



PARTNER GENERAL TERMS AND CONDITIONS

BETWEEN

**THE PARTNER SET OUT IN PARTNER PROGRAM AGREEMENT**

AND

**QUINTICA GROUP SHARED SERVICES PROPRIETARY LIMITED T/A  
WORKWIDE**

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1. **PARTIES**

1.1 The Parties to these Partner General Terms and Conditions are:

1.1.1 WorkWide, as set out in the Partner Program Agreement; and

1.1.2 The Partner, as set out in the Partner Program Agreement.

1.2 The Parties agree as set out below.

**OPERATIVE CLAUSES**

2. **INTERPRETATION**

2.1 **Defined terms**

In these Partner General Terms and Conditions the following words and expressions shall have the following meanings assigned to them:

2.1.1 **"Admin User"** means Customer Personnel who are authorized to use the administration form of the WorkWide Technology, for whom the Partner has purchased the Subscription Services;

2.1.2 **"Appointment"** means the appointment of the Partner by WorkWide, to Resell the Services as contemplated in clause 5 below;

2.1.3 **"Confidential Information"** means the terms of the Contractual Framework, any information concerning a Party, its clients and/or its suppliers including its operations, business and financial affairs including, but not limited to, information expressly marked or designated by a Party as confidential and all other matters which relate to the business of either Party and in respect of which information is not readily available in the ordinary course of business to a competitor of such Party. The following shall be included in the definition of the "*Confidential Information*": (a) the WorkWide Technology is confidential and proprietary to WorkWide (b) Partner Technology is confidential and proprietary to the Partner;

2.1.4 **"Customer"** means a customer of the Partner who purchases the Services from the Partner and enters to the Customer Agreements with WorkWide;

2.1.5 **"Customer Agreements"** means the End User Acceptance Form, the End User License Agreement and/or a SOW, or any one of them or a combination of them as the context may indicate;

2.1.6 **"Customer Personnel"** means, all employees, partners, contractors, sub-contractors of the Customer;

- 2.1.7 **“the Disclosing Party”** means the party disclosing the Confidential Information;
- 2.1.8 **“Effective Date”** means the effective date of the Partner Agreements as set out in the Partner Program Agreement;
- 2.1.9 **“End User Acceptance Form”** means WorkWide’s end user acceptance form provided to the Customer specifying the Subscription Services that the Customer has ordered from the Partner along with the term and scope thereof, signed and agreed by the Customer;
- 2.1.10 **“End User License Agreement”** means WorkWide’s End User License Agreement in respect of the Subscription Services, signed and agreed by the Customer;
- 2.1.11 **“Intellectual Property Rights”** means all patents, trademarks, service marks, know-how, designs, design rights, copyright (including all copyright in any designs and computer software), source codes, inventions, trade secrets, and all other intellectual property rights;
- 2.1.12 **“Mobile User”** means a Customer Personnel who is authorized by the Partner to use the mobile form of the Subscription Services and for whom the Partner has purchased the Subscription Services;
- 2.1.13 **“Order Form/s”** means an Order Form for Subscription Services and an Order Form for Professional Services, or any one of them as the context may indicate;
- 2.1.14 **“Order Form for Subscription Services”** means an Order Form for Subscription Services entered into between the Partner and WorkWide;
- 2.1.15 **“Order Form for Professional Services”** means an Order Form for Professional Services entered into between the Partner and WorkWide;
- 2.1.16 **“Partner Agreements”** means the Partner Program Agreement and the Partner General Terms and Conditions, or any one of them as the context may indicate, as read together as one indivisible agreement;
- 2.1.17 **“Partner Agreements Termination Date”** means the date on which the Partner Agreements expire or are terminated, for any reason whatsoever;
- 2.1.18 **“Partner Personnel”** means, all employees, partners, contractors, sub-contractors of the Partner;

- 2.1.19 **"Partner Program Agreement"** means Partner Program Agreement concluded between WorkWide and the Partner;
- 2.1.20 **"Partner Technology"** means software, methodologies, templates, business processes, documentation or other material authored, invented or otherwise created or licensed by the Partner (other than in respect of the Subscription Services under a Subscription Services Order Form);
- 2.1.21 **"Party/ies"** means WorkWide and the Partner, or any one of them as the context may indicate;
- 2.1.22 **"Professional Service/s"** means professional services provided by WorkWide to a Customer pursuant to an agreed SOW for Professional Services;
- 2.1.23 **"Professional Services Termination Date"** means the date on which the Professional Services expire or are terminated, for any reason whatsoever;
- 2.1.24 **"the Receiving Party"** means the party receiving the Confidential Information;
- 2.1.25 **"Resell"** means to identify and qualify an opportunity to sell Services to Customers, where WorkWide has granted permission to the Partner, via the lead registration process referred to Partner Program Agreement, to engage directly in the sales cycle with a potential Customer and execution of the commercial deal which shall be transacted through the Partner;
- 2.1.26 **"Services"** means the Professional Services and/or Subscription Services, or any one of them as the context may indicate;
- 2.1.27 **"SOW"** mean a statement of work agreed between the Customer and WorkWide specifying the Professional Services to be performed by the WorkWide for the Customer;
- 2.1.28 **"Subscription Services"** means the subscription services in respect of the WorkWide Software as ordered by the Partner from WorkWide under a Order Form for Subscription Services;
- 2.1.29 **"Subscription Term"** means the subscription term as set out in an Order Form for Subscription Services;
- 2.1.30 **"Subscription Services Termination Date"** means the date on which a Order Form expires or is terminated, for any reason whatsoever;

- 2.1.31 **“Support Services”** means the support services, in respect of the Subscription Service, to be rendered by WorkWide to the Customer as more fully described in Annexure A hereto;
- 2.1.32 **“Taxes”** include all present and future taxes including, but not limited to, Value Added Tax or sales tax, withholding taxes, charges, imposts, duties, levies, personal income tax and statutory deductions, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the a foregoing, by whomsoever and whenever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and **“Taxation”** shall be construed accordingly
- 2.1.33 **“Territory”** has the same meaning as is ascribed to it in the Partner Program Agreement;
- 2.1.34 **“Upgrades”** means new versions of the WorkWide Software that include new major features and significantly improved functionality, and which are signified by version number changes to the left of the decimal point, for example, version 5.0, 6.0;
- 2.1.35 **“User”** means an Admin User and a Mobile User, or any one of them as the context may indicate;
- 2.1.36 **“WorkWide Documentation”** means the WorkWide product documentation relating to the operation and use of the Subscription Services including technical design or interface documentation, usage guide, configuration guide, usage policy and release notes, as updated from time to time by WorkWide, in its sole discretion;
- 2.1.37 **“WorkWide Software”** means WorkWide’s solutions licensed by WorkWide to the Customer that is deployed on devices operated by Users to facilitate operation of the Subscription Service;
- 2.1.38 **“WorkWide Technology”** means
- 2.1.38.1 The Subscription Service, WorkWide Software, WorkWide Documentation, Support Services and WorkWide technology and methodologies (including, without limitation, products, software tools, software designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) created by or for, or licensed to, WorkWide;

- 2.1.38.2 updates, Upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end-user documentation or manuals; and
- 2.1.38.3 WorkWide's Intellectual Property Rights as set out in clause 11.1 below.

## 2.2 **Construction**

In these Partner General Terms and Conditions:

- 2.2.1 unless the context clearly indicates otherwise, words importing natural persons shall include a reference to juristic persons and *vice versa*, a reference to one gender includes a reference to the other genders, and a reference to the singular includes a reference to the plural and *vice versa*;
- 2.2.2 should any provision in a definition be a substantive provision conferring rights or imposing obligations on any Party, then effect shall be given to that provision as if it were a substantive provision in the body of these Partner General Terms and Conditions;
- 2.2.3 any reference to an enactment, regulation, rule or by-law is that enactment, regulation, rule or by-law as at the Effective Date, and as amended or replaced from time to time;
- 2.2.4 schedules, appendices and annexures to these Partner General Terms and Conditions shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 2.2.5 a reference to a Party in these Partner General Terms and Conditions includes that Party's successors and permitted assigns;
- 2.2.6 if any date which is specified for the performance of any obligation falls on a date which is not a Business Day, such obligation shall be performed on the 1<sup>st</sup> (first) Business Day thereafter;
- 2.2.7 the use of the word "*including*" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 2.2.8 the expiration or termination of these Partner General Terms and Conditions shall not affect those provisions of these Partner General Terms and Conditions which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination,

notwithstanding the fact that the clauses themselves do not expressly provide this;

- 2.2.9 in its interpretation (these Partner General Terms and Conditions being the product of negotiations between the Parties), these Partner General Terms and Conditions shall not be construed in favour of or against either Party by reason of the extent to which that Party or its professional advisors participated in the preparation of these Partner General Terms and Conditions;
- 2.2.10 records shall be binding on the Parties and are not merely for information purposes;
- 2.2.11 the headings appearing in these Partner General Terms and Conditions are for reference purposes only and shall not affect the interpretation hereof;
- 2.2.12 words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause;
- 2.2.13 terms, other than those defined within these Partner General Terms and Conditions, will be given their plain English meaning and those terms, acronyms, abbreviations and phrases known in the information technology industry will be interpreted in accordance with their generally-known meanings; and
- 2.2.14 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

### 3. **RECORDAL**

3.1 It is recorded that WorkWide is:

- 3.1.1 the owner of the WorkWide Technology;
- 3.1.2 capable of delivering the Professional Services; and
- 3.1.3 capable of providing the Support Services.

3.2 The Partner:

- 3.2.1 wishes to Resell the Services; and
- 3.2.2 may retain WorkWide to:
  - 3.2.2.1 provide Customers with the Professional Services;



3.2.2.2 provide Customers with a license, access and use rights to the Subscription Service/s; and

3.2.2.3 provide Customers with Support Services.

4. **ORDER OF PRECEDENCE**

4.1 The relationship between the Parties is governed by the following documents (in order of precedence):

4.1.1 the Partner Program Agreement;

4.1.2 these Partner General Terms and Conditions; and

4.1.3 any Order Form; and

together shall form the entire agreement between the Parties superseding all previous verbal or written proposals and agreements relating to the subject matter hereof, collectively "the Contractual Framework".

4.2 In the event of any conflict between the terms and provisions of any of the agreements or documents under the Contractual Framework, the agreements or documents shall prevail in the order of precedence set out in clause 4.1 above.

4.3 Any and all of Partner's general conditions of sale or any terms included on a Partner's purchase order to WorkWide are expressly excluded from the Contractual Framework.

5. **APPOINTMENT**

In accordance with the Partner Program Agreement, and subject to the terms of the Contractual Framework, WorkWide has appointed the Partner to Resell the Services in the Territory.

6. **ORDER PROCESS**

6.1 Professional Services

6.1.1 In order for WorkWide to render the Professional Services:

6.1.1.1 the Partner must enter into an Order Form for Professional Services with WorkWide as contemplated in the Partner Program Agreement; and

6.1.1.2 the Customer must enter into a SOW with WorkWide.

6.2 Subscription Services

6.2.1 In order for a Customer to be provided access to the Subscription Services:

6.2.1.1 the Partner must enter into an Order Form for Subscription Services with WorkWide as contemplated in the Partner Program Agreement; and

6.2.1.2 the Customer must enter into and accept the End User Acceptance Form and End User License Agreement.

6.2.2 Grant of User Rights to Subscription Services

For each Order Form for Subscription Services signed between WorkWide and the Partner in respect of Subscription Services, and subject to the terms contained in the Contractual Framework, including entry into and acceptance by the Customer of the relevant Customer Agreements, WorkWide shall grant the Customer, for the Subscription Term, the license, access and use rights set out in this clause 6.2.2, with respect to the Subscription Services described in that Order Form for Subscription Services.

6.3 Support Services

WorkWide shall, during the Subscription Term, provide the Support Services to a Customer.

6.4 Any contract between the Parties resulting from a Order Form shall be on the basis of the Partner Agreements.

6.5 Absent the execution of an Order Form and the Customer Agreements, the Partner Agreements do not, in and of themselves, represent a commitment by the Partner to receive the Services from WorkWide or pay WorkWide any Fees.

6.6 The Partner Agreements do not obligate the Partner to order the Services from WorkWide, nor does it obligate WorkWide to accept orders for Services from the Partner, but it, together with the commercial specifications, service specifications and/or technical parameters in any applicable Order Form, shall define the rights and obligations of the Partner and WorkWide during the term thereof and will continue to govern such Services until Services have been completed by WorkWide, expired or terminated.

## 7. **DURATION AND TERMINATION**

7.1 Partner Agreements

7.1.1 Term of the Partner Agreements

The Partner Agreements shall commence on the Effective Date and shall continue in full force and effect for successive 1 (one) year terms unless earlier terminated in accordance with the Partner Agreements.

7.1.2 Termination of the Partner Agreement

7.1.2.1 Either Party may terminate the Partner Agreements:

7.1.2.1.1 by convenience upon 90 (ninety) days prior written notice to the other Party; or

7.1.2.1.2 in accordance with any other applicable termination clauses in the Partner Agreements.

7.1.3 Effect of Termination of the Partner Agreements

7.1.3.1 The Partner Agreements are entered into simultaneously and operate together. As such, expiration or termination of one of the Partner Agreements shall result in immediate expiration or termination of the other Partner Agreement.

7.1.3.2 Upon expiration or termination of the Partner Agreements for any reason, the Appointment shall terminate.

7.1.3.3 Upon termination of the Appointment:

7.1.3.3.1 all rights of the Partner to participate under the Appointment and Resell the Services shall terminate;

7.1.3.3.2 all Order Forms signed and provided by WorkWide that remain unsigned by the Partner are rendered null and void;

7.1.3.3.3 neither Party shall be liable to the other Party for any claims for damages of any kind arising out of termination of the Partner Agreements as provided herein, including without limitation incidental or consequential damages and any compensation for reimbursement or for loss of prospective profits, anticipated sales or goodwill.

7.1.3.4 Termination of the Partner Agreements shall not extinguish any liability of either Party arising before the

Partner Agreements Termination Date, including without limitation:

7.1.3.4.1 for payments due by one Party to the other Party; and

7.1.3.4.2 for the Parties to fulfil their obligations under an Order Form.

## 7.2 Subscription Services

### 7.2.1 Subscriptipon Services Term

7.2.1.1 Except as otherwise specified in the Order Form for Subscription Services and subject to the provisions of clause 18:

7.2.1.1.1 the term of the Subscription Services as well as the Support Services will be for the Subscription Term; and

7.2.1.1.2 neither Party shall be entitled to terminate an Order Form for Subscription Services, during the Subscription Term.

### 7.2.2 Effect of Termination of the Subscription Services

7.2.2.1 On the Subscription Services Termination Date:

7.2.2.1.1 WorkWide shall stop providing the Subscription Services, in respect of the O Order Form for Subscription Services in question, to the Customer; and

7.2.2.1.2 the rights granted to the Partner and/or the Customer under the Order Form for Subscription Services shall terminate.

7.2.2.2 If the Subscription Services are terminated by:

7.2.2.2.1 the Partner, in accordance with clause 18.1.2, due to a breach by WorkWide in, then the Partner may submit to WorkWide a claim for refund of all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Services after the Subscription Services Termination Date, which refund shall be paid by WorkWide to

the Partner within 30 (thirty) days following the Subscription Services Termination Date.

7.2.2.2.2 WorkWide, in accordance with clause 18.1.2, due to a breach by the Partner, the Partner shall pay within 30 (thirty) days following the Subscription Services Termination Date all remaining amounts for the Subscription Term applicable to the Subscription Services covering the remainder of the Subscription Term regardless of the due dates specified in the Order Form for Subscription Services.

### 7.3 Professional Services

7.3.1 Subject to provisions of this clause 18.1.2 below, an Order Form for Professional Services shall endure for the period set out in the Order Form for Professional Services.

7.3.2 Notwithstanding clause 7.3.1 above, the Partner shall have the option to terminate a Order Form for Professional Services, without cause, by providing WorkWide with 30 (thirty) days written notice of its intent to terminate such Order Form for Professional Services.

7.3.3 Any termination of a Order Form for Professional Services by the Partner pursuant to clause 7.3.2 shall be without liability to the Partner, provided that the Partner shall pay WorkWide for all Professional Services properly rendered prior to the Professional Services Termination Date.

## 8. **FEES AND PAYMENT THEREOF**

8.1 In consideration for the provision of the Services as contemplated in an Order Form, WorkWide shall charge the Partner the Fees set out in the Order Form.

8.2 Except as otherwise specified in the Contractual Framework payment obligations are non-cancellable, and Fees paid are non-refundable.

8.3 Any Fees payable in respect of a Subscription Service, during a Subscription Term, shall escalate annually as set out in the relevant Order Form for Subscription Services.

8.4 The Fees do not include any Taxes and the Partner shall be responsible for paying all Taxes associated with the Partner's purchase of the Services.

8.5 WorkWide shall invoice the Partner in accordance with the terms set out in the relevant Order Form.

- 8.6 Unless otherwise set in an Order Form the Partner shall make payment of the invoices referred to in clause 8.5 above within 30 (thirty) days of receipt of the relevant invoice.
- 8.7 All payments in terms of or arising out of an Order Form shall be made free of set-off, bank exchange, commission, withholding or any other deduction to the Party entitled thereto.
- 8.8 The Partner shall not have the right to defer, adjust or withhold any payment due to WorkWide in terms of or arising out of an Order Form or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature and howsoever arising.
- 8.9 All amounts due by one Party to the other in terms of or arising out of an Order Form will, unless paid on due date, bear interest from the due date to date of payment, both days inclusive. Such interest shall be:
- 8.9.1 calculated at the 1,5% (one and a half percent) per month; and
- 8.9.2 capitalised monthly in arrears on the balance due.
- 8.10 If any amount owing by the Partner under an Order Form is 30 (thirty) or more days overdue WorkWide may, without limiting its other rights and remedies in terms of the Contractual Framework and in WorkWide's sole discretion:
- 8.10.1 suspend Services until such amounts are paid in full; and/or
- 8.10.2 migrate the Customer to form a direct relationship WorkWide.

9. **AUTHORITY OF THE PARTNER**

The relationship established in respect of the Partner by the Partner Agreements is solely that of a buyer and seller of the Services. Nothing in the Partner Agreements is intended to or shall be construed to mean that Partner is the agent or representative of Workwide for any purpose whatsoever. The Partner is not granted any right or authority to assume or create any obligation or responsibility on behalf of Workwide, or in the name of Workwide.

10. **RIGHTS AND OBLIGATIONS OF THE PARTNER**

- 10.1 The Partner shall:
- 10.1.1 be responsible for Partner Personnel's compliance with the Contractual Framework and WorkWide Documentation;
- 10.1.2 use commercially reasonable endeavours to prevent unauthorised access to the use of the Subscription Services, and notify WorkWide promptly of any such unauthorised access of use; and

- 10.1.3 use WorkWide Technology only in accordance with the Contractual Framework, WorkWide Documentation and applicable laws and government regulations.
- 10.2 The Partner shall not, and shall not permit the Partner's Personnel to:
- 10.2.1 make any Subscription Services available to, or use the Subscription Service for the benefit of, anyone other than a Customer, unless expressly stated otherwise in an Order Form or the WorkWide Documentation;
  - 10.2.2 copy, translate, modify, adapt, decompile, disassemble or reverse engineer the WorkWide Software or the WorkWide Documentation;
  - 10.2.3 convert the whole or any part of the WorkWide Software into source code or make any attempt to discover the source code of the WorkWide Software;
  - 10.2.4 merge, combine or use the whole or any part of the WorkWide Software or the WorkWide Documentation with any other computer software or other written materials or documentation without the prior written consent of WorkWide, which consent can be withheld by WorkWide in its sole discretion;
  - 10.2.5 attempt to gain unauthorised access to the WorkWide Software or WorkWide Documentation;
  - 10.2.6 directly or indirectly, reveal or otherwise disclose or divulge the Confidential Information, to any third party;
  - 10.2.7 permit direct or indirect access to or use of WorkWide Technology in any way that circumvents a contractual usage limit;
  - 10.2.8 use any of the Subscription Services to access to the WorkWide Intellectual Property Rights except under the Contractual Framework or the WorkWide Documentation;
  - 10.2.9 access the WorkWide Technology for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Services;
  - 10.2.10 use the WorkWide Technology to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise in a malicious act or disrupt its security, integrity or operation;
  - 10.2.11 use the WorkWide Technology to access or disable any WorkWide or third party data;

- 10.2.12 part with possession of, lend or transfer any part of the WorkWide Software or WorkWide Documentation to any non-authorized person;
- 10.2.13 other than in accordance with an Order Form, license, sell, resell, sublicense, distribute, make available, transfer, time share rent or lease the WorkWide Technology or include the WorkWide Technology in an outsourcing offering; or
- 10.2.14 use the trademarks of the WorkWide Technology and refrain from modifying, removing or otherwise altering such trademarks, copyright or other Intellectual Property of the WorkWide Technology.

## 11. **INTELLECTUAL PROPERTY RIGHTS**

### 11.1 WorkWide's Intellectual Property

- 11.1.1 The Partner acknowledges that all right, title and interest in and to the Intellectual Property Rights in the WorkWide Technology ("WorkWide's Intellectual Property") are and shall at all times remain vested with WorkWide.
- 11.1.2 The Partner shall not during or at any time after the expiry or termination of the Partner Agreements dispute the ownership by WorkWide of WorkWide's Intellectual Property.
- 11.1.3 The Partner acknowledges that all rights in any copy, translation, update, Upgrade, adaptation or derivation of WorkWide's Intellectual Property including any improvement or development thereof belongs exclusively to, and shall be and remain the sole property of WorkWide.
- 11.1.4 The Partner shall hold all information and documentation relating to WorkWide's Intellectual Property in the strictest confidence and shall take all reasonable precautions to safeguard WorkWide's Intellectual Property from any unauthorized copying, distribution, disclosure, reproduction or use.
- 11.1.5 The Partner shall notify WorkWide promptly of any unauthorized disclosure, possession or use of WorkWide's Intellectual Property which becomes known to the Partner and to assist WorkWide in prosecuting any claims or proceedings in connection therewith.

### 11.2 Partner Technology

- 11.2.1 All rights, title and interest in and to the Intellectual Property Rights in the Partner Technology ("Partner's Intellectual Property") shall vest in the Partner and, to the extent that such rights do not vest by operation of law, WorkWide hereby cedes, assigns, transfers and



makes over such rights, title and interests to the Partner (which cession, assignment, transfer and making over the Partner hereby accepts).

- 11.3 Nothing in the Partner Agreements shall be deemed to restrict or limit WorkWide's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing the Professional Services.
- 11.4 The Parties agree that this clause 11 shall survive the termination of the Partner Agreements for any reason whatsoever.

## 12. **CONFIDENTIALITY**

12.1 The Parties acknowledge that:

12.1.1 the Confidential Information is of a sensitive nature and is a valuable, special and unique asset of the Disclosing Party, as the case may be; and

12.1.2 the Disclosing Party may suffer irreparable harm or substantial and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with the Partner Agreements.

12.2 Except as otherwise provided in this clause 16, the Confidential Information shall be treated and safeguarded by the Parties as strictly private, secret and confidential. No Party shall, whether directly or indirectly, reveal, otherwise disclose or divulge, or give access, whether remotely, physically or otherwise, to such Confidential Information, whether during or after the termination of the Partner Agreements, to any third party without the prior written consent of the other Party hereto.

12.3 The foregoing restrictions shall not apply to the disclosure of necessary Confidential Information to employees and advisors of the Parties on a need to know basis and in the case of a Party's employees, to enable the Party to perform its obligations under and in terms of the Partner Agreements. Any third party that may become privy to such Confidential Information shall first undertake in writing to protect the confidential nature thereof.

12.4 The Receiving Party irrevocably and unconditionally agrees and undertakes:

12.4.1 not to use or permit the use of the Confidential Information for any purpose other than in connection with and arising out of the Partner Agreements and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a

commercial, trading, investment, financial or other advantage over the Disclosing Party or otherwise use it to the detriment of the Disclosing Party;

- 12.4.2 to take all such steps as may be reasonably necessary to protect the Confidential Information against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent the Confidential Information from falling into the hands of unauthorised third parties.
- 12.5 The Parties shall, both before and after the disclosure of any Confidential Information to an employee for the purpose contemplated in clause 12.2, inform such employee of, and take all practical steps to impress upon him or her, the secret and confidential nature of the Confidential Information and the obligations imposed upon the Receiving Party under the Parnter Agreements in relation to the disclosure of such Confidential Information.
- 12.6 Each Party shall be responsible for procuring that its employees abide by the provisions of the Parnter Agreements and agree to be bound by the confidentiality undertakings given by the Receiving Party to the Disclosing Party in terms of the Parnter Agreements. A breach of any of the terms of the Parnter Agreements by any employee of the Receiving Party shall be deemed to be a breach committed by the Receiving Party, entitling the Disclosing Party to avail itself of the remedies contemplated in clause 18.1.
- 12.7 The confidentiality undertaking in this clause 16 shall not apply in respect of Confidential Information:
- 12.7.1 within the public domain other than as a result of a breach of this clause 16; or
- 12.7.2 where the disclosure is required to satisfy an order of a court of competent jurisdiction or other judicial decree, provided that in this case the Party required to disclose same has given the other Party sufficient prior written notice, where it is able to do so, to enable such other Party to defend or protect such disclosure; or
- 12.7.3 where the provisions of any law or regulation in force from time to time requires disclosure.
- 12.8 Information already known by a Party, information disclosed to it by a third party without being in breach of any confidentiality provisions, or information which was rightfully in a Party's possession without obligation of confidentiality, or was approved for release with the prior written consent of the Disclosing Party and information independently developed by a Party is also excluded from the confidentiality undertaking contained in this clause 16.

- 12.9 The Disclosing Party may at any time request the Receiving Party in writing to return, and procure the return by any employee of the Receiving Party, any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of the Partner Agreements, and may in addition request the Receiving Party to furnish a written statement to the effect, that upon such return, the Receiving Party has not retained in its possession or under its control either directly or indirectly any such material.
- 12.10 As an alternative to the return of the material contemplated in clause 12.9 above, the Receiving Party shall at the written request of the Disclosing Party, destroy such material, and procure the destruction of such material by any employee of the Receiving Party, and furnish the Disclosing Party with a written statement to the effect that all such material has been destroyed.
- 12.11 The Parties agree that this clause 12 shall survive the termination of the Partner Agreements for any reason whatsoever.

13. **WARRANTIES AND ACKNOWLEDGEMENTS**

- 13.1 Any warranty to a Customer regarding the Services shall be provided solely and directly from WorkWide to the Customer in the Customer Agreements.
- 13.2 The Partner shall not make (and shall not allow its shareholders, directors, officers, employees or subcontractors to make) representations or warranties, whether or not false or misleading, to Customers regarding WorkWide Technology or Professional Services.
- 13.3 Corporate Warranties

13.3.1 Each Party represents and warrants to the other Party that:

- 13.3.1.1 it will perform its responsibilities under the Partner Agreements in a manner that does not infringe or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret, intellectual property rights or any other proprietary rights of any third party;
- 13.3.1.2 it has the requisite corporate power and authority to enter into the Partner Agreements and to carry out the transactions contemplated by the Transaction Documents under the Partner Agreements;
- 13.3.1.3 execution, delivery and performance of the Partner Agreements and the consummation of the transactions contemplated herein have been duly authorised by the requisite corporate action on the part of such Party; and

13.3.1.4 the entry into of the Partner Agreements shall not contravene any provision of that Party's constitutional documents.

#### 13.4 Disclaimer of Warranties

Except for the Warranties expressly set out in the Partner Agreements or an Order Form, to the maximum extent permitted by law, WorkWide disclaims all warranties of any kind, whether express, implied, statutory, written or otherwise, and specifically disclaims all implied warranties, including warranties of merchantability, accuracy, title, noninfringement or fitness for a particular purpose or warranties arising from usage of trade, course of dealing or course of performance. Without limiting the generality of the foregoing, WorkWide provides the Services "as is" and specifically does not warrant that the Subscription Services, WorkWide Software, Professional Services or WorkWide Documentation will meet the requirements of the Partner or the Customer or that they will be accurate or operate without interruption or error.

13.5 The Parties acknowledge that in entering into the Partner Agreements they do not do so on the basis of and do not rely on any representation, warranty or other provision except as expressly provided in the Partner Agreements.

#### 14. **THIRD PARTY CLAIM INDEMNITY**

14.1 Subject to the provisions of clauses 14.4, WorkWide hereby indemnifies and holds the Partner harmless from any liabilities, claims, damages, losses and all related costs and expenses incurred, or suffered by or awarded against the Partner arising out of any claims instituted by way of court proceedings against the Partner by a third party arising out of the infringement of any third party's copyright, trade secret, trademark, patent, invention, proprietary information or any other intellectual property rights pursuant to the Customer's use of the WorkWide Technology supplied by WorkWide to the Customer under and in terms of the Contractual Framework.

14.2 WorkWide shall, at its cost, be entitled to defend, on behalf of the Partner, any claim arising out of or in connection with the infringement by the Customers use of any intellectual property rights of any third party described in clause 14.1. The Partner shall promptly notify WorkWide in writing of any allegations of infringements of which notice has been received by the Partner and the Partner shall not make any admissions or make any settlement arrangements without WorkWide's prior written consent. The Partner shall provide all reasonable assistance including information, providing evidence, all documentation necessary as well as access to the WorkWide Technology, to WorkWide in connection with the defence of the claim. Any relief awarded in favour of the Partner in respect of any such claim shall be for the benefit of and shall accrue to WorkWide.

- 14.3 If a claim has been instituted by way of court proceedings against the Partner by a third party as contemplated in clause 14 and the Partner has notified WorkWide in accordance with the provisions of clause 14.2 and such third party claim may cause the Customer's use of the WorkWide Technology, to be seriously endangered or disrupted, then WorkWide shall at its own cost and expense and at its sole discretion:
- 14.3.1 replace the WorkWide Technology or the relevant portion thereof which allegedly infringes the third party's intellectual property rights with compatible functionally equivalent and non-infringing software and/or associated documentation, as the case may be; or
  - 14.3.2 make the necessary modifications to the WorkWide Technology to avoid the infringement; or
  - 14.3.3 obtain a licence for the Customer to continue using the offending WorkWide Technology for the term of the Subscription Services,
- or, if the aforementioned are not available on commercially reasonable terms in WorkWide's judgement, they will terminate the Customer's use of the affected Subscription Services upon 60 (sixty) days written notice to the Partner and refund the Partner for any prepaid subscription fees covering the remaining portion of the Subscription Term for the affected Subscription Service after the date of Subscription Services Termination Date.
- 14.4 The provisions of these clauses 14.1 to 14.3, both inclusive, shall survive the termination of the Partner Agreements and states WorkWide's entire liability and the Partner's exclusive remedy for third party claims and actions in relation to any infringement referred to in clauses 14.1 and 14.2.
- 14.5 Notwithstanding the provisions contained in clause 14.1, WorkWide shall not be liable to the Partner, if any infringement of any third party's intellectual property rights or misappropriation of any software and/or materials forming the subject matter of any third party's claim thereof is based upon:
- 14.5.1 the use of the WorkWide Technology or any part thereof in connection with any other product, software or system not delivered by WorkWide to the Customer;
  - 14.5.2 the use of the WorkWide Technology or any portion thereof in any manner other than in accordance with the Contractual Framework, WorkWide Documentation, Customer Agreements and its designated use;
  - 14.5.3 modification, alteration, enhancement and/or customisation of the WorkWide Technology or any part thereof by the Partner or Customer, in the manner causing it to become infringing; or

- 14.5.4 use of any update or upgrade of the WorkWide Technology other than the most current update or upgrade of the WorkWide Technology where the use of the most current update or upgrade would have avoided the third party claim of infringement.

15. **PARTNER INDEMNITY**

- 15.1 The Partner shall be liable, on written demand, for all losses, liabilities, damages and claims and all related costs and expenses including legal fees and disbursements, settlement and judgment incurred or suffered by WorkWide arising from the negligence, intentional act, wilful misconduct, omissions or vandalism committed by or on behalf of the Partner or Partner Personnel in connection with the following:

- 15.1.1 the tampering, misuse or abuse of the WorkWide Technology by the Partner or any of the Partner's Personnel and/or pursuant to any damage inflicted to the environment and system in which the WorkWide Technology operates through vandalism;

- 15.1.2 any addition, modification, alteration or enhancement made to the WorkWide Technology by the Partner or any of the Partner's Personnel without the prior written consent of WorkWide;

- 15.1.3 The Partner's breach of any of its obligations, warranties, undertakings or covenants contained in the Contractual Framework;

- 15.1.4 damage or destruction of any property belonging to WorkWide.

16. **RECIPROCAL INDEMNITY**

- 16.1 Each Party ("the Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("the Indemnified Party"), its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents, from and against any third party claims, demands, loss, damage or expense relating to:

- 16.1.1 bodily injury or death of any person directly caused solely by the negligence of the Indemnifying Party, its personnel or agents in connection with the Partner Agreements;

- 16.1.2 any fraudulent act or omission of the Indemnifying Party, its affiliates or personnel in connection with the Partner Agreements;

- 16.1.3 a breach of clauses 11 or 12 by the Indemnifying Party.

17. **LIMITATION OF LIABILITY**

- 17.1 Subject to the provisions of clause 17.2 and to the extent permitted by law:

- 17.1.1 the Parties shall not be liable to each other for any indirect, special or consequential loss or damage including, without limitation, loss of profit, revenue, anticipated savings, business transactions, goodwill, or other contracts or loss of data, interruption in use or availability of data, howsoever arising, whether in delict, breach of contract or otherwise. The Parties shall be liable to each other for proven direct damages only;
  - 17.1.2 WorkWide's liability to the Partner arising from an Order Form for Subscription Services, whether in contract or delict (including negligence) is limited to 50% of the charges paid by the Partner, in the 12 (twelve) month period immediately preceding the event giving rise to the liability, under the applicable Order Form for Subscription Services on which the claim relates. The existence of more than one claim shall not enlarge this limit; and
  - 17.1.3 WorkWide's liability to the Partner in respect of a claim arising from Subscription Services, whether in contract or delict (including negligence) is limited to a maximum of the Fees paid by the Partner to WorkWide for the Subscription Services in the 12 (twelve) month period immediately preceding the event giving rise to the liability. The existence of more than one claim shall not enlarge this limit.
- 17.2 Nothing contained in this clause 16, shall exclude or limit either Party's liability to the other in respect of the indemnity undertakings given in clause 16.

18. **BREACH**

18.1 Breach

- 18.1.1 Should any Party (the "**Agreement Defaulting Party**") commit a material breach of any provision of a Partner Agreement, and fail to remedy such breach or fail to implement remedial action reasonably acceptable to the other Party which will remedy the breach, within 30 (thirty) days of receiving a written notice from the other Party (the "**Partner Agreement Aggrieved Party**") requiring the Defaulting Party to do so, the Partner Agreement Aggrieved Party shall be entitled, in addition to its other remedies in terms of the Partner Agreements, to cancel the Partner Agreement (subject to clause 7.2.1.1 above) or to claim specific performance, without prejudice to its rights to claim damages in accordance with the provisions of the Partner Agreements.
- 18.1.2 Should any Party (the "**Order Form Defaulting Party**") commit a material breach of an Order Form (the "**Breached Form**"), and fail to remedy such breach or fail to implement remedial action reasonably acceptable to the other Party which will remedy the

breach, within 30 (thirty) days of receiving a written notice from the other Party (the "**Order Form Aggrieved Party**") requiring the Order Form Defaulting Party to do so, the Order Form Aggrieved Party shall be entitled, in addition to its other remedies in terms of the Partner Agreements or the Breached Order Form, to cancel the Breached Order Form forthwith or to claim specific performance, without prejudice to its rights to claim damages in accordance with the provisions of the Partner Agreements or the Breached Order Form. An unremedied breach by any Order Form Defaulting Party of its obligations with respect of a Breached Order Form shall not constitute a breach by the Order Form Defaulting Party of its obligations with respect of the Partner Agreements or a separate Order Form and the Parties agree that the Order Form Aggrieved Party shall not be entitled to terminate the Partner Agreement or any separate Order Forms as a result of an unremedied Breach of a Breached Order Form.

- 18.2 Either Party shall be entitled to terminate the Partner Agreements, and/or a Order Form, immediately if the other Party commits an act of insolvency, admitting in writing its inability to pay its debts as they mature, making an assignment for the benefit of creditors generally, filing or having filed against it by a third party any petition under any insolvency, or an application for any of the foregoing not being resolved, or being placed under business rescue proceedings

19. **FORCE MAJEURE**

In the event of any delay in performance by either Party due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of such Party (including, but not limited to, strikes, lock-outs, civil commotion, riots, war, threat of or preparation for war, breaking off of diplomatic relations, fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, pestilence or epidemic, machinery breakdown, failure of plant or collapse of structure, request or order of any person having or appearing to have authority), the Party affected thereby shall be under no liability for loss or injury suffered by the other Party as a result thereof and the performance of such obligation by the Party affected thereby shall be suspended during such delay and upon cessation of the cause of such delay, the Partner Agreements shall again become fully operative and such affected Party shall immediately rectify such delay in performance.

20. **ARBITRATION**

- 20.1 Save as otherwise expressly provided in the Partner Agreements or a Transaction Document, should any Party ("the Disputing Party") contend that, in its opinion, a claim or a disagreement or a dispute (hereinafter collectively referred to as a "Dispute") has arisen between the Parties out of, in relation to,



or in connection, with the Parnter Agreements or an Order Form or in regard to:

- 20.1.1 the interpretation of;
- 20.1.2 the effect of;
- 20.1.3 the Parties' respective rights or obligations under;
- 20.1.4 a breach of;
- 20.1.5 the termination of; or
- 20.1.6 any matter arising out of the termination of,

the Parnter Agreements or an Order Form that Dispute shall be decided by arbitration in the manner set out in this clause 26.

20.2 The arbitration shall:

- 20.2.1 be held in Sandton;
- 20.2.2 be held, in accordance with the then prevailing Rules of Arbitration of the Arbitration Foundation of South Africa ("AFSA");
- 20.2.3 The award rendered by the arbitrator(s) shall be final and binding upon all the parties; and
- 20.2.4 Be held in English.

20.3 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if the Parnter Agreements is terminated.

20.4 The law governing the Parnter Agreements shall be the laws of the Republic of South Africa.

20.5 The Court having jurisdiction to enforce any award made under this clause 20 shall be the South Gauteng, High Court.

20.6 Nothing contained in this clause 20 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.

## 21. **NOTICES**

21.1 The Parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with the Parnter Agreements at which addresses all the terms and notices

arising out of or in connection with the Partner Agreements, its breach or termination may validly be served upon or delivered to the Parties.

21.2 For the purpose of the Partner Agreements the Parties' respective addresses shall be:

21.2.1 as regards the Partner, the address shall be the address of the Partner set out in the Partner Program Agreement; and

21.2.2 as regards WorkWide, the address shall be the address of WorkWide the set out in Partner Program Agreement.

21.3 Any notice given in terms of the Partner Agreements shall be in writing and shall:

21.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

21.3.2 if sent by electronic mail, be deemed to have been duly received:

21.3.2.1 on the day of transmission where any e-mail is sent on a day before or during normal working hours in place of receipt; or

21.3.2.2 on the following day where any e-mail is sent either on a day after normal working hours in the place or receipt which is not a working day in the place of receipt.

21.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

## 22. **CESSION, DELEGATE AND ASSIGNMENT**

None of the Parties may cede their rights nor delegate their obligations without the prior written consent of any other Parties, which consent will not be unreasonably withheld.

## 23. **WHOLE AGREEMENT**

The Contractual Framework constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. The Parties shall not be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded in the Contractual Framework.

24. **VARIATION**

24.1 Save as contemplated in clause 24.2 below, no addition to or variation, consensual cancellation or novation of the Parnter Agreements shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

24.2 WorkWide may, from time to time in its sole discretion upon thirty (30) days' notice to Partner, amend the Partner Program Agreement or these Partner General Terms and Conditions, on a going forward and non-discriminatory basis. If the Partner does not agree to such amendments, the Partners sole recourse shall be to terminate the Appointment in accordance with clause Section 7.1.2.1.1.

25. **PARTIES NOT AFFECTED BY WAIVER**

25.1 The waiver (whether expressed or implied) by any Party of any breach of the terms or conditions of the Parnter Agreements by the other Party shall not prejudice any remedy of the waiving Party in respect of any continuing or other breach of the terms and conditions hereof.

25.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of the Parnter Agreements shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under the Parnter Agreements.

25.3 The expiry or termination of the Parnter Agreements shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions hereof.

26. **SEVERABILITY**

If any provision of the Parnter Agreements is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid or enforceable means is reasonably available to achieve the same object as the invalid or unenforceable provision, to adopt such means by way of variation of the Parnter Agreements.

27. **BENEFITS**

The Parnter Agreements will inure for the benefit of and be binding upon the successors and permitted assigns of the Parties, or any of them.

28. **COSTS**

Each Party shall bear its own costs relating to the negotiation, drafting and settling of the Parnter Agreements.

## **Annexure A**

### **SUPPORT SERVICES - WorkWide Support Policy**

#### **Support Process**

1. Raise your support by sending an e-mail to support@workwidemobile.com
2. You will be issued with a case reference number and one of our team members will be assigned to your case
3. Calls will be resolved once you have confirmed the solution proposed is valid and has resolved your query
4. If no response is being given after 5 business days of the issue being resolved by the WorkWide team, the call will be automatically closed

SEVERITY LEVEL	SEVERITY CRITERIA
S1	<b>Critical Service Impact</b> Issue critically affects the primary business service, major application, or mission critical system. Partner resources should be available and willing to work on a 24x7 basis with support teams to resolve the issue. Characteristics of a Severity 1 issue include: <ul style="list-style-type: none"> <li>• Business service is not operational</li> <li>• Production system crashes</li> <li>• Data integrity at risk</li> <li>• Production backup and recovery operations fail</li> </ul>
S2	<b>Significant Service or Implementation Impact</b> The business service, major application, or system is seriously affected, or implementation stopped. No acceptable workaround is available.
S3	<b>Moderate Service Impact</b> The business service, major application, or system is moderately impacted, no data has been lost, and the business service, application, or system is still functioning. The issue may be temporarily circumvented using an available workaround.
S4	<b>No Service Impact</b> Non-critical issues, general questions or documentation issues
S5	<b>Product Enhancement</b> Enhancement requests, new features or additional integration

PARTNER SUPPORT OFFERING	HOURS OF OPERATION	INITIAL RESPONSE GOALS
Continuous Support Severity 1 issues	Continuous Hours 24 hours x 7 days (Includes public holidays)	S1 = 3 Clock Hours
Continuous Support Severity 2 - 4 issues	Business Hours 8 Hours x 5 days (Excludes public holidays)	S2 = 8 Business Hours S3 = 16 Business Hours S4 = 36 Business Hours

The WorkWide Support Policy governs the Support Services WorkWide will provide for the Subscription Service. This Policy may be updated by WorkWide from time to time, and is detailed in the scope below:

### **Scope**

A resolution to a defect may be determined as a platform issue, or a non-platform issue, as further clarified below.

The purpose of these Support Services is to resolve defects as a result of platform issues.

A resolution to non-platform issues will not form part of these Support Services and must be ordered by the Partner under an Order Form for Professional Services.

### **Non-Platform Issues:**

These Support Services do not include the following,

- Professional Services
- Platform performance related issues
- Configuration services
- Integration Services
- Customization services
- Training
- Administration
- Data Migration

### **Platform Issues:**

These Support Services may include the following:

- General User Queries
- All product features, functions and performance related issues in relation to WorkWide's Subscription Services, unrelated to platform performance.
- Non-code related Configuration services
- User Support (Mobile and Desktop)
- All items in relation to WorkWide post the go-live Professional Services

Support Services will not be required to provide any resolution for immaterial defects or defects resultant of modifications made to the Subscription Services by any person other than a WorkWide employee, or a person acting directly on behalf of WorkWide.

### **Partner Responsibilities**

- The Partner agrees to receive communications via e-mail, SMS and telephone regarding the Subscription Services.
- The Partner shall appoint no more than 5 Technical Contacts to engage WorkWide Support to log calls and resolve technical issues.
- The Partner is responsible for providing the correct information for all Technical Contacts and ensure that these details remain current and up to date.
- The Partner shall cooperate with WorkWide to resolve issues and enable delivery of the Subscription Services.