties will be mutually liable for damages without limitation:

- a) resulting from intentional or gross negligence misconduct of a Party, its legal representatives or vicarious agents,
- b) resulting from a breach of a guarantee taken over by the respective Party,
- c) resulting from a defect that is maliciously concealed,
- d) resulting from an injury to life, body or health,
- e) according to the German Product Liability Act.

**6.2. Liability for Breach of Cardinal Duties.** If cardinal duties are infringed due to slight negligence and if, as a consequence, the achievement of the objective of this Agreement is endangered, or in the case of a slightly negligent failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of this Agreement, the Parties' liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded. The Parties agree that any damages or costs due to loss of (i) profits, (ii) Customers Data, (iii) use of the Services or (iv) goodwill will be considered as damages that are not foreseeable within the meaning of this Section 6.2.

**6.3. Liability Cap.** Unless the Parties are liable in accordance with section 6.1. above, in no event will the aggregate liability of each Party together with all of its Affiliates arising out of or in any way connected to this Agreement exceed the total amount of Fees paid by Customer under this Agreement in the twelve (12) months immediately preceding the first claim to arise under the Agreement ("Liability Cap"). The Liability Cap will not limit Customer payment obligations under Section 3 above.

**6.4. Scope of the Liability.** Except for liability in accordance with section 6.1., the above limitations of liability will apply to all claims for damages, irrespective of the legal basis, including claims for tort damages. The above limitations of liability also apply in the case of claims for a Party's damages against the respective other Party's employees, vicarious agents or legal representatives.

## 7. Term and Termination

**7.1. Term.** This Agreement commences either on the date stated on the Order or on the date of the last signature of the Parties on the Order (the "Effective Date"). This Agreement remains effective for an indefinite period of time, unless terminated by Customer or Workpath according to this section 7. The Term for the Services is stated on the Order.

**7.2. Auto-renewal and re-pricing.** Except as otherwise specified in the Order, Subscription Services will automatically renew for additional terms of one (1) year, unless either Party gives the other notice at least one (1) month before the end of the relevant term. In addition, Workpath has the right to change the Fees for any renewal term subject to a two (2) months notice to Customer prior to the auto-renewal of the term. Customer will have the right to object to the change in the Fees by sending a notice to Workpath within two (2) weeks from the receipt of Workpath's notice including the change in the Fees and Workpath has then a right to terminate the Agreement with Customer in such case prior to the auto-renewal of the term.

- 7.3. Termination by Customer or by Workpath.** Customer may terminate the Subscription Services as stated before in Section 7.1 after the expiration of the initial or then agreed Term or in case of an auto-renewal on each annual anniversary by sending a written notice (email acceptable) at least thirty (30) days before the end of the then relevant subscription term. In addition, Customer or Workpath may terminate this Agreement immediately, upon written notice: (i) if the other Party breaches any material provision of these Agreement and fails to cure such breach within thirty (30) days after written notice thereof; or (ii) if the other Party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding that is not dismissed within sixty (60) days, or becomes insolvent or subject to direct control by a trustee, receiver, or similar authority.
- 7.4. Effect of Termination or Expiration.** Upon termination or expiration of this Agreement (i) all of Customer rights documented in this Agreement and the provisioning of the Services by Workpath will terminate, and (ii) Workpath will make Customer Customer Data available for download and delete it according to Section 1.4 above.

## 8. General Provisions

- 8.1. Governing Law and Venue.** These Agreement and any claim, controversy or dispute arising out of or related to these Agreement shall be governed by and construed in accordance with the laws of Germany without giving effect to any conflicts of law provision. The courts of Munich, Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Agreement (including any non-contractual disputes or claims). To the extent permissible, the United Nations Convention on Contracts for the International Sale of Goods will not apply.
- 8.2. Anti-Corruption.** Both Parties shall comply with all applicable anti-corruption regulations.
- 8.3. Export.** Both parties shall comply with the Export Control Laws. Workpath is not obliged to perform any obligation under this Agreement to the extent that the performance of such obligation would breach Export Control Laws or expose Workpath to any risk of enforcement action, punitive or restrictive measures, or other adverse action under Export Control Laws. Customer and Workpath each represents that it is not on any EU denied-party list.
- 8.4. Notices.** All notices, consents, waivers and other communications required or permitted by these Agreement must be in English or German, in writing via mail or electronically via email.
- 8.5. Relationship of the Parties.** The Parties are independent contractors, and at no time will either Party be deemed to be the agent or employee of the other Party. No joint venture, partnership, agency, or other relationship will be created or implied between the Parties as a result of this Agreement. Except as expressly set forth in this Agreement, each Party will bear full and sole responsibility for its own expenses and costs of operation. Furthermore, neither Party will have the authority to, and will not purport to, enter into any contract on behalf of the other Party, or commit it to any obligation.
- 8.6. Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 8.7. Waiver.** No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.
- 8.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the provisions will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 8.9. Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party's prior written consent (not to be unreasonably withheld); provided, however, either Party may assign its rights or obligations hereunder in its entirety, without the other Party's consent to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- 8.10. Entire Agreement and Order of Precedence.** This Agreement will constitute the exclusive terms and conditions with respect to the subject matter of the agreement with Customer. Customer acknowledge that in entering into this Agreement Customer has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of Workpath in relation to the subject-matter of this Agreement at any time before its signature, other than those which are set out in this Agreement. The Parties agree that this Agreement may be agreed to online or executed by electronic signature. Any changes to the Agreement need to be made in writing and signed by both Parties. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) the Agreement, and (3) the documents annexed or referenced to in the Agreement.

## 9. Definitions

**"Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**"Agreement"** means this Master Services Agreement including the terms and conditions and all documents referenced herein that Workpath and Customer agree to.

**"Confidential Information"** means information disclosed by the Disclosing Party to the Receiving Party during the term of the Agreement that (a) is marked confidential; (b) if disclosed orally, is clearly described as confidential at the time of disclosure and is subsequently set forth in writing, marked confidential, and sent to the Receiving Party within thirty (30) days following the oral disclosure; or (c) is of a nature that the Receiving Party knows is confidential to the Disclosing Party or should reasonably be expected to know is confidential.

**"Customer Data"** means electronic data and information submitted by Customer and Customer Users to the Services, excluding content from Us and third party applications.

**"Data Processing Addendum"** means the document available at <https://www.workpath.com/dpa> which is part of the Agreement.



**"Disclosing Party"** means Customer or Workpath disclosing Confidential Information to the other Party under the Agreement.

**"Export Control Laws"** means export and import control regulations and sanctions laws, including but not limited to the laws and regulations of the Federal Republic of Germany, the European Union, the United Kingdom and the United States of America, to the extent applicable to the provision and use of the Subscription Services

**"Fees"** means the fees for the Services stated on the Order.

**"Laws"** means any applicable law, rule, decision, order, regulation, judgment, and requirement of any government authority having jurisdiction over the parties or Services.

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

**"Order"** means the quote, proposal document, order form or other ordering document for the Services to be provided hereunder that is signed by Customer and accepted by Workpath by countersignature; the Order forms part of the Agreement.

**"Professional Services"** means the customization of services, training, enablement and consulting services stated on the Order.

**"Receiving Party"** means Customer or Workpath receiving Confidential Information from the other Party under the Agreement.

**"Security Addendum"** means the document available at <https://www.workpath.com/security-addendum> which is part of the Agreement.

**"Service Level Addendum"** means the document available at <https://www.workpath.com/sla> which is part of the Agreement.

**"Services"** means the Subscription Services, the Support Services and the Professional Services stated on the Order.

**"Statement of Work"** means, if applicable, a document describing the scope of a Professional Services engagement.

**"Subscription Services"** means Workpath's web-based software as a service that is accessible via the Internet, including but not limited to Updates, product suites, tools and platforms, any derivative works of the foregoing, that Customer has subscribed to its Order.

**"Support Services"** means the services provided by Workpath to support Customer's utilization of the Subscription Services.

**"Taxes"** means any form of taxation of whatever nature and by whatever authority imposed, for example value added tax, sales tax or withholding tax, exclusive of any Taxes based on the net income of the receiving Party.

**"Term"** means the term stated on the Order.

**"Updates"** means patches, bug fixes, releases, versions, modifications, or successors to the Subscription Services.

**"Users"** mean the natural persons that are authorized by Customer based on this Agreement to access the Subscription Services, because they are Customer's or Customer's Affiliates' employees, consultants, subcontractors, agents or other business partners, who are directly involved by Customer in the utilization of the Services.

**"Website"** means <https://www.workpath.com/> and its subpages.

**"Workpath"** means Workpath GmbH or the Workpath legal entity mentioned in the Order.

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