

# Cloud Services Subscription and Professional Services Agreement

By agreeing to an Order Form that references this Cloud Services Subscription and Professional Services Agreement (this “**Cloud Services Agreement**”), Customer agrees to this Cloud Services Agreement. It is effective between Customer (as set out on the Order Form) and WorkFusion, Inc., a Delaware corporation with a principal office located at 48 Wall Street, 7th Floor, New York, New York 10005 (“**WorkFusion**”, “**we**”, “**our**”) as of the date of Customer’s and WorkFusion’s first fully signed Order Form that references this Cloud Services Agreement (“**Effective Date**”).

## 1. DEFINITIONS

“**Acceptable Use Policy**” (or “AUP”) means WorkFusion’s Acceptable Use Policy governing Customer’s online conduct for WorkFusion-hosted service environments and websites available at [www.workfusion.com/AUP](http://www.workfusion.com/AUP).

“**Access Credentials**” has the meaning set out in Section 2.5.

“**Add On**” means an additional capability utilized by Digital Workers that may be necessary to fulfil the Customer’s automation objectives. Add On fees are not included in the prepaid subscription fees and are calculated as part of True-Up based on actual usage and the pricing set forth in the Order Form.

“**Additional Purchase**” has the meaning set forth in Section 2.1.B.1.

“**Affiliate**” means, for a party, any other entity that controls, is controlled by or under common control with the party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in such other entity.

“**Agreement**” means this Cloud Services Agreement and any Order Form, including any exhibits.

“**AI Model**” means a set of WorkFusion machine learning algorithms for automating business processes, including associated parameters and weights.

“**Applicable Laws**” has the meaning set forth in Section 13.14.

**“CCPA”** means the California Consumer Privacy Act of 2018 (Cal. Civ. Code § 1798.100 – 1798.199, 2018)

**“Claim”** means a claim, action, or legal proceeding made against a person or entity, however arising and whether present or future, fixed or unascertained, actual, threatened, or contingent.

**“Cloud Services”** means the WorkFusion SaaS or the WorkFusion Managed Services, including the Digital Workers provided as a service, as specified on the Order Form.

**“Confidential Information”** means non-public information a party designates as confidential or reasonably considers confidential. The party disclosing Confidential Information is referred to as “Discloser” and the party receiving Confidential Information is referred to as “Recipient”. Confidential Information does not include information that:

(1) is or becomes generally publicly available at or after the time of disclosure through no fault of either Recipient or Recipient’s Affiliate;

(2) was known to Recipient or Recipient’s Affiliate (as applicable), free of any confidentiality obligations, before its disclosure by either Discloser or Discloser’s Affiliate;

(3) becomes known to Recipient or Recipient’s Affiliate (as applicable), free of any confidentiality obligations, from a source other than either Discloser or Discloser’s Affiliate;

(4) is retained in the unaided memories of Recipient’s representatives who have had access to the Discloser’s Confidential Information; or

(5) is independently developed by either Recipient or Recipient’s Affiliate without use of Confidential Information.

**“Customer Data”** means (i) any information, data, or other content that Customer uploads, submits or otherwise transmits to or through the Cloud Services and that was generated independently from the WorkFusion Technology and (ii) Results (defined below). Customer Data does not include Usage Metrics or any other information reflecting the access or use of the Cloud Services or the WorkFusion Technology by or on behalf of Customer.

**“Customer Materials”** means collectively, and including any enhancements, improvements or modifications made thereto: (i) any intellectual property rights belonging to Customer; or (ii) any intellectual property rights in and to any materials independently developed by Customer with or without the involvement of a third party.

**“Customer Personal Data”** means any data that is defined as ‘personal data,’ ‘personal information’ or ‘personally identifiable information’ (or analogous term) under applicable Data

Protection Laws that Customer uploads into the Cloud Services or that Customer otherwise provides to WorkFusion under this Agreement.

**“Custom Digital Workers”** – see “Digital Workers”.

**“Data Protection Laws”** means all local country laws and regulations applicable to the respective party in its role in the processing of Customer Personal Data under this Agreement, including but not limited to: (i) the EU General Data Protection Regulation 2016/679 (**“GDPR”**); (ii) UK Data Protection Laws (as such term is defined under the UK IDTA); (iii) any EEA member state made under or pursuant to (i); (iv) California Consumer Privacy Act of 2018 (**“CCPA”**), the California Privacy Rights Act of 2020; the (v) Virginia Consumer Data Protection Act of 2021 (**“CDPA”**); or the (vi) Colorado Privacy Act (**“CPA”**); in each case as may be amended or superseded from time to time.

**“Deliverables”** means any work product, including reports and written materials, developed and provided to Customer by WorkFusion in performing Professional Services (excluding open source software components and Customer Materials). Deliverables may include Custom Digital Workers if set out on the Order Form.

**“Digital Assets”** means any WorkFusion pre-built or licensed automation components, including combinations thereof, such as models, integrators, and connectors that can be used as part of Digital Workers or to build custom automations.

**“Digital Worker”** is the combination of AI Models, RPA Bots, and any other WorkFusion owned or licensed software or other technology that is designed to enable the end-to-end automation of specific business process workflows. Digital Workers may be WorkFusion pre-built and pre-trained with specifications set out in the Documentation (**“Packaged Digital Workers”**) or custom-made (**“Custom Digital Workers”**). Custom Digital Workers can be developed as part of Professional Services under this Agreement and as described on the relevant Order Form (**“Custom Digital Workers – WorkFusion Built”**) or developed independently by Customer (including with a third party) (**“Custom Digital Workers – Customer Built”**). WorkFusion, in its own discretion, may designate a Custom Digital Worker as a Packaged Digital Worker by adding it to the Documentation.

**“Documentation”** means any manuals, instructions or other documents or materials that WorkFusion provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the WorkFusion Technology, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof. Documentation for the WorkFusion software powering the Cloud Services is set out at <https://doc.workfusion.com/enterprise/versions/>.

**“DPA”** is the WorkFusion Customer Data Processing Agreement available at <https://doc.workfusion.com/enterprise/docs/next/iac/support/customer-data-processing-agreement/>.

**“Hosted Services”** has the same meaning as “Cloud Services”.

**“Incident”** has the meaning given to it in Section 7.2.C.

**“Indemnified Technology”** means WorkFusion Technology (except for open source and third-party software, platforms or services).

**“Losses”** means any damages, losses, costs, expenses, or liabilities incurred by a person or entity.

**“Order Form”** means the ordering document signed by both WorkFusion and Customer that refers to this Cloud Services Agreement. “Order Form” includes any SOW.

**“Packaged Digital Workers”** – see “Digital Workers”.

**“Professional Services”** means any consulting, training, development, implementation, or other technical services provided by WorkFusion to Customer.

**“Results”** means the actual derivative intended results the Cloud Services generate by processing Customer Data imported into the Cloud Services. Results do not include Usage Metrics.

**“RPA Bot”** is a WorkFusion robotic process that enables desktop application automation in a programmatic manner.

**“Services”** means collectively, the Cloud Services, Professional Services (if any) and Support.

**“SLA”** means the Service Level Agreement for the Cloud Services as set out at <https://doc.workfusion.com/enterprise/docs/next/iac/support/cloud-services-service-level-agreement/>.

**“Solutions Catalogue”** is an online repository of Packaged Digital Workers and Digital Assets that WorkFusion may make available to Customer.

**“SOW”** means a statement of work for Professional Services signed by both WorkFusion and Customer that refers to this Cloud Services Agreement.

**“Subscription Period”** means the duration of the subscription granted for the Cloud Services, as specified in the Order Form, or any shorter term arising from a termination of the Agreement.

**“Support”** means the support services WorkFusion provides in accordance with the WorkFusion Support Policy at <https://doc.workfusion.com/enterprise/docs/iac/support/workfusion-online->

support-policy-3-0/ to Customers that purchase Support Subscriptions or whose WorkFusion Subscription includes Support.

“**UOM**” means the applicable units of measure set out in the Order Form, and may include, but is not limited to, pages/year, emails/year, and entities/year.

“**Usage Metrics**” means data and information related to Customer’s use of WorkFusion Technology. Usage Metrics include but are not limited to UOMs consumed, performance metrics, type of automation processes run, components usage (e.g. Control Tower, WorkSpace, Analytics, etc.), Add Ons, type of classifiers, number of pages processed per processing source (e.g. ABBYY), anonymized model accuracy validation, user navigations, error tracking, system scaling, process volumes, type and number of servers used, percentage of CPUs used, number of transactions, and whether the use is for production, development or test/QA.

“**Users Authorized to Purchase**” mean the users authorized by Customer to access WorkFusion Technology that would trigger an Additional Purchase.

“**WorkFusion Cloud Platform**” means the combination of hardware, software and technology owned, licensed, subscribed to, or managed by WorkFusion to which WorkFusion grants the Customer access as part of the Cloud Services. The WorkFusion Cloud Platform is multi-tenant for WorkFusion SaaS and single-tenant/dedicated environment for WorkFusion Managed Services.

“**WorkFusion Managed Services**” means the single-tenant cloud-based automation services provided by WorkFusion using the WorkFusion Technology set out on the Order Form.

“**WorkFusion Network**” means the WorkFusion managed interactive environment that WorkFusion may make available to Customer. Depending on the Customer’s elected participation level, the WorkFusion Network may provide Customer with access to enhanced Digital Workers, a-la-carte AI Models, Digital Assets, industry benchmarking and other offerings. Upon Customer’s request, WorkFusion will provide the current description of the WorkFusion Network.

“**WorkFusion SaaS**” means the multi-tenant or single-tenant cloud-based automation services provided by WorkFusion using the WorkFusion Technology set out on the Order Form.

“**WorkFusion Technology**” means technology owned by WorkFusion or licensed to WorkFusion by a third party (including, without limitation, the WorkFusion Intelligent Automation software, the Cloud Services, WorkFusion Network output, Digital Assets, Add Ons, Digital Workers, the WorkFusion Cloud Platform, Deliverables, reports, software tools, code, bots, algorithms, software (in source and object forms), machine learning models, SDKs, APIs, integrations, connectors, user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any

related intellectual property rights throughout the world), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.

## 2. ACCESS AND USE. LICENSE GRANTS. RESTRICTIONS.

### 2.1. Provision of Access.

**(A) Cloud Services.** Subject to the terms and conditions of this Agreement, WorkFusion grants Customer a non-exclusive, non-transferable right to access and use the Cloud Services during the Subscription Period for Customer's internal business purposes, within the scope, including, without limitation, UOMs, set out in the Order Form. The SLA WorkFusion currently offers for the Cloud Services is at <https://doc.workfusion.com/enterprise/docs/next/iac/support/cloud-services-service-level-agreement/>. WorkFusion will enable the Customer's authorized users to access and use the Cloud Services. Unless otherwise set forth in the Order Form, Customer's access will be limited to one instance of the Cloud Services. If Customer has purchased a subscription to Managed Services, WorkFusion will also provide Customer with development environment within the WorkFusion Technology.

**(B) Solutions Catalogue. WorkFusion Network.** WorkFusion may make available to Customer access to the WorkFusion Network or the Solutions Catalogue.

**2.1.B.1. Solutions Catalogue.** If WorkFusion makes available the Solutions Catalogue to Customer, Customer may access and begin using WorkFusion Technology not set out on an active Order Form, subject to the terms of this Agreement and to Customer's prompt entry into an Order Form in accordance with this section ("**Additional Purchase**"). WorkFusion Technology downloaded through the Solutions Catalogue that would incur additional charges includes but is not limited to: additional Digital Workers, a-la-carte AI Models and Digital Assets. WorkFusion will ensure that only Users Authorized to Purchase may access WorkFusion Technology that would trigger an Additional Purchase. Customer will provide WorkFusion with the list of Users Authorized to Purchase and will be responsible for keeping it updated. WorkFusion may allow a User Authorized to Purchase to access and use WorkFusion Technology that requires an Additional Purchase for up to ten business days prior to the Customer's entry in the Order Form, *provided that* Customer pays for the use as of the date of first use. If Customer does not enter into an Order Form with WorkFusion within ten business days from its User Authorized to Purchase use of the WorkFusion Technology, Customer must cease immediately such use, and WorkFusion may charge Customer for the use as of the date of first use based on WorkFusion's then-current price list.

**2.1.B.2. WorkFusion Network.** If WorkFusion makes available the WorkFusion Network, the WorkFusion Network's features beyond the Solutions Catalogue would only be available to customers with current Cloud Services or WorkFusion On-premise Software subscriptions. If Customer opts in to participate in the WorkFusion Network within the WorkFusion Technology, during the Subscription Period, and subject to the terms of this Agreement, Customer may use the WorkFusion Technology made available to Customer from time to time based on the Customer's elected participation level at no additional charge (excluding Additional Purchases

through the Solutions Catalogue which would incur charges in accordance with Section 2.1.B.1 or any overage dues in accordance with Section 4.2.

**(C) Future Functionality.** Customer agrees that its purchases under this Agreement are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding future functionality or features.

## **2.2. Licenses.**

**(A)** Subject to the terms and conditions of this Agreement, WorkFusion grants to Customer a non-exclusive, non-transferable license to (i) use the Documentation during the Subscription Period solely for Customer's internal business purposes in connection with its use of the Cloud Services; and (ii) use any other WorkFusion Technology that WorkFusion may provide to Customer in its sole discretion from time to time, subject to payment of any applicable fees, for Customer's internal operations only during the Subscription Period.

**(B)** Subject to the terms of this Agreement, and to the extent set forth on the Order Form, WorkFusion grants to Customer, during the Subscription Period, the right to use Digital Assets to develop end-to-end automation processes or components thereof, such as machine learning models and any associated code, integrations, and workflows, either independently or with a third party solely for Customer's internal use in connection with Customer's authorized use of the WorkFusion Technology (and not to compete with WorkFusion). Nothing in this Agreement will limit WorkFusion's right to (i) develop technology that may automate similar end-to-end business processes or otherwise perform similar functions to the Customer Developed Digital Workers, (ii) use any general information, ideas, know-how, concepts, techniques, processes, or expertise which is retained in the unaided memory of WorkFusion personnel (including third party contractors); or (iii) use any Customer Developed Digital Workers shared voluntarily by Customer or that are WorkFusion Technology to create derivatives work or to otherwise improve WorkFusion's products and services or create new products or services.

**(C)** WorkFusion grants Customer a royalty-free, non-exclusive, non-transferable license to use the Deliverables and any WorkFusion Technology incorporated into the Deliverables or the Custom Digital Worker – Customer Built solely for Customer's internal operations in connection with its authorized use of the WorkFusion Technology during the Subscription Period. To the extent that any Customer Materials are integrated into any Deliverables, Custom Digital Workers or other WorkFusion Technology, Customer grants WorkFusion a fully-paid, perpetual, irrevocable (subject to compliance with this Agreement), transferrable, world-wide and non-exclusive license to use, display, perform, modify, copy and create derivative works from, and to permits its customers, contractors and partners to use, display, perform, modify, copy and create derivative works from, the Customer Materials incorporated into the WorkFusion Technology, subject to the confidentiality obligations set out in Section 6.

**2.3. Use Restrictions.** Customer shall not use the Cloud Services or any other WorkFusion Technology for any purposes beyond the scope of the access granted in this Agreement.

Customer shall not at any time, directly or indirectly, and shall not permit anyone to: (i) copy, modify, or create derivative works of the WorkFusion Technology, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the WorkFusion Technology; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the WorkFusion Technology, in whole or in part; (iv) remove any proprietary notices from the WorkFusion Technology; (v) use the WorkFusion Technology in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Law; (vi) allow any “Prohibited Party” to use or access the On-premise Software. “Prohibited Party” means (a) Automation Anywhere, Blue Prism, UiPath and Pegasystems, and (b) any entity or person identified on a U.S. government restricted party or sanctions list or located, organized or resident in a country or territory embargoed by the U.S; or (vii) release, publish, and/or otherwise make available to any third party the results of any performance, functional or security evaluation of the WorkFusion Technology without the prior written approval of WorkFusion.

**2.4. Customer Grant.** The Customer grants WorkFusion and its Affiliates the right to use, process, collect, copy, store, transmit, modify and create derivative works of Customer Data to provide the Services to Customer, during the Subscription Period or an applicable professional services term, plus any additional post-termination period. Additionally, Customer grants WorkFusion and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of WorkFusion or its Affiliates), publish, display, and distribute any anonymous information derived from Customer Data. We may use Customer Data, provided that we anonymize, de-identify and aggregate Customer Data, for the purposes of: (i) improvements to, and development of new, WorkFusion products, features or services; (ii) training and developing Digital Workers and AI Models; and (iii) identifying actionable insights, trends, industry developments, and anonymous benchmarking.

**2.5. Access Credentials.** Customer will create usernames and passwords and will receive periodically tokens, registrations keys and other certificates in order to access the Cloud Services and related APIs and WorkFusion Technology (collectively, “**Access Credentials**”). Customer must employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Cloud Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Cloud Services. WorkFusion is not responsible for any activities that occur under Customer’s account, regardless of whether undertaken by Customer, Customer employees or a third party (including contractors or agents) unless caused by WorkFusion’s breach of its security obligations under this Agreement. Customer must contact us immediately if Customer believes an unauthorized third party may be using their account or if their account information is lost or stolen.

**2.6. Cloud Services and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties: (a) WorkFusion has and will retain sole control over the



operation, provision, maintenance, and management of the Cloud Services and the WorkFusion Cloud Platform; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Cloud Services and the WorkFusion Cloud Platform by any person by or through the Customer Systems or any other means controlled by Customer or any authorized user, including any: (i) information, instructions, or materials provided by any of them to the Cloud Services, the WorkFusion Cloud Platform or WorkFusion; (ii) results obtained from any use of the Cloud Services; and (iii) conclusions, decisions, actions based on such use, and suitability for the Customer's use.

**2.7. Support.** A Support subscription or a WorkFusion subscription that includes Support, as set out on the Order Form, and subject to Customer's payment of the Support fees, will entitle Customer to Support in accordance with the WorkFusion Support Policy. WorkFusion's provision of Support is conditional on Customer's timely issuance of Purchase Orders and timely payment of invoices. While WorkFusion may modify our Support Policy from time to time, WorkFusion will not modify it in a way that materially and adversely affects Support.

### 3. FEES.

**3.1. Payment.** Customer must pay the fees according to the payment terms in the Order Form. All invoices will be delivered electronically to Customer. WorkFusion may charge interest at a monthly rate equal to the lesser of 5% per month or the maximum rate permitted by applicable law ("Interest") on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. If Customer requires a Purchase Order and delays its issuance by more than five days from the date of the Order Form, WorkFusion may issue an invoice due upon receipt, notwithstanding the payment terms set out in the Order Form, and charge the Interest. Any fees that are unpaid as of the date of termination or expiration will be immediately due and payable. Customer must provide a detailed remittance advice with each payment to WorkFusion via email to [ar@WorkFusion.com](mailto:ar@WorkFusion.com) no later than the date of the payment. If Customer is not a publicly traded corporation, upon WorkFusion's request, Customer will provide the necessary financial documents to allow WorkFusion to ascertain the credit-worthiness of Customer.

**3.2. Failure to Pay.** If Customer fails to pay any amount due under this Agreement timely, WorkFusion will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, WorkFusion may, in its sole discretion, terminate this Cloud Services Agreement or the applicable Order Form or suspend or restrict provision of the Cloud Services or Support.

**3.3. Disputes.** If Customer believes in good faith that WorkFusion has incorrectly billed Customer, Customer must contact WorkFusion in writing within 30 days of the invoice date, specifying the error, and Customer must pay the undisputed portions of WorkFusion's invoice as required by this Agreement. Unless Customer has correctly notified WorkFusion of the dispute, Customer must reimburse WorkFusion's reasonable collection costs.

**3.4. Taxes.** Fees do not include any applicable sales, use, withholding, excise, value added or similar taxes, duties, or assessments (collectively “**Taxes**”) imposed upon the products or services subject to this Agreement by any federal, state, local, or foreign government authority, exclusive of any taxes based upon WorkFusion’s income or payroll, and Customer must pay these Taxes. WorkFusion may invoice Customer for the Taxes and remit the funds received by Customer for such Taxes to the relevant authorities. Where applicable, Customer must provide a tax-exemption claim to WorkFusion before entering into an Order Form. If applicable law requires Customer to withhold any amount from Customer’s payment, Customer will provide WorkFusion with copies of documents related to Customer’s withholding upon WorkFusion’s requests.

#### 4. USAGE AND TRUE-UP.

**4.1. Usage Reports and Monitoring.** WorkFusion will monitor and collect Usage Metrics, including UOMs, and will have the right to audit the usage of any WorkFusion Technology for compliance with this Agreement. Customer shall cooperate with WorkFusion for such monitoring and audit, including by making available all such records, equipment, information, and personnel, and running processes as requested by WorkFusion. WorkFusion shall only examine information directly related to Customer’s use of the Cloud Services or other WorkFusion Technology. Customer will not in any way tamper, delete, interfere or modify Usage Metrics. Customer’s usage as used in this paragraph includes use by Customer, its Affiliates or third-party contractors of Customer or its Affiliates.

**4.2. True-Up and Overage Dues.** Customer shall pay to WorkFusion all amounts due for any use of WorkFusion Technology beyond the one covered by the annual prepaid subscription fees in the Order Form, at the terms, including prices, as set out in the Order Form.

#### 5. Outsourcing and Third-Party Access.

**5.1. Use by Affiliates.** Customer’s Affiliates may purchase subscriptions directly from WorkFusion based on this Cloud Services Agreement. Customer may allow its Affiliates to use and access the Cloud Services, only if, and as specified in, an Order Form, and subject to Section 5.3.

**5.2. Outsourcing and Third-Party Access.** Customer may allow a third-party contractor to use and access the Cloud Services solely to operate the Cloud Services on Customer’s behalf, but only if: upon WorkFusion’s request, Customer provides WorkFusion with the identity of the contractor and the purpose for the contractor’s use or access to the Cloud Services; and the use or access by the contractor is only for Customer’s internal operations.

**5.3. Customer Responsibility.** If Customer allows any person or entity to use or access the Cloud Services, including under Sections 5.1 or 5.2:

(A) Customer must ensure that the person or entity agrees to comply with and does comply with the terms of the Agreement on the same basis as the terms apply to Customer; and

(B) Customer is responsible for all acts and omissions of all such person or entity.

**5.4. Subcontractors.** WorkFusion may from time to time in its discretion engage subcontractors to perform the Support or Cloud Services. WorkFusion will be responsible for subcontractor's compliance with this Agreement. To the extent a subcontractor will be also a subprocesses of Customer Personal Data, the subcontractor will be listed in WorkFusion's list of subprocessors in the DPA or otherwise pre-approved in writing by Customer. WorkFusion may add additional subprocessors by notifying Customer in writing. WorkFusion will be responsible for its subcontractors' compliance with this Agreement.

## 6. CONFIDENTIALITY

**6.1. No Use or Disclosure.** Recipient will only use Confidential Information for the purposes of this Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its and its Affiliates' directors, officers, employees and authorized representatives (e.g., temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this Section 6. Recipient will treat all Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care.

**6.2. Required Disclosure.** Recipient may disclose Confidential Information:

(A) as approved in a writing signed by Discloser;

(B) as necessary to comply with any law or valid order of a court or other governmental body; or

(C) as necessary to establish the rights of either party, but, in the case of Section 6.2.B, only if Recipient (1) promptly notifies Discloser of the details of the required disclosure; and (2) gives Discloser all assistance reasonably required by Discloser to enable Discloser to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.

**6.3. Responsibility for Representatives and Affiliates.** Recipient is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the Recipient under this Section 6.

## 7. PRIVACY AND SECURITY. DATA PROCESSING. COMPLIANCE.

**7.1. Mutual Responsibilities.** Each party will comply with all applicable laws and Data Protection Laws. To the extent WorkFusion processes Customer Personal Data, the DPA is incorporated by reference in this Agreement, and the parties agree to comply with its terms.

## **7.2. Security Procedures.**

(A) WorkFusion shall implement and maintain administrative, technical and physical safeguards designed to: (i) secure and protect the confidentiality of Confidential Information and of Customer Personal Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Confidential Information and Customer Personal Data; and (iii) protect against unauthorized access to or use of Confidential Information and Customer Personal Data that could result in harm to Customer, its employees, customers or consumers.

(B) WorkFusion shall have an independent third party annually prepare, and shall make available to Customer, at Customer's request, a ISO 27001 certificate and its supporting documentation. At Customer's written request, the WorkFusion shall electronically transmit to Customer a copy of their latest security certification as well as of its SOC 2 Type 1 report, and, if and when available, SOC 2 Type 2 report. The SOC 2 reports are Confidential Information of WorkFusion, and Customer will treat them in accordance with its confidentiality obligations set out in this Agreement.

(C) If either WorkFusion or Customer discovers or is notified of a breach or potential breach of security affecting Customer Data ("**Incident**"), (i) such party shall immediately notify the other party of such breach or potential breach, and (ii) if the applicable Customer Data was in the possession of WorkFusion or subcontractors at the time of such breach or potential breach, WorkFusion shall promptly (A) investigate and remediate the effects of the breach or potential breach, (B) provide Customer with information related to the breach or potential breach and coordinate with Customer while conducting the WorkFusion's investigation; (ii) cooperate with Customer to the extent Customer determines it is necessary to conduct its own investigation; and (iii) provide Customer with assurance reasonably satisfactory to Customer that such breach or potential breach shall not recur. Customer, in its sole discretion, will determine whether and how to provide notification of the Incident to third parties (including any individuals affected by the event) and WorkFusion will cooperate fully with Customer regarding any such notification.

**7.3. Customer Control and Responsibilities.** Without limiting WorkFusion's obligations under Sections 7.1 and 7.2, Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any authorized user in connection with the Cloud Services or any Professional Services; (c) Customer Systems; (d) the security and use of Customer's and its authorized users' Access Credentials; and (e) all access to and use of the Cloud Services directly or indirectly by or through the Customer Systems or its or its authorized users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all Customer's and authorized users' conclusions, decisions, and actions based on, such access or use. Customer will monitor and remove any infringing, abusive, or otherwise unlawful content. Customer is responsible for the appropriate configuration and use of security

features offered within the Cloud Services necessary to meet its obligations under Data Protection Laws. If Customer becomes aware of a possible violation of this Section 7.3, Customer must notify WorkFusion within 48 hours and, where applicable, remedy the violation in accordance with the timelines of applicable laws. Customer is responsible for the content and use of the Customer Data and Customer Materials and for Customer's use of WorkFusion Technology and Results in compliance with Applicable Laws. Customer is responsible for obtaining the licenses to any third-party technology, Customer Systems or data sources that, at Customer's request, will interact with the WorkFusion Technology. WorkFusion will follow Customer's instructions in respect of sourcing from, or sending data to, third-party technology, Customer Systems or data sources. Unless WorkFusion and Customer have entered into a Business Associate Agreement, Customer will not upload to the Cloud Services or otherwise provide WorkFusion with protected health information, as regulated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Customer may upload to the Cloud Services or otherwise provide WorkFusion with cardholder data and sensitive authentication data, as defined by the Payment Card Industry Data Security Standard only with WorkFusion's prior written consent. Without limiting the foregoing, Customer is responsible for using features such as human in the loop (as described in the Documentation) and best industry practices for automation as is appropriate or legally required given Customer's specific use of the WorkFusion Technology.

## **8. TERM AND TERMINATION. SUSPENSION.**

**8.1. Term and Termination Generally.** This Cloud Services Agreement commences on the Effective Date and is effective until terminated in accordance with its terms. Either party may terminate this Cloud Services Agreement for convenience upon notice if all Order Forms under this Cloud Services Agreement have been terminated or have expired. Neither party may terminate an Order Form for convenience.

**8.2. Termination for Cause.** If either party commits a material breach of this Agreement, the non-breaching party may give written notice describing the nature and basis of the breach to the breaching party. If the breach is not cured within 30 days of the notice date, the non-breaching party may immediately terminate the Agreement, in whole or in part.

**8.3. Effect of Termination or Expiration.** Upon termination of the Agreement, (an Order Form or upon expiration of the Subscription Period, (I) Customer (and any of its authorized users) must cease to use the Cloud Services, the WorkFusion Network (except for any materials provided under trial licenses which will expire in their own terms), and any other WorkFusion Technology authorized for use under this Agreement and must remove and delete all copies thereof. Some or all of the Cloud Services may cease to operate without prior notice upon expiration or termination of the Subscription Period. Customer Data stored within the Cloud Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s), and WorkFusion will charge Customer its corresponding infrastructure costs incurred. If Customer notifies WorkFusion in writing that WorkFusion may delete all Customer Data, WorkFusion will follow the instructions, and prorate the fees to account only for periods during which it incurred infrastructure costs.

**8.4. Post Termination or Expiration Use.** Any continued use of Services after termination or expiration of this Agreement constitutes a breach of this Agreement, and Customer will be liable for any fees for any SaaS Services that remain active after the termination or expiration.

**8.5. Survival.** The termination or expiration of the Agreement will not affect any provisions of the Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, compliance, indemnification, limitation of liability, and the “General Provisions” section in this Cloud Services Agreement. Without limiting the foregoing, trade secrets shall be maintained in confidence as long as such information remains a “trade secret” (as defined by the Uniform Trade Secrets Act).

## **8.6. Suspension.**

**(A) AUP Violations.** If WorkFusion becomes aware that Customer or any Customer User’s use of the Services violates the AUP, WorkFusion will give Customer notice of the violation by requesting that Customer correct the violation. If Customer fails to correct the violation within 24 hours of WorkFusion’s request, then WorkFusion may Suspend all or part of Customer’s use of the Services until the violation is corrected.

**(B) Other Suspension.** Without limiting Section 8.6.A, WorkFusion may immediately suspend all or part of Customer’s use of the Cloud Services if: (a) WorkFusion believes Customer’s use of the Cloud Services could adversely impact the Cloud Services, including other customers’ use of the Cloud Services, or the WorkFusion Cloud Platform or its network or servers used to provide the Cloud Services; (b) there is suspected unauthorized third-party access to the Cloud Services; (c) WorkFusion believes it is required to suspend immediately to comply with applicable law; (d) Customer is in breach of Section 2.3 (Use Restrictions); (e) the Customer’s use of the Cloud Services may subject WorkFusion, our Affiliates, or any third party to liability; or (f) the Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. WorkFusion will lift any such suspension when the circumstances giving rise to the suspension have been resolved. At Customer’s request, unless prohibited by applicable law, WorkFusion will notify Customer of the basis for the suspension as soon as is reasonably possible. If the circumstances giving rise to the suspension are not resolved within five days from the suspension, or, if in WorkFusion reasonably believes that the circumstances are not capable of resolution, WorkFusion may terminate the Customer’s account and this Agreement immediately.

## **9. INTELLECTUAL PROPERTY.**

**9.1. Ownership.** WorkFusion (and its licensors, where applicable) own the WorkFusion Technology. WorkFusion claims no ownership of Customer Data or Customer Materials and Customer shall at all times (as between the parties) retain all of its right, title and interest in and to Customer Data and Customer Materials, subject to the limited licenses set forth in this Agreement. This Agreement does not transfer any right, title or interest in any intellectual

property to any party, except as expressly set forth in this Agreement. All uses in this Agreement of the terms “sell”, “sale”, “purchase”, “price” and the like mean the purchase or sale of a license or authorization to use under this Agreement, in each case limited to the applicable Subscription Period.

**9.2. Customer Data.** Customer represents and warrant to us that: (i) Customer or Customer’s licensors own all right, title, and interest in and to Customer Data; (ii) Customer has all rights in the Customer Data necessary to grant the rights contemplated by this Agreement; and (iii) none of the Customer Data violates this Agreement, any applicable law (including but not limited to Data Protection Law) or any third party’s intellectual property or other right.

**9.3. Feedback.** WorkFusion (and its licensors, where applicable) own all right, title and interest in and to the WorkFusion Technology and any and all software, technology, algorithms, materials, improvements, derivative works and information that is developed, created, authored, conceived, reduced to practice or acquired by WorkFusion. WorkFusion (and its licensors, where applicable) shall exclusively own all right, title, and interest in and to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information (“**Feedback**”) provided by Customer or any other party relating to WorkFusion Technology, including all intellectual property rights related thereto, and the Feedback will be deemed assigned to WorkFusion.

## 10. LIMITED WARRANTY. REMEDIES.

**10.1. Cloud Services.** WorkFusion represents and warrants that the Cloud Services will perform substantially in accordance with the Documentation. Customer’s exclusive remedy for WorkFusion’s material breach of warranty is to notify WorkFusion about the non-conformity, and if WorkFusion fails to cure the non-conformity within 30 days from the notice, to terminate any affected Order Form and receive a refund of any prepaid fees for unused Cloud Services. This remedy represents WorkFusion’s exclusive duty and Customer’s sole remedy even if the remedy should fail in its essential purpose.

**10.2. Professional Services.** Deliverables are deemed accepted upon delivery unless otherwise stated in the Order Form. WorkFusion warrants that it will perform the Professional Services in a professional and workmanlike manner in accordance with generally applicable industry standards. If WorkFusion fails to meet this warranty, Customer’s exclusive remedy shall be as follows in this Section 10.2 (unless otherwise set forth in the Order Form). WorkFusion shall correct deficiencies at no additional charge to Customer, provided Customer gives WorkFusion written notice of any such deficiencies within 30 days of delivery by WorkFusion. In the event WorkFusion is unable to correct such deficiencies at a commercially reasonable cost, WorkFusion shall refund Customer prorated amounts paid for the defective portion of the Professional Services.

## 11. INDEMNIFICATION.

**11.1. WorkFusion Indemnification.** WorkFusion shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Claim

by a third party that Customer's use of the Indemnified Technology in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights ("Infringement Claim"). The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Customer Data, Customer Materials or third-party materials; (b) access to or use of the WorkFusion Technology in combination with any hardware, system, software, network, or other materials or service not provided by WorkFusion or specified for Customer's use in the Documentation, unless otherwise expressly permitted by WorkFusion in writing; (c) modification of the Indemnified Technology other than: (i) by or on behalf of WorkFusion; or (ii) with WorkFusion's written approval in accordance with WorkFusion's written specification; (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of WorkFusion; or (e) act or omission by Customer, including ones that have given rise to a matter described in Section 11.3(a), Section 11.3(b), whether or not the same results in any action against or Losses by any WorkFusion Indemnitee.

**11.2. WorkFusion's response.** In the defense or settlement of any Infringement Claim, WorkFusion may, at its sole option and expense: procure for Customer a license to continue using the Indemnified Technology under the terms of this Agreement; (b) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; or (c) terminate Customer's right to use and access to the Indemnified Technology (or its infringing part) and refund any prepaid, unused fees as of the date of termination. The remedies in this Section 11 are Customer's sole and exclusive remedies and WorkFusion's sole liability regarding the subject matter giving rise to any Claim that any WorkFusion Technology, including, without limitation, the Cloud Services, Deliverables or Services infringe or misappropriate any third party's intellectual property rights.

**11.3. Customer's Duty to Indemnify.** Customer shall indemnify, defend, and hold harmless WorkFusion and its Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**WorkFusion Indemnitee**") from and against any and all Losses incurred by such WorkFusion Indemnitee resulting from any Claim by a third party that arise out of or result from, or are alleged to arise out of or result from: (a) Customer Data, including any Claim involving alleged infringement or misappropriation of third-party rights by Customer Data; or (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer, including WorkFusion's compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by WorkFusion.

**11.4. Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Claim for which such party believes it is entitled to be indemnified pursuant to Section 11. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice/reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Claim on any terms or in any



manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Claim, the Indemnitee shall have the right, but no obligation, to defend against such Claim including settling such Claim after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 11.4 will not relieve the Indemnitor of its obligations under Section 11, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

## 12. LIMITATION OF LIABILITY

### 12.1. Limitation of Damages.

(A) In no event is either party liable for any of the following arising out of or concerning this Agreement, however caused: special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits, use, or revenue; business interruption; or loss or corruption of data.

(B) Except for any Claim related to each party's indemnification obligations in Section 11, Customer's use of WorkFusion Technology beyond the scope of the authorization granted under the Agreement, or Customer's failure to pay any amounts owing to WorkFusion under the Agreement, the maximum aggregate liability of each party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under the Agreement during the 12 months before the initial Claim.

(C) Sections 12.1.A and 12.1.B apply regardless of the form or source of Claim or Loss, whether the Claim or Loss was foreseeable, and whether a party has been advised of the possibility of the Claim or Loss.

**12.2. Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this Agreement, WorkFusion provides the Cloud Services and any WorkFusion Technology on an "as-is" basis. WorkFusion, its Affiliates, and third-party providers disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, fitness for a particular purpose, title, non-infringement, or accuracy. Customer acknowledges that (A) neither WorkFusion, its Affiliates nor its third party providers controls Customer equipment or the transfer of data over communications facilities (including the Internet); (B) the WorkFusion Technology may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (C) it is fully responsible to cooperate with WorkFusion as necessary for the upgrades to the Cloud Services with appropriate security updates and patches in accordance with the Support Policy. WorkFusion, its Affiliates, and its third-party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.

## 13. GENERAL PROVISIONS.

### 13.1. Assignment.

(A) Customer may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition of Customer, upon written notice to WorkFusion, if the assignment does not expand the scope of the rights to use the Cloud Services and is not to a Prohibited Party.

(B) WorkFusion may assign this Agreement (or a part of it) to its Affiliates or a surviving person under a merger or acquisition of WorkFusion or the assets of the business to which this Agreement relates, upon written notice to Customer.

(C) Except as provided in this Section 13.1, Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of WorkFusion, and any such attempted assignment would be invalid.

**13.2. Governing Law, Venue.** The Agreement is governed by and construed under the laws of the state of New York, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the County of New York, state of New York, provided however, WorkFusion will have the right to pursue claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement or to enforce its intellectual property rights.

**13.3. Force Majeure.** Neither party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, failure of third-party providers, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.

**13.4. Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, provisions on intellectual property (including ownership and use restrictions), license, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.

**13.5. Notices.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either party): (A) to WorkFusion: [finance@WorkFusion.com](mailto:finance@WorkFusion.com); and (B) to Customer: at Customer's email address stated on the Order Form. A notice is taken to have been received by email 3 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

**13.6. No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the parties. No party has authority to bind the other party.

**13.7. Third-Party Beneficiaries.** Customer acknowledges and agrees that WorkFusion's licensors are third-party beneficiaries of this Agreement, with the right to enforce the obligations in this Agreement directly against Customer.

**13.8. Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to WorkFusion (or any other party) do not form part of the Agreement and are void.

**13.9. Waiver, Modification.** Neither party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the parties.

**13.10. Entire Agreement.** This Agreement contains the entire understanding of the parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.

**13.11. Counterpart.** This Agreement (or a component) and any Order Form executed hereunder may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each party may sign the Cloud Services Agreement or any Order Form using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

**13.12. Severability.** If any provision of the Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

**13.13. Conflicts.** If there is any inconsistency or conflict between this Cloud Services Agreement and an Order Form, the applicable Order Form will prevail (to the extent of the inconsistency or conflict) over this Cloud Services Agreement.

**13.14. Applicable Laws.** Customer will comply with all applicable laws and regulations in connection with Customer's use of the Cloud Services, Deliverables and Services, including, without limitation, the United States Foreign Corrupt Practices Act of 1977 ("FCPA"), the U.K. Bribery Act 2010, U.S. export control laws (including "deemed export" and "deemed re-export"), the U.S. sectoral sanctions, new export controls that are or may be promulgated under Section 1758 of the Export Control Reform Act of 2018, the U.S. trade control laws and regulations (and any amendments thereto), applicable laws and regulations governing the use of

automation, machine learning and artificial intelligence, and applicable data privacy laws (“**Applicable Laws**”).

**13.15. Further Assurances.** At any time and from time to time, each party will, without further consideration, take such further action, execute and deliver such further instruments and documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of the Agreement.