



WORKFRONT, INC.

MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This Master Subscription and Services Agreement (“**Agreement**”) is between the customer entering into this Agreement (“**Customer**”) and Workfront, Inc., a Delaware corporation (“**Workfront**”). Customer and Workfront may enter into this Agreement by mutual signature (whether electronic or otherwise) of this Agreement or a sales order or other order form referencing this Agreement (an “**Order**”).

1. **SCOPE.** Workfront will provide to Customer certain software-as-a-service (“**SaaS**”)-based services, as further described in Orders, each of which are incorporated by reference into this Agreement (such SaaS-based services, together with any related applications and documentation provided by Workfront, the “**SaaS Services**”). The effective date of the initial Order is the “**Effective Date**” of this Agreement. Customer’s affiliate companies, partners, vendors, and customers may use and access the SaaS Services, solely in their capacities as such in relation to Customer and within the scope of Customer’s business projects or environment, with Customer being responsible for their acts and omissions.

2. **ACCESS TO SAAS SERVICES.** Subject to the terms and conditions of this Agreement, Workfront hereby grants Customer a non-exclusive, non-transferable right to access and use the SaaS Services internally in accordance with Orders (including any usage and subscription term limitations set forth therein).

3. **RESTRICTIONS.** Customer may not:

- (a) Assign (except as permitted under Section 12), sublicense, rent or lease access to the SaaS Services or, except as expressly permitted under Section 1 above, permit any third party to access the SaaS Services;
- (b) make any attempt to discover the underlying software, structure or algorithms of the SaaS Services or create derivative works from the SaaS Services;
- (c) evaluate or use, or facilitate the evaluation or use, of the SaaS Services for the purpose of competing with Workfront; or
- (d) use the SaaS Services in violation of applicable law or regulation (including export control and sanctions laws and regulations), from any embargoed country or region or outside the scope expressly permitted hereunder and in the applicable Order.

4. **TAXES AND FEES.** Customer will pay Workfront the fees set forth in the applicable Order, and will pay the appropriate governmental agency (or reimburse Workfront) any taxes or fees imposed in connection with the charges under this Agreement whenever such taxes or fees are or become applicable, including, but not limited to, sales, use, VAT, excise, customs duties and other similar taxes (other than taxes based on Workfront’s net income or property) to the extent that Customer is not exempt from such taxes or fees. Workfront will collect all such taxes unless Customer provides Workfront with proof of exemption. Payment obligations are non-cancellable, non-refundable (except as expressly set forth herein) and not subject to set-off. Unpaid amounts not subject to good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower.

5. **PROPRIETARY RIGHTS.** Workfront or its licensors retain all right, title and interest to the SaaS Services and all related intellectual property and proprietary rights. The SaaS Services are protected by applicable copyright, trade secret, industrial and other intellectual property laws. Workfront reserves any rights not expressly granted to Customer.

6. **MUTUAL CONFIDENTIALITY AND DATA SECURITY.** Recipient will not disclose Confidential Information of Discloser to any third party or use the Confidential Information other than for purposes of

performing under this Agreement. Recipient will hold the Confidential Information in strict confidence and will protect it with no less than the same degree of secrecy and confidentiality as the Recipient would extend to its own confidential information, but in no event will Recipient use less than reasonable care.

- (a) **Definition. “Confidential Information”** means all information that should reasonably be understood to be confidential or proprietary that is disclosed to the recipient (“**Recipient**”) by the discloser (“**Discloser**”), and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its financial information, software, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to Workfront, the SaaS Services; (iii) as to Customer, all data or content uploaded by or on behalf of Customer to the SaaS Services (“**Customer Content**”); and (iv) the terms of this Agreement, including without limitation, pricing information.
- (b) **Exclusions.** Confidential Information *excludes* information that: (a) was rightfully in Recipient's possession without any obligation of confidentiality; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient without use of the Confidential Information. If any Confidential Information is required to be disclosed by applicable law or court order, it may be disclosed to the extent of such requirement, provided that the Recipient promptly notifies Discloser of such requirement and provides Discloser with an opportunity to prevent such disclosure, if available. In addition, either party may confidentially disclose the terms of this Agreement to an actual or potential financing source or acquirer that is bound by written nondisclosure obligations substantially similar to those in this Section 6.
- (c) **Data Security.** Workfront asserts no ownership rights over the Customer Content, and Customer has the right to remove or request deletion of the Customer Content from the SaaS Services at any time, and Workfront shall provide reasonable cooperation with any such request(s). All Customer Content hosted by Workfront as part of the SaaS Services will be considered Customer's Confidential Information, except as set forth in subsection (b) above, and will also be protected and used pursuant to the then-current Workfront Data Security Policy found at <http://www.workfront.com/security>, and Customer further agrees to comply with its obligations thereunder and that the terms thereof are incorporated by reference into this Agreement. In updating such policy, Workfront will not materially diminish such protections.

7. WARRANTIES.

- (a) **SaaS Services Warranty.** Workfront warrants that the SaaS Services will perform in substantial accordance with their user guide. This warranty will not apply to any problems caused by malfunctioning non-Workfront software or equipment, the Customer's hardware, or misuse of the SaaS Services. IN THE EVENT OF ANY BREACH OF THE FOREGOING WARRANTY, CUSTOMER MUST PROVIDE WORKFRONT WRITTEN NOTICE OF THE BREACH WITHIN SIXTY (60) DAYS THEREAFTER, AND WORKFRONT'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WILL BE FOR WORKFRONT TO REPAIR OR REPLACE THE DEFECTIVE SAAS SERVICES (AND CUSTOMER WILL REASONABLY COOPERATE WITH WORKFRONT TO RESOLVE THE CLAIM), BUT IF WORKFRONT CANNOT RESOLVE THE ISSUE WITHIN A REASONABLE PERIOD OF TIME, THEN EITHER PARTY MAY TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO THE OTHER PARTY AND:
- IF THE BREACH OCCURRED DURING THE FIRST NINETY (90) DAYS AFTER THE EFFECTIVE DATE, WORKFRONT WILL REFUND THE FULL SUBSCRIPTION FEE PAID BY CUSTOMER FOR THE SAAS SERVICES; OR
 - IF THE BREACH OCCURRED AFTER THE FIRST NINETY (90) DAYS AFTER THE EFFECTIVE DATE, WORKFRONT WILL PROVIDE A PRO RATA REFUND OF ANY PRE-PAID AND UNUSED SUBSCRIPTION FEES.

(b) **Availability.** Workfront will use commercially reasonable efforts to maintain the online availability of the SaaS Services for a minimum of 99.9% availability in any given month (excluding published scheduled outages, outages of third party connections or utilities or other reasons beyond Workfront’s control). WORKFRONT’S SOLE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY FOR A BREACH OF THIS SECTION 7(B) WILL BE FOR WORKFRONT TO PROVIDE A CREDIT (OR, IN THE CASE OF A NON-RENEWAL, A REFUND) EQUAL TO A PERCENTAGE OF THE TOTAL SUBSCRIPTION FEES PAID BY CUSTOMER FOR THE MONTH IN QUESTION IN ACCORDANCE WITH THE TABLE BELOW. HOWEVER, IN ORDER TO OBTAIN SUCH CREDIT (OR REFUND, IF APPLICABLE), CUSTOMER MUST NOTIFY WORKFRONT OF SUCH BREACH WITHIN THIRTY (30) DAYS OF THE END OF THE MONTH IN QUESTION.

| Monthly SaaS Services Availability | Credit Percentage |
|--|-------------------|
| Equal to or greater than 99.0% but less than 99.9% | 10% |
| Equal to or greater than 95.0% but less than 99.0% | 25% |
| Less than 95.0% | 100% |

(c) **Professional Services Warranty.** Customer may purchase consulting, implementation, or other professional services (“**Professional Services**”) from Workfront in association with the SaaS Services hereunder. Workfront represents and warrants that it shall perform such Professional Services in accordance with professional standards in a good, workmanlike and timely manner using qualified employees and contractors and in conformity to the applicable Order (which, for purposes of Professional Services, may include a mutually executed statement of work (“**SOW**”)).

- i. Customer shall have a right to use items delivered pursuant to the Professional Services solely within the scope of the rights granted in Sections 1 and 2.
- ii. The successful completion of the Professional Services depends on the cooperation and participation of Customer’s management and personnel. Delays in performance of Customer’s responsibilities may result in additional cost and/or delay of the completion of the Professional Services. Prior to the commencement of the Professional Services, Customer will designate an individual as Project Manager who will be the point of contact for Workfront communications relative to the Professional Services and will have the authority to act on behalf of the Customer in all matters regarding the Professional Services. The responsibilities of Customer’s Project Manager include the following: (a) managing Customer personnel and responsibilities for the Professional Services; (b) serving as the interface between Workfront and all participating Customer departments; (c) participating in project status meetings; (d) expediently obtaining and providing any necessary information, data, and decisions pursuant to Workfront’s reasonable requests; (e) resolving deviations from the estimated schedule caused by Customer; (f) helping to resolve project issues and escalate issues within Customer’s organization as necessary; and (g) reviewing any special invoice or billing requirements associated with the Professional Services and approving any related effect on the price of Professional Services.
- iii. Notwithstanding any configuration-related Professional Services provided by Workfront, Customer is responsible for all Customer Content, including the accuracy and legality thereof, as well as the selection and implementation of Customer’s controls on end-user access and Customer’s use of Customer Content.
- iv. Any proposed change request must be reviewed by the requesting party’s Project Manager and must describe the changes requested and the resulting effects on the related Professional Services. The parties agree that no project change request will be rejected unreasonably, and, in the case of any rejection, the reasons for the rejection will be provided to the other party. A written project change authorization must be signed by authorized representatives of both parties after investigation prior to any final modification to an Order going into effect.

- (d) **Disabling Code.** Workfront warrants that (i) it has used commercially reasonable efforts consistent with industry standards to scan for and remove any software viruses, and (ii) it has not inserted any Disabling Code. “**Disabling Code**” means computer code inserted by Workfront that is not addressed in the documentation and that is designed to delete, interfere with or disable the normal operation of the SaaS Services.
- (e) **Indemnification.** Workfront will defend or settle any action against Customer based upon a third party claim that Customer’s use of the SaaS Services infringes any patent, copyright or other intellectual property right of a third party and will indemnify Customer against any amounts finally awarded against Customer as a result of the claim, provided Workfront is promptly notified of the assertion of the claim, is provided all reasonable cooperation in the defense of the claim and has sole control of its defense or settlement. Workfront may not, without the prior written consent of Customer, consent to the entry of any judgment or enter into any settlement that includes any admission of fault, culpability or a failure to act by or on behalf of Customer. If the use of any material component of the SaaS Services has become, or in Workfront’s opinion is likely to become, the subject of any claim of infringement, Workfront may at its option and expense (i) procure for Customer the right to continue using and receiving such component as set forth hereunder; (ii) replace or modify such component to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate the applicable Order as it relates to such component and provide a pro rata refund of any pre-paid and unused subscription fees for such component. Workfront will have no liability or obligation with respect to any such claim to the extent caused by (A) compliance with designs, guidelines, plans or specifications provided by Customer; (B) use of the SaaS Services by Customer not in accordance with this Agreement; (C) Customer Content; or (D) the combination, operation or use of the SaaS Services with other applications, portions of applications, product(s) or services where the SaaS Services would not by themselves be infringing. This section contains Customer’s exclusive remedies and Workfront’s sole liability for infringement claims.

WORKFRONT DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SAAS SERVICES MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

8. **SUPPORT.** Workfront will provide maintenance and technical support (“**Support**”) for the SaaS Services based on the specific Support offering purchased under the relevant Order and as set forth in the Workfront Support Policy, located at <http://www.workfront.com/support-policy>. Workfront warrants that Support will be supplied with reasonable care and skill. Workfront may change its Support terms upon written notice to Customer, but Support will not materially degrade.

9. **TERM AND TERMINATION.** This Agreement will remain in effect for so long as there are Orders outstanding. Each Order will automatically renew for an additional term of one (1) year, unless either party provides at least thirty (30) days advance notice of non-renewal. Either party may terminate this Agreement or the applicable Order, upon a material breach by the other party, which is not cured within thirty (30) days after written notice of the breach. Customer may also terminate this Agreement for convenience upon thirty (30) days advance notice to Workfront, with the understanding that such a termination will not change Customer’s payment obligations under any Orders, which will remain due and payable for the full term of any Order as if the Order had not been terminated. Upon any expiration or termination of this Agreement, Customer must end its usage of the SaaS Services. In addition, upon termination by Customer for an uncured material breach, Workfront will provide a pro rata refund of any pre-paid and unused subscription fees. Upon expiration or termination of this Agreement, all rights and obligations will immediately terminate except those that by their nature should survive such expiration or termination, including restrictions relating to the SaaS Services and terms and conditions relating to proprietary rights and confidentiality, payment obligations, disclaimers, indemnification, limitations of liability and termination and the miscellaneous provisions below.

10. **MUTUAL DISCLAIMER OF DAMAGES.** NEITHER PARTY IS LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT

(INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USAGE, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND WHETHER SUCH DAMAGE RESULTS FROM A CLAIM ARISING UNDER CONTRACT OR TORT LAW.

11. **LIMIT OF LIABILITY.** EACH PARTY'S TOTAL LIABILITY FOR ALL DAMAGES IS LIMITED TO THE AMOUNT PAID AND/OR PAYABLE IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM FOR THE SUBSCRIPTION TO THE APPLICABLE SAAS SERVICES GIVING RISE TO SUCH DAMAGES.

12. **MISCELLANEOUS TERMS.**

- (a) **Waivers.** A waiver by a party of any breach of this Agreement will not be construed as a waiver of any continuing or succeeding breach.
- (b) **Assignment.** Each party may not assign or transfer this Agreement, or an Order, to a third party without the other party's prior written consent, except this Agreement and all Orders may be assigned to (i) a successor to all, or substantially all, of the assets or business of such party related to this Agreement or (ii) an affiliate of such party, in each case without such consent, provided that such successor or affiliate agrees in writing to assume all obligations of the assigning party under this Agreement.
- (c) **Notices.** Any notices under this Agreement must be in writing and must be delivered by registered mail (or by courier with tracking number) to the attention of the receiving party's legal department.
- (d) **Governing Law and Dispute Resolution.** This Agreement is governed by the laws of the State of Utah, without regard to its conflicts-of-laws provisions. Any dispute relating to an alleged material breach of this Agreement must first be addressed by the relevant executives of each party, who shall meet in a good faith attempt to resolve all outstanding issues. Then, if a resolution has not been reached within fourteen (14) days, either party may seek any remedy available under applicable law, provided that the parties agree to the exclusive jurisdiction of the state and federal courts located in Salt Lake County, Utah. Nothing in this Agreement will prevent either party from seeking injunctive relief in any court.
- (e) **Enforceability.** If any term of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such term will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability and the remaining terms will remain in effect.
- (f) **PO Terms; Order of Precedence.** The parties agree that all additional or conflicting terms of Customer's form purchasing document will not apply to this Agreement and the business transactions conducted hereunder. In the event of a conflict between this Agreement and an Order, the terms of the Order shall control.
- (g) **Entire Agreement and Changes; No Third Party Beneficiaries.** This Agreement, together with the Orders and SOWs, are the complete and exclusive agreement and supersede any prior or contemporaneous negotiations or agreements, between the parties relating to this subject matter. This Agreement may not be modified except in writing executed by both parties. There shall be no third-party beneficiaries, either express or implied, to this Agreement.
- (h) **U.S. Government Restricted Rights.** The Workfront software is provided with RESTRICTED RIGHTS and its supporting documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 (or its successor provision) or the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202 (or its successor provision), as applicable. Contractor/manufacturer is Workfront, Inc., 3301 N. Thanksgiving Way, Ste. 100, Lehi, UT 84043.
- (i) **Force Majeure.** Neither party shall be liable for any failure or delay in performance caused by circumstances beyond its reasonable control, including but not limited to acts of God, fires, war, governmental action or terrorism.

- (j) **Independent Contractors.** In making and performing this Agreement, Customer and Workfront act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either party make commitments or incur any charges or expenses for, or in the name of the other party.
- (k) **Marketing.** Neither party may issue any press release regarding this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.
- (l) **Counterparts and Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Facsimile and electronic copies of signatures shall have the same effect as originals. If a party elects to sign this Agreement electronically, it expressly acknowledges and agrees that such electronic signature is the legal equivalent of, and has the same force and effect as, a manual signature.