



MASTER SERVICES AGREEMENT

This agreement is between WorkRails, Inc., a Delaware corporation (**WorkRails**), and the Customer agreeing to these terms (**Customer**), and is effective as of the date of the last signature below.

1. SOFTWARE SERVICE.

This agreement and the applicable order provide Customer and its Affiliates (defined below) access to and usage of an Internet-based software service, including, without limitation, its features, functions, and user interface, and underlying software, as specified on an order (**Service**). Professional services (**Professional Services**) may also be provided by WorkRails if specified under an order.

2. USE OF SERVICE.

- a. **Customer Owned Content.** All content and data uploaded by Customer to the Service remains the property of Customer, as between WorkRails and Customer (**Customer Content**). Customer represents and warrants to WorkRails that Customer has provided all required notices and has obtained all required licenses, permissions, and consents regarding Customer Content for use within the Service under this agreement. Customer grants WorkRails the right to use the Customer Content solely for purposes of performing under this agreement. During the term of this agreement, WorkRails will provide Customer Content upon request.
- b. **WorkRails Support.** WorkRails must provide Customer support for the Service under the terms of WorkRails' Customer Support Policy (**Support**) as described and attached in **Exhibit A** to this agreement.
- c. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential and use industry-standard password management practices; (ii) is solely responsible for Customer Content and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account and notify WorkRails promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's technical documentation and applicable law.
- d. **Third Party Service.** The Service interoperates with third party services (**Third Party Service**), and it depends on continuing availability of and access to Third Party Service, including application programming interfaces, for full functionality of the Service. Customer is responsible for obtaining all rights and the payment of all fees associated with all Third-Party Service for purposes of this agreement.
- e. **API.** WorkRails provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, WorkRails grants a non-exclusive, nontransferable, terminable license to interact only with the Service as allowed by the API, and as follows:
 - i. may not use the API in a manner--as reasonably determined by WorkRails--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, WorkRails may suspend or terminate 's access to the API on a temporary or permanent basis.
 - ii. WorkRails may change or remove existing endpoints or fields in API results upon at least 30 days' notice to Customer, but WorkRails will use commercially reasonable efforts to support the previous version of the API for at least 6 months. WorkRails may add new endpoints or fields in API results without prior notice to Customer.

The API is provided on an AS IS basis. WorkRails has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.

- f. **Affiliates and Contractors.** Customer, including its Affiliates, may enter into orders with WorkRails and its Affiliates. An Affiliate entering into an order agrees to be bound by this agreement as if it were an original party hereto. Customer may allow its Affiliates and contractors to use the Service, provided Customer is responsible for their compliance with the terms of this agreement, and use by its Affiliates and contractors is solely for Customer's or Affiliate's benefit. Affiliate means any company controlled by or under common control with the subject entity, directly or indirectly, with an ownership interest of at least 50%.

3. SERVICE LEVEL AGREEMENT AND WARRANTY.

- a. **Service Warranty.** WorkRails warrants to Customer that: (i) it will make the Service Available as specified on **Exhibit B**; (ii) WorkRails will not materially decrease the overall security of the Service; (iii) the Service will perform materially in accordance with its technical documentation; and (iv) WorkRails will not materially decrease the overall functionality of the Service or the scope of Support during a paid term. **For any breach of this warranty, Customer's exclusive remedies are those described in Exhibit A (for availability) or the "Mutual Termination for Material Breach" and "Effect of Termination" sections in this agreement.**
- b. **Professional Services Warranty.** WorkRails warrants that, for a period of 30 days from delivery, it has performed the Professional Services in conformance with generally accepted practices within the software services industry. Customer must notify WorkRails of any breach of this warranty no later than 30 days after delivery of the Professional Services. **CUSTOMER'S EXCLUSIVE REMEDY AND WORKRAILS' ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR WORKRAILS TO RE-PERFORM ANY NON-CONFORMING PORTION OF THE IMPLEMENTATION SERVICES, OR IF WORKRAILS CANNOT REMEDY THE BREACH, THEN REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING PORTION OF THE IMPLEMENTATION SERVICES. THIS WARRANTY WILL NOT APPLY TO THE EXTENT CUSTOMER, ITS CONTRACTORS, OR AGENTS HAVE MODIFIED ANY ITEM.**
- c. **DISCLAIMER. WORKRAILS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE WORKRAILS TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, WORKRAILS DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS AND AGREES THAT THE SERVICE MAY NOT BE ERROR-FREE AND THE USE MAY BE INTERRUPTED, AND WORKRAILS IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD-PARTY SERVICE ISSUES.**

4. PAYMENT.

Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If WorkRails has the legal obligation to pay or collect taxes for which Customer is responsible under this section, WorkRails will invoice Customer and Customer will pay that amount unless Customer provides WorkRails with a valid tax exemption certificate authorized by the appropriate taxing authority. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. MUTUAL CONFIDENTIALITY AND DATA SECURITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). WorkRails' Confidential Information includes, without

limitation, the Service, and pricing information. Customer's Confidential Information includes, without limitation, the Customer Content.

- b. **Protection of Confidential Information.** Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to: (i) not use any Confidential Information of Discloser for any purpose outside the scope of this agreement; and (ii) limit access to Confidential Information of Discloser to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient containing protections not materially less protective of the Confidential Information than those in this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) is independently developed by the Recipient without use of or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.
- d. **Data Security Measures.**
 - i. *Security Measures.* WorkRails: (i) implements and maintains reasonable security measures appropriate to the nature of the Customer Content including, without limitation, technical, physical, administrative, and organizational controls, designed to maintain the confidentiality, security, and integrity of the Customer Content; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of the Customer Content that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of safeguards in place to control these risks (collectively, **Security Measures**).
 - ii. *Notice of Data Breach.* If WorkRails becomes aware that Customer Content was accessed or disclosed in breach of this agreement, WorkRails will so notify Customer without undue delay, immediately act to eliminate the breach and preserve forensic evidence, and provide available information to Customer regarding the nature and scope of the breach.
- e. **Data Privacy.** WorkRails will protect the privacy of Customer Data in accordance with the Data Processing Addendum available at www.workrails.com/legal, which is hereby incorporated into this agreement for all purposes, except as otherwise agreed by the parties in writing.

6. PROPERTY.

- a. **Reservation of Rights.** WorkRails and its licensors are the sole owners of the Service, including all associated intellectual property rights, and they remain only with WorkRails. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. WorkRails reserves all rights that are not expressly granted in this agreement.
- b. **Restrictions.** Customer *may not*: (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit

infringing material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service except as allowed by applicable law despite this limitation; or (vi) access the Service to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes. WorkRails may suspend Service to Customer if WorkRails believes in good faith that Customer's use of the Service poses an imminent threat to the security, availability or legality of the Service; in such event, WorkRails will work with Customer to address the issue and restore Service as quickly as possible.

- c. **Statistical Information.** WorkRails may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Content, and there is no means to re-identify Customer Content. WorkRails retains all intellectual property rights in such information.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have expired, unless earlier terminated as provided below.
- b. **Term of Orders.** The term of each order must be specified in the order.
- c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- d. **Return of Customer Content.**
- Within 60 days after termination, upon request WorkRails will make the Service available for Customer to export Customer Content as provided in **Section 2(a)**.
 - After such 60-day period, WorkRails has no obligation to maintain the Customer Content and may destroy it.
- e. **Effect of Termination.** If this agreement is terminated for WorkRails' breach, WorkRails will refund Customer fees prepaid for the remainder of the term of all orders after the termination effective date. If this agreement is terminated for Customer's breach, Customer will pay any unpaid fees for the term of all orders. Upon request, following any termination of this agreement, each party will destroy or return all of the other party's property that it holds, subject to the "**Return of Customer Content**" section above.

8. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES. TO THE MAXIMUM EXTENT ALLOWED BY LAW, WORKRAILS IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION; AND LOST PROFITS, REVENUE, OR ANTICIPATED COST SAVINGS), EVEN IF IT KNOWS OF THE POSSIBILITY OR FORESEEABILITY OF SUCH DAMAGE OR LOSS.**
- b. **TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR WORKRAILS' INDEMNITY OBLIGATIONS, WORKRAILS' TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.**

9. INDEMNIFICATION FOR THIRD-PARTY CLAIMS.

- a. WorkRails will defend or settle any third-party claim against Customer to the extent that such claim alleges that WorkRails technology used to provide the Service infringes a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies WorkRails of the claim in writing, cooperates with WorkRails in the defense, and allows WorkRails to solely control the defense or settlement of the claim. **Costs.** WorkRails will indemnify and hold harmless Customer from any infringement claim defense costs it incurs in defending Customer under this indemnity, WorkRails-negotiated settlement amounts agreed to by WorkRails, and court-awarded damages. **Process.** If such a claim appears likely, then WorkRails may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If WorkRails determines that none of these are reasonably available, then WorkRails may terminate the Service and refund any prepaid and unused fees. **Exclusions.** WorkRails has no obligation for any claim arising from: WorkRails' compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; Customer Content; or technology or aspects not provided by WorkRails. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND WORKRAILS' SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**
- b. If a third party claims against WorkRails that any part of the Customer Content infringes or violates that party's patent, copyright, or other right, Customer will defend WorkRails against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that WorkRails promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

10. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of New York (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Suffolk County, New York, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party. Customer hereby expressly waives the application of New York General Obligation Law section 5-903 to any renewal of this agreement or an order.

11. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all a party's businesses, assets, not involving a competitor of the other party, or at any time to an Affiliate.
- c. **Export Compliance.** The Service and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will permit its personnel or representatives to access any Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.

- d. **Independent Contractors.** The parties are independent contractors with respect to each other, and neither party is an agent, employee, or partner of the other party or the other party's Affiliates.
- e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for its non-performance due to events beyond its reasonable control, including but not limited to natural weather events and disasters, labor disruptions, and disruptions in the supply of utilities.
- f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- g. **No Additional Terms.** WorkRails rejects additional or conflicting terms of a Customer's form-purchasing document.
- h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i. **Survival of Terms.** All provisions of this agreement regarding payment, confidentiality, indemnification, limitations of liability, proprietary rights and such other provisions that by fair implication require performance beyond the term of this agreement must survive expiration or termination of this agreement until fully performed or otherwise are inapplicable. The UN Convention on Contracts for the International Sale of Goods does not apply.
- j. **Feedback.** If Customer provides feedback or suggestions about the Service, then WorkRails (and those it allows to use its technology) may use such information without obligation to Customer.
- k. **Publicity.** Customer agrees that WorkRails may use its name and logo in WorkRails' promotional materials and client lists.

_____ (Customer)	WorkRails, Inc. (WorkRails)
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address:

Technical Support Policy

Hours Available: Monday to Friday from 8 am to 6 pm (Eastern United States time).

Ticketing System: During the support hours, Customer can open error tickets via email and have general support questions answered by WorkRails' customer success personnel as per the schedule below.

Emails: Customer should send all support inquiries to supportteam@workrails.com, which is monitored during the support hours. Customer must include: company name, contact, return phone numbers and a detailed issue description (include screenshots if possible).

Response Times (During Support Hours).

Error Class	Description	Target Response Time	Process
Level 1	Service or API failure, data corruption, or major functionality errors in which the Service is rendered inoperable, disabled and inaccessible without any work-around.	24 hours	<p>(1) Evaluation and determination of a proposed solution.</p> <p>(2) Begin providing the solution and reach resolution of the error <i>(unless the resolution is simply a server restart, which will occur within the first 8 hours)</i></p> <p>Solution will provide either:</p> <ul style="list-style-type: none">(i) the correction of the error or,(ii) a workaround. <p>In exceptional cases, an action plan may be submitted for the fastest proposed resolution of the problem (timing and scope subject to the reasonable acceptance of Customer).</p>

Level 2	Service operation is not functionally correct with respect to specifications but the Service allows the user to complete job functions or a work-around is available	within 3 business days	(1) Configuration issues: within 20 business days (subject to Customer prioritization) (2) Bugs and Product issues: resolved in the next formal release, or, if possible, a hotfix.
Level 3	All other issues. For example, where the Service aesthetics or cosmetics are inconsistent or incorrect but do not prevent Customer utilization of the Service, a problem has occurred but has not re-occurred, or an infrequently-used utility gives misleading results.	20 business days	(1) Configuration issues: within 20 business days (subject to Customer prioritization) (2) Bugs and Product issues: resolved in a subsequent release

More Information is located at: <https://developer.workrails.com/docs/help-support>

Exclusions: Public US Holidays.

Service Level - Availability

Availability Commitment. The Service will be available 99.9% of the time during a calendar month, subject to the terms below.

Service Credits.

Service Availability Level	Service Credit Factor of Monthly Subscription Fee (pro-rated)
99.7% to 99.89%	5%
99.50% to 99.69%	7.5%
99.0% to 99.49%	10%
Below 99%	15%

To be eligible, the credit request must:

- (i) include, in the body of an e-mail, the dates and times of each incident of unavailability that Customer claims to have experienced; and
- (ii) include logs, screenshots or other physical evidence that document the errors and corroborate Customer's claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

CUSTOMER'S EXCLUSIVE REMEDY AND WORKRAILS' SOLE OBLIGATION FOR ITS FAILURE TO MEET THIS WARRANTY WILL BE FOR WORKRAILS TO PROVIDE A CREDIT FOR THE APPLICABLE MONTH, AS PROVIDED IN THE CHART ABOVE (IF THIS AGREEMENT IS NOT RENEWED, THEN A REFUND FOR THE MONTH), PROVIDED THAT CUSTOMER NOTIFIES WORKRAILS OF SUCH BREACH WITHIN 30 DAYS OF THE END OF THAT MONTH.

Exceptions.

- Circumstances beyond WorkRails' reasonable control, including acts of god that prevent it from providing the Service, including any force majeure event or major Internet related problems (e.g. loss of internet access across a geographic area larger than 100 square miles) beyond the demarcation point of WorkRails or DNS issues outside of WorkRails control;
- In the event of an emergency maintenance, WorkRails shall provide notice as soon as reasonably practicable prior to beginning such emergency maintenance; and
- Customer's wrongful acts or omissions, including, without limitation, custom scripting or coding.