



WORKWIDE END USER LICENSE AGREEMENT

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1. **PARTIES**

1.1 The Parties to this Agreement are:

1.1.1 Quintica Group Shared Services Proprietary Limited, incorporated as a private company in the Republic of South Africa with company registration number 2014/188455/07 whose registered office is Culross on Main, Building 2, 34 Culross Road, Bryanston, Gauteng, South Africa T/A WorkWide ("hereinafter referred to as "**WorkWide**"); and

1.1.2 the party listed under "Customer Details" in the End User Acceptance Form to which this Agreement is annexed ("hereinafter referred to as the "**Customer**").

1.2 The Parties agree as set out below.

OPERATIVE CLAUSES

2. **INTERPRETATION**

2.1 **Defined terms**

In this Agreement the following words and expressions shall have the following meanings assigned to them:

2.1.1 "**Admin User**" means a Customer Personnel who is authorised by the Customer to act as the administrative user of the WorkWide Technology, for whom the Customer has purchased the Subscription Services;

2.1.2 "**the/this Agreement**" means the agreement set out in this End User License Agreement including the End User Acceptance Form/s and all schedules, appendices and annexures hereto and any amendments thereto as may be agreed to by the Parties in writing from time to time;

2.1.3 "**Confidential Information**" means the terms of this Agreement, 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) Customer Data is confidential and proprietary to the Customer;

- 2.1.4 **"Customer's Data"** means electronic data uploaded by or for the Customer and the Customer's Personnel and processed in the WorkWide Technology, but excluding the WorkWide Technology;
- 2.1.5 **"Customer's Personnel"** means, all Users, employees, partners, contractors, sub-contractors of the Customer;
- 2.1.6 **"Date of Signature"** means the date of signature of the End User Acceptance Form by the Customer;
- 2.1.7 **"the Disclosing Party"** means the party disclosing the Confidential Information;
- 2.1.8 **"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 Reseller along with the term and scope thereof, signed and agreed by the Customer;
- 2.1.9 **"Initial Term"** means the initial term of authorized use and provision of the Services as set forth in an End User Acceptance Form;
- 2.1.10 **"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;
- 2.1.11 **"Mobile User"** means a Customer Personnel who is authorized by the Customer to use the mobile application form of the Subscription Services and for whom the Customer has purchased the Subscription Services;
- 2.1.12 **"Party/ies"** means WorkWide and the Customer, or any one of them as the context may indicate;
- 2.1.13 **"the Receiving Party"** means the party receiving the Confidential Information;
- 2.1.14 **"Renewal Term"** means the renewal term of authorized use and provision of the Services;
- 2.1.15 **"Reseller"** means WorkWide's authorized reseller who has entered into a separate transaction with the Customer to purchase the Services to be delivered by WorkWide;

- 2.1.16 **"Services"** means the Subscription Services and/or the Support Services, or any one of them or a combination of them as the context may indicate;
- 2.1.17 **"Subscription Services"** means the subscription services in respect of the WorkWide Software as ordered by the Customer from the Reseller and set out in an End User Acceptance Form;
- 2.1.18 **"Subscription Term"** means the subscription term as set out in the End User Acceptance Form;
- 2.1.19 **"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 [Appendix 1](#) hereto;
- 2.1.20 **"Termination Date"** means the date on which an End User Acceptance Form is terminated for any reason whatsoever;
- 2.1.21 **"Time and Task User"** means an individual who is authorized by the Customer to use the Time and Task form of the WorkWide Technology, for whom the Customer has purchased the Subscription Services;
- 2.1.22 **"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;
- 2.1.23 **"User"** means an Admin User, Mobile User and/or Time and Task User, or any one of them or a combination of them, as the context may indicate;
- 2.1.24 **"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;
- 2.1.25 **"WorkWide Software"** means WorkWide's WorkWide solutions licensed by WorkWide to the Customer that is deployed on machines operated by or for the Customer to facilitate operation of the Subscription Service;
- 2.1.26 **"WorkWide Technology"** means

- 2.1.26.1 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;
- 2.1.26.2 updates, Upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and
- 2.1.26.3 WorkWide's Intellectual Property Rights as set out in clause 10.1 below.

2.2 **Construction**

In this Agreement:

- 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 this Agreement;
- 2.2.3 any reference to an enactment, regulation, rule or by-law is that enactment, regulation, rule or by-law as at the Date of Signature, and as amended or replaced from time to time;
- 2.2.4 schedules, appendices and annexures to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 2.2.5 a reference to a Party in this Agreement 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 1st (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 this Agreement shall not affect those provisions of this Agreement 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 (this Agreement being the product of negotiations between the Parties), this Agreement 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 this Agreement;
- 2.2.10 records shall be binding on the Parties and are not merely for information purposes;
- 2.2.11 the headings appearing in this Agreement 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 this Agreement, 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; and
- 3.1.2 capable of providing the Support Services.

- 3.2 The Customer has retained WorkWide, through the Reseller, to:
- 3.2.1 provide the Customer with a license, access and use rights to the Subscription Service/s; and
 - 3.2.2 provide the Customer with Support Services.

4. **ORDERING**

The Customer shall order the Services directly from the Reseller pursuant to a separate agreement specifying price, payment and other commercial terms between the Reseller and the Customer. WorkWide is not a party to such separate agreement but will grant use of and provide such purchased Services to the Customer pursuant to this Agreement. For each order, the Reseller or WorkWide will provide the Customer with an End User Acceptance Form for the Customer to sign and return to WorkWide. WorkWide will have no obligation to provide any service unless and until it has received a signed End User Acceptance Form from the Customer. The Reseller is not authorised to make any changes to this Agreement (including any End User Acceptance Forms issued hereunder) or bind WorkWide to any additional or different terms or conditions.

5. **GRANT OF USER RIGHTS**

- 5.1 For each End User Acceptance Form signed between WorkWide and the Customer in respect of Subscription Services, and subject to the terms contained in this Agreement, WorkWide hereby grants to the Customer, for the Subscription Term, the license, access and use rights set out in this clause 5, with respect to the Subscription Service described in that End User Acceptance Form.
- 5.2 Subject to the terms of this Agreement, WorkWide hereby grants to the Customer, for the Subscription Term, a limited, worldwide, non-sublicensable, personal, non-transferable, and non-exclusive right and license to install and execute the WorkWide Software on machines operated by or for the Customer solely to facilitate the Customer's authorized User access to and use of the purchased Subscription Service.
- 5.3 The Customer shall not use or otherwise access the Subscription Service in a manner that exceeds the Customer's authorised use as set forth in this Agreement and applicable End User Acceptance Form.
- 5.4 WorkWide will at all times during the Subscription Term keep the WorkWide Technology under escrow with Codekeeper to serve as continuity protection of the WorkWide Technology.

6. **USAGE LIMITS**

6.1 Subscription Service Usage Limits

In respect of Subscription Services, unless otherwise provided in the applicable End User Acceptance Form:

- 6.1.1 Subscription Services are purchased as subscriptions per User as set out in a relevant End User Acceptance Form;
- 6.1.2 Users may be added during a Subscription Term by the Parties concluding a new End User Acceptance Form in respect of such additional Users;
- 6.1.3 Quantities of Subscription Services purchased as per the End User Acceptance Form cannot be decreased during the relevant Subscription Term;
- 6.1.4 a quantity in a End User Acceptance Form refers to the Users, and the Subscription Services may not be accessed by more than that number of Users;
- 6.1.5 a User's login may not be shared with any other individual; and
- 6.1.6 a User identification may only be reassigned to a new individual replacing one who will no longer use the Subscription Services.

6.2 Use Verification

WorkWide may remotely review the Customer's use of the Subscription Services, and upon WorkWide's written request the Customer shall provide reasonable assistance to WorkWide to enable WorkWide to verify the Customer's compliance with this Agreement and the End User Acceptance Form.

6.3 Over Usage

- 6.3.1 If WorkWide determines that the Customer exceeds a contractual usage limit ("the Contractual Usage Limit") contemplated in the original End User Acceptance Form ("the Original End User Acceptance Form"), the Reseller, at the instruction of WorkWide, shall invoice the Customer for:
 - 6.3.1.1 Such numbers, types and identifiers of permitted Users which are in excess of the Contractual Usage Limit set out in the the Original End User Acceptance Form ("the Over-Usage");

- 6.3.1.2 The term of the Over-Usage Subscription Services shall be for the period commencing on the 1st day of the month in the month when the Customer exceeded the Contractual Usage Limit until the end of the Subscription Term set out in the the Original End User Acceptance Form;
 - 6.3.1.3 The fees and other charges payable by the Customer for the Over-Usage shall be in line with those fees and charges set out for the Subscription Services in the order between the Customer and the Reseller ("the Over-Usage Fees");
 - 6.3.1.4 The Over-Usage Fees will be invoiced to the Reseller to the Customer within 30 days of WorkWide becoming aware of the Over-Usage; and
 - 6.3.1.5 The invoice in respect of the Over-Usage Fees will be payable 14 days after issue of such invoice.
- 6.3.2 To the extent that the Customer does not make payment of the invoice in accordance with clause 6.3, WorkWide shall disable the unpermitted Users which are in excess of the Contractual Usage Limit.

7. **UPGRADES**

- 7.1 WorkWide shall, subject to clause 7.3 and 7.4 below, use commercially reasonable efforts to provide the Customer with any Upgrades of the WorkWide Technology.
- 7.2 To the extent that WorkWide is, in its sole discretion, able to make any such Upgrades to the WorkWide Technology available to the Customer, WorkWide undertakes, subject to clauses 7.3 and 7.4, to supply such Upgrades to the Customer, free of charge.
- 7.3 Should WorkWide, determine in its discretion that the provision of the Upgrade to the Customer is not routine, WorkWide may elect not to make the Upgrade available to the Customer unless the Customer solicits WorkWide, through a statement of work for professional services entered into with the Reseller, to install the relevant Upgrade on behalf of the Customer.
- 7.4 For the avoidance of doubt, it is specifically agreed by the Parties that any statement of work for professional services required in respect of the installation of a relevant Upgrade by WorkWide and requested by the Customer shall be charged by Reseller to the Customer on a time and material basis.
- 7.5 WorkWide will use reasonable efforts to give the Customer 90 days prior notice of any Upgrade to the Subscription Services. Notwithstanding the foregoing,

WorkWide may provide the Customer with a shorter notice period of an Upgrade if necessary, in the reasonable judgement of WorkWide, for WorkWide to efficiently provide the Subscription Service.

- 7.6 WorkWide will use commercially reasonable efforts to limit the period of time during which the Subscription Service is unavailable due to the application of Upgrades to no more than 8 hours per month.

8. **SUPPORT SERVICES**

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

9. **RIGHTS AND OBLIGATIONS OF THE CUSTOMER**

- 9.1 The Customer shall:

9.1.1 Be responsible for Customer Personnel's compliance with this Agreement, WorkWide Documentation and a End User Acceptance Form;

9.1.2 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;

9.1.3 Use WorkWide Technology only in accordance with this Agreement, WorkWide Documentation, End User Acceptance Form and applicable laws and government regulations; and

9.1.4 accept sole responsibility for all of the Customer's Data and WorkWide shall not be held responsible for any claim by of whatsoever nature for any loss of the Customer's Data.

- 9.2 The Customer shall not, and shall not permit Users, the Customer's Personnel, or others to:

9.2.1 make any Subscription Services available to, or use the Subscription Service for the benefit of, anyone other than the Customer, unless expressly stated otherwise in an End User Acceptance Form or the WorkWide Documentation;

9.2.2 copy, translate, modify, adapt, decompile, disassemble or reverse engineer the WorkWide Software or the WorkWide Documentation;

- 9.2.3 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;
- 9.2.4 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;
- 9.2.5 attempt to gain unauthorised access to the WorkWide Software or WorkWide Documentation;
- 9.2.6 directly or indirectly, reveal or otherwise disclose or divulge the Confidential Information, to any third party;
- 9.2.7 permit direct or indirect access to or use of WorkWide Technology in any way that circumvents a contractual usage limit;
- 9.2.8 use any of the Subscription Services to access to the WorkWide Intellectual Property Rights except under this Agreement, the End User Acceptance Form/s or the WorkWide Documentation;
- 9.2.9 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;
- 9.2.10 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;
- 9.2.11 use the WorkWide Technology to access or disable any WorkWide or third party data;
- 9.2.12 part with possession of, lend or transfer any part of the WorkWide Software or WorkWide Documentation to any non-authorized person;
- 9.2.13 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
- 9.2.14 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.

9.3 Notwithstanding anything contained in this Agreement, the provisions of clause 9.2 as well as any provision required for its construction or enforcement, shall survive the Termination Date.

10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 WorkWide's Intellectual Property

10.1.1 The Customer 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.

10.1.2 The Customer shall not during or at any time after the expiry or termination of this Agreement dispute the ownership by WorkWide of WorkWide's Intellectual Property.

10.1.3 The Customer 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.

10.1.4 The Customer 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 unauthorised copying, distribution, disclosure, reproduction or use.

10.1.5 The Customer shall notify WorkWide promptly of any unauthorised disclosure, possession or use of WorkWide's Intellectual Property which becomes known to the Customer and to assist WorkWide in prosecuting any claims or proceedings in connection therewith.

10.2 Customer's Intellectual Property

10.2.1 As between the Customer and WorkWide, the Customer shall retain all of its rights, title, and interest in and to its Intellectual Property Rights in the Customer's Data ("Customer's Intellectual Property").

10.2.2 The Customer hereby grants to WorkWide a royalty-free, fully paid, non-exclusive, non-transferable (except as set forth in clause 22), non sub-licensable, worldwide right to use Customer's Data solely for the purpose of providing the Services.

10.3 Notwithstanding anything contained in this Agreement, the provisions of this clause 10 as well as any provision required for its construction or enforcement, shall survive the Termination Date.

11. **CONFIDENTIALITY**

11.1 The Parties acknowledge that:

11.1.1 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

11.1.2 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 this Agreement.

11.2 Except as otherwise provided in this clause 11, 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 this Agreement, to any third party without the prior written consent of the other Party hereto.

11.3 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 this Agreement. Any third party that may become privy to such Confidential Information shall first undertake in writing to protect the confidential nature thereof.

11.4 The Receiving Party irrevocably and unconditionally agrees and undertakes:

11.4.1 not to use or permit the use of the Confidential Information for any purpose other than in connection with and arising out of this Agreement 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;

11.4.2 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.

- 11.5 The Parties shall, both before and after the disclosure of any Confidential Information to an employee for the purpose contemplated in clause 11.2, 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 this Agreement in relation to the disclosure of such Confidential Information.
- 11.6 Each Party shall be responsible for procuring that its employees abide by the provisions of this Agreement and agree to be bound by the confidentiality undertakings given by the Receiving Party to the Disclosing Party in terms of this Agreement. A breach of any of the terms of this Agreement 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.
- 11.7 The confidentiality undertaking in this clause 11 shall not apply in respect of Confidential Information:
- 11.7.1 within the public domain other than as a result of a breach of this clause 15; or
 - 11.7.2 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
 - 11.7.3 where the provisions of any law or regulation in force from time to time requires disclosure.
- 11.8 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 11.
- 11.9 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 this Agreement, 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.

11.10 As an alternative to the return of the material contemplated in clause 11.9 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.

11.11 Notwithstanding anything contained in this Agreement, the provisions of this clause 11 as well as any provision required for its construction or enforcement, shall survive the Termination Date.

12. **WARRANTIES AND ACKNOWLEDGEMENTS**

12.1 Subscription Service Warranty

12.1.1 WorkWide warrants and represents that during the Subscription Term, the Subscription Services shall materially conform to the WorkWide Documentation ("Subscription Service Warranty").

12.1.2 To submit a Subscription Services Warranty claim, the Customer shall:

12.1.2.1 Reference this clause 12.1; and

12.1.2.2 Submit a Support Services request to resolve the non-conformity as provided in Annexure A.

12.1.3 If the non-conformity persists without relief for more than 30 (thirty) days after written notice to WorkWide of a warranty claim under this clause 12.1, then Customer may terminate the affected Subscription Service and submit to the Reseller a claim for a refund of any prepaid Fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination.

12.1.4 This clause 12.1 sets forth Customer's exclusive rights and remedies, and WorkWide's sole liability in connection with the Subscription Service Warranty.

12.2 Disclaimer of Warranties

12.2.1 Except for the warranties expressly set out in this Agreement or an End User Acceptance 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

specifically does not warrant that the Subscription Service, WorkWide Software or WorkWide Documentation will meet the requirements of the Customer or that they will be accurate or operate without interruption or error.

- 12.3 The Parties acknowledge that in entering into this Agreement 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 this Agreement.

13. THIRD PARTY CLAIM INDEMNITY

- 13.1 Subject to the provisions of clauses 13.4, WorkWide hereby indemnifies and holds the Customer harmless from any liabilities, claims, damages, losses and all related costs and expenses incurred, or suffered by or awarded against the Customer arising out of any claims instituted by way of court proceedings against the Customer 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 this Agreement.

- 13.2 WorkWide shall, at its cost, be entitled to defend on behalf of the Customer any claim arising out of or in connection with the infringement by the Customer of any intellectual property rights of any third party described in clause 13.1. The Customer shall promptly notify WorkWide in writing of any allegations of infringements of which notice has been received by the Customer and the Customer shall not make any admissions or make any settlement arrangements without WorkWide's prior written consent. The Customer 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 Customer in respect of any such claim shall be for the benefit of and shall accrue to WorkWide.

- 13.3 If a claim has been instituted by way of court proceedings against the Customer by a third party as contemplated in clause 13.1 and the Customer has notified WorkWide in accordance with the provisions of clause 13.2 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:

- 13.3.1 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

13.3.2 make the necessary modifications to the WorkWide Technology to avoid the infringement; or

13.3.3 obtain a licence for the Customer to continue using the offending WorkWide Technology for the term of this Agreement,

or, if the aforementioned are not available on commercially reasonable terms in WorkWide's judgement, the Customer can terminate the use of the affected Subscription Services upon 60 (sixty) days written notice and refund the Customer for any prepaid subscription fees covering the remaining portion of the Subscription Term for the affected Subscription Service or WorkWide Software after the date of termination.

13.4 The provisions of these clauses 13.1 to 13.3, both inclusive, shall survive the termination of this Agreement and states WorkWide's entire liability and the Customer's exclusive remedy for third party claims and actions in relation to any infringement referred to in clauses 13.1 and 13.2.

13.5 Notwithstanding the provisions contained in clause 13.1, WorkWide shall not be liable to the Customer, 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:

13.5.1 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;

13.5.2 the use of the WorkWide Technology or any portion thereof in any manner other than in accordance with the WorkWide Documentation and its designated use;

13.5.3 modification, alteration, enhancement and/or customisation of the WorkWide Technology or any part thereof by the Customer, its employees or any other third party in the manner causing it to become infringing; or

13.5.4 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.

14. **CUSTOMER INDEMNITY**

14.1 The Customer 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 Customer or any of its employees, agents and/or contractors in connection with the following:

- 14.1.1 the tampering, misuse or abuse of the WorkWide Technology by the Customer or any of the Customer's Personnel and/or pursuant to any damage inflicted to the environment and system in which the WorkWide Technology operates through vandalism;
- 14.1.2 any addition, modification, alteration or enhancement made to the WorkWide Technology by the Customer without the prior written consent of WorkWide;
- 14.1.3 The Customer's breach of any of its obligations, warranties, undertakings or covenants contained in this Agreement;
- 14.1.4 The Customer's failure to maintain licence fees in respect of virus protection software and, as a result thereof, the operating system and the WorkWide Technology becomes infected; and
- 14.1.5 damage or destruction of any property belonging to WorkWide.

15. RECIPROCAL INDEMNITY

15.1 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:

- 15.1.1 bodily injury or death of any person directly caused solely by the negligence of the Indemnifying Party, its personnel or agents in connection with this Agreement;
- 15.1.2 any fraudulent act or omission of the Indemnifying Party, its affiliates or personnel in connection with this Agreement; and
- 15.1.3 a breach of clauses 10 or 11 by the Indemnifying Party.

16. LIMITATION OF LIABILITY

16.1 Subject to the provisions of clause 16.2 and to the extent permitted by law:

- 16.1.1 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;

16.1.2 WorkWide's liability to the Customer 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 Customer 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.

16.2 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 clauses 14 and 15.

17. **DURATION AND TERMINATION**

17.1 Term of Agreement

This Agreement shall commence on the Date of Signature and shall continue in full force and effect until the Termination Date.

17.2 Term of the Subscription Services

17.2.1 Except as otherwise specified in the End User Acceptance Form and this Agreement, the term of the Subscription Services will be for the Subscription Services Term.

17.3 Termination of this Agreement

17.3.1 Either Party ("the Aggrieved Party") may terminate an End User Acceptance Form effective immediately upon written notice to the other Party ("the Defaulting Party"), if the Defaulting Party breaches a material provision of this Agreement or the applicable End User Acceptance Form, for the affected Services, and does not cure such breach within 45 (forty five) days after receiving written notice thereof from the Aggrieved Party.

17.3.2 Notwithstanding anything to the contrary contained in this clause 17, either Party shall be entitled to terminate this Agreement and/or an End User Acceptance 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.

17.4 Effect of Termination of the Services

17.4.1 On the Termination Date:

17.4.1.1 the Customer shall stop using the Services related to the the End User Acceptance Form in question; and

17.4.1.2 the rights granted to the Customer under the the End User Acceptance Form in questionshall terminate.

17.4.2 Termination of this Agreement or an End User Acceptance Form will not relieve a Party of obligations imposed upon such Party by statute, regulation, this Agreement or an End User Acceptance Form prior to the Termination Date.

17.4.3 Termination of this Agreement shall not affect the rights of the Parties, including any right to receive payment on pro-rata basis for the Services duly provided up to the Termination Date, which arose prior to any such termination and such rights shall survive any such termination.

17.4.4 If the Subscription Services are terminated by:

17.4.4.1 the Customer, in accordance with clause 17.3, then the Customer may submit to the Reseller a claim for refund of all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Service after the Termination Date, which refund shall be paid by WorkWide to the Customer within 30 (thirty) days following the receipt of the claim for refund by the Reseller.

17.4.4.2 WorkWide, in accordance with clause 17.3, the Customer shall pay, within 30 (thirty) days following the 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 End User Acceptance Form.

18. **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, this Agreement shall again become fully operative and such affected Party shall immediately rectify such delay in performance, provided that, if such delay pertains to a material obligation of the Party affected by such event of force majeure and such delay shall exceed 120 (one hundred and twenty) days, either Party shall be entitled to terminate this Agreement by written notice to the other in such case all services duly provided up to the Termination Date will be paid and any advance payment for services to be delivered after Termination Date shall be refunded.

19. CONFLICTS WITH END USER ACCEPTANCE FORM

To the extent that the provisions of an End User Acceptance Form may conflict with or fail to record the provisions of this Agreement, the provisions of the End User Acceptance Form shall prevail to the extent that it is competent in law for the End User Acceptance Form to prevail.

20. ARBITRATION

20.1 Save as otherwise expressly provided in this Agreement 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 this Agreement or a Transaction Document 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,

this Agreement or a Transaction Document that Dispute shall be decided by arbitration in the manner set out in this clause 20.

- 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.
 - 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 this Agreement is terminated.
- 20.4 The law governing this Agreement 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 this Agreement at which addresses all the terms and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 21.2 For the purpose of this Agreement the Parties' respective addresses shall be:
- 21.2.1 as regards the Customer, address shall be the address set out in the End User Acceptance Form; and
 - 21.2.2 as regards WorkWide, address shall be the address the set out in clause 1.1.1 above.
- 21.3 Any notice given in terms of this Agreement 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 posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting;

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

This Agreement and the End User Acceptance Form 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 therein.

24. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

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 this Agreement 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 this Agreement 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 this Agreement.

25.3 The expiry or termination of this Agreement 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 this Agreement 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 this Agreement.

27. **BENEFITS**

This Agreement will inure for the benefit of and be binding upon the successors and permitted assigns of the Parties, or any of them.

28. **COUNTERPARTS**

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all of the parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement.

29. **WARRANTY OF AUTHORITY**

The persons signing this Agreement hereby warrant that they are properly empowered and duly authorised to sign this Agreement on behalf of the Parties.

30. **COSTS**

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

APPENDIX 1 - 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	<p>Critical Service Impact Issue critically affects the primary business service, major application, or mission critical system. Customer 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:</p> <ul style="list-style-type: none"> • Business service is not operational • Production system crashes • Data integrity at risk • Production backup and recovery operations fail
S2	<p>Significant Service or Implementation Impact The business service, major application, or system is seriously affected, or implementation stopped. No acceptable workaround is available.</p>
S3	<p>Moderate Service Impact 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.</p>
S4	<p>No Service Impact Non-critical issues, general questions or documentation issues</p>

CUSTOMER 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 of Support**

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 Customer from the Reseller under a professional services statement of Work.

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.

Customer Responsibilities

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