## WORKPAY AFRICA LIMITED SOFTWARE TERMS & CONDITIONS

Thank you, the Client, for choosing the end-to-end cloud-based human resource (HR) management software-as-a-service (SaaS) platform (the Software) developed and maintained by Workpay Africa Limited (Company Number PVT-JZU38G6), a company incorporated with limited liability in the Republic of Kenya whose registered address is at P. O. Box 15646-00400, Nairobi, Kenya (together with its successors in title, subsidiaries or holding company or affiliates, Workpay or the Supplier).

To be eligible to register an Account on the Software in accordance with your completed Order Form, the Client must review and accept the enclosed Terms and Conditions, which along with the Order Form, form the Software-as-a-service Agreement (the Agreement). These terms and Conditions apply to the Order Form and vice versa.

## PLEASE REVIEW THESE TERMS AND CONDITIONS CAREFULLY. BY USING THE SOFTWARE OR SIGNING THE ORDER FORM, YOU AGREE TO THESE TERMS AND CONDITIONS

This Agreement applies to all of Workpay’s clients (the **Client(s)**), including, as applicable, Administrators and Users.

# Definitions and Interpretation

In this Agreement (including the Order Form, Schedules and Recitals) except where the context otherwise requires, the following words and expressions shall have the following meanings. The definitions and rules of interpretation in this clause apply in this agreement.

* 1. **Account** means a secure, password-protected, cloud-based organisational account through which the Client will access the Software in accordance with this Agreement;
  2. **Administrator or Super Admin** means a person designated and authorized by the Client to:
     1. act on behalf of the Client;
     2. provide information on behalf of the Client;
     3. bind the Client with respect to the terms of this Agreement and the provision of the Software; and
     4. apply for, manage and oversee, and receive all notifications related to the Account;
  3. **Applicable Law** means any common law, constitutional law, statute, regulation, guideline, circular, resolution, rule, ordinance, enactment, judgement, order, code, decree, directive, notification, clarification, guideline, policy, requirement or any other governmental direction having the force of law and any form or decision or any determination by or interpretation of any of the foregoing by any Competent Authority, now or hereafter in effect, in each case as amended, re-enacted or replaced to the extent applicable to the Parties, the Software, the Administrator and the Users, the data created by the Client on the Software, the payments made through the Software, this Agreement and all documents and policies that relate to this Agreement;
  4. **Business Day** means a day other than a Saturday, Sunday or public holiday in Kenya;
  5. **Competent Authority** means any regional, national, state, county, local or municipal authorities and other persons having statutory competence to promulgate rules and regulations having the force of law touching and concerning the matters contemplated in this Agreement and / or the Software and / or the Administrator or the Users and / or the data created on the Software;
  6. **Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 7.1;
  7. **Client Data** means any data created by the Client or the Administrator or the Users that is ultimately stored at any time on the Account;
  8. **Documentation** means all the Workpay Knowledge Base and Help Centre articles available on via the Software at <https://help.myworkpay.com/en/>or such other web addresses notified by the Supplier to the Client from time to time which sets out the user instructions for the Software;
  9. **Effective Date** means the date of signature of the Order Form;
  10. **Initial Subscription Term** means the initial term of this Agreement as set out in the Order Form;
  11. **Normal Business Hours** means 8.00 am to 5.00 pm East African time on a Business Day, and/or the same hours on Business Days in West Africa;
  12. **Renewal Period** means the period described in clause 3.1;
  13. **Software** has the meaning ascribed to it in recitals to this Agreement;
  14. **Subscription** means the subscription purchased by the Client which entitles the Client to access and use its Account on the Software and related Documentation in accordance with this Agreement;
  15. **Subscription Fees** mean the fees payable by the Client to the Supplier for access to the Software over a defined Subscription Term, as set out in the Order Form;
  16. **Subscription Term** has the meaning ascribed to it in clause 3.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
  17. **Users** will bear the meaning ascribed to it in sub-clause 2.2.2;
  18. **Virus** means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software including the Software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
  19. In this Agreement (including the recitals hereto and the schedules), unless the context otherwise requires, reference to:
      1. words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;
      2. sub-clauses, clauses, Sections and the Schedules shall be construed as references to sub-clauses, clauses and sections of and the schedules to this Agreement;
      3. the expression **person** shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or unincorporated);
      4. any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation made thereunder or under any such re-enactment;
      5. indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
      6. a document **in the agreed terms** or in **agreed form** shall mean in the form agreed by or on behalf of the parties and executed by or on their behalf;
      7. the word “including” shall mean “including without limitation.”
      8. a **party** or the **parties** shall mean a party or the parties to this Agreement;
      9. the word **tax** shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including, without limitation, pay as you earn or employment tax, social security deductions, value added tax, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and **taxation** shall be construed accordingly and the expression **competent taxing authority** means, any governmental authority, monetary agency or central bank having power to collect or levy taxes;
      10. the expression **month** means a calendar month; and
      11. where any term is defined within any particular clause or sub-clause in this Agreement the term so defined, unless it is expressly stated in the clause or sub-clause in question that the term so defined has limited application to the relevant clause or sub-clause, shall bear the meaning ascribed to it wherever utilised in this Agreement notwithstanding that that term has not been defined expressly in this Section 1 of this Agreement.
  20. Headings to sections are for convenience only and shall not affect the construction or interpretation of this Agreement. In this Agreement any reference to any document (including this Agreement and the Order Form) means that document as is supplemented, amended or varied from time to time in accordance with the terms of that document and, if applicable, hereof.
  21. For the purposes of this Agreement, if a definition imposes substantive rights on a party to this Agreement such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.

# Client Responsibilities

## Software Documentation Delivery and Acceptance

* + 1. In order to access and use an Account on the Software, the Client must first accept all terms of this Agreement and all the related documents that will be provided to the Client by the Supplier from time to time. This acceptance of this Agreement and the foregoing documents will be indicated by way of signature and shall have the force of law regardless of whether such signature is appended to an agreement or a document manually or electronically, and signatures shall include digital selection by the Client or an Administrator of an “I Accept” box while using the Software.
    2. By using the Software, the Client agrees to receive important documents and notices electronically. This means that the Supplier may send documents to the Client through email or through the Account. The Client also confirms that the Supplier has the permission of Users and the Administrator to receive information and documentation electronically.

## Account Administration

* + 1. In order to access and use the Software, the Client will be required to create an Account on the Software. To create the Account, the Client will identify the Administrator. The Administrator will create the Account through this [Account opening link](https://help.myworkpay.com/en/articles/6998958-how-to-create-your-workpay-account). To open the Account, the Administrator will provide his or her full name, a generic or group email address (the **Account Email**), phone number (the **Master Phone Number**) and the identification details of the Client. The Administrator shall also create a password (the **Master Password**). The Account Email, the Master Phone Number, the Master Password, the User’s emails, phone numbers and passwords together referred to as the **Credentials**.
    2. Once the Account is created, the Administrator will have the right to grant access and rights to other of the Client’s personnel so that they can view and/or manage some Software modules within the Account (the **Users**).
    3. The Client is liable for any actions of the Administrator and the Users. Any actions taken by the Administrator or Users will be deemed authorized by the Client, regardless of the Client’s knowledge of such actions. The Client is responsible for the security of the Credentials, and agrees to keep and to ensure that the Administrator keeps the Credentials secure. The Client further acknowledges that its Account is solely for the Client’s use, and that the Client will not share its Account or Credentials with any other third party that is not a party to this Agreement.

## Software Training

* + 1. The Client will be required to ensure that the Administrator and the Users avail themselves for a training on the modules, features, functionalities and use of the Software; as well as the know-how to set the rights, privileges and restrictions of each User; and the proper channels through which to access and receive Product Support

## Account Information

* + 1. For the Software to run and perform human resource and payroll functions, the Client will be required to aggregate and upload (in a format prescribed by the Supplier) data relating to its employees which includes the employees’ names, identification numbers and bank account details.
    2. The Client retains all right, title and interest in and to the Client Data, and represents and warrants that the Client Data provided is accurate and complete and is provided to the Supplier without any obligations on the Supplier to verify the accuracy or completeness of such Client Data.
    3. The Supplier has no liability or responsibility for any consequences related to inaccurate or incomplete Client Data. Further, the Client acknowledges that the Supplier is not liable for any errors, penalties, fines, missed payments, judgements by competent tax authorities, incorrect coverage, unpaid taxes or any other losses incurred by the Client that result from inaccurate or incomplete Client Data or from the late provision of Client Data.

## Account Security

* + 1. The Client is solely responsible for adequately securing and keeping confidential the Credentials. The Client accepts all risks of unauthorized use of its Account arising from Client’s failure to implement security safeguards or otherwise maintain the confidentiality of its Credentials and hereby releases, indemnifies, defends and holds harmless from any liability in connection with any such unauthorized access. If the Client believes or suspects that its Account or Credentials have been accessed or compromised, the Client must immediately notify the Supplier. The Supplier reserves the right to prevent access to the Account if the Supplier has reason to believe that the Account or its Credentials have been compromised.
    2. The Client is fully and solely responsible for maintaining the privacy and security of its computer systems and mobile devices, those of its personnel and users, and for all activity on its Account.

## Review of Reports Generated by the Software

* + 1. The Client is responsible for reviewing reports generated through its Account on the Software including any forms required to be generated by the Client by a competent tax authority. If the Client finds any error in these reports, the Client must inform the Supplier as soon as possible. The Client must also inform the Supplier of any notices from third parties that may affect the delivery of the Software.

## Prohibited Activities

* + 1. Any authorization to access or use the Software extends only to the Client’s Account, to the Subscription, and for the Subscription Term for which the Client has subscribed and remains in good standing. The Client will not (nor will the Client permit any third party to):
       1. use the Software to access, store, distribute or transmit any Viruses or material that:
          1. facilitates illegal activity;
          2. depicts sexually explicit images;
          3. promotes unlawful violence;
          4. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
          5. is otherwise illegal or causes damage or injury to any person or property;
       2. except as may be allowed by any Applicable law which is incapable of exclusion by agreement between the Parties:
          1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
          2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or attempt to create or derive the source code underlying the Software; or
       3. use the Software for any illegal or fraudulent activity; or
       4. access all or any part of the Software and Documentation in order to build a product or service which competes with the Software; or
       5. develop, support or use software, devices, scripts, robots or any other means or processes (including crawlers, browser plugins and add-ons or any other technology) to scrape the Software or otherwise copy profiles and other data from the Software in order to enable, use, or build a similar or competitive product or service; or
       6. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party without the express permission of the Supplier; or
       7. share its Credentials with any other person, or allow any other person to use its Credentials to access the Software; or
       8. use or launch any automated system, including "robots," "spiders," or "offline readers," that sends more requests to the Supplier’s servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser; or
       9. use the Software in any manner that damages, disables, overburdens, or impairs any of the Supplier’s websites, servers, or otherwise interferes with any other party's use of the Software; or
       10. attempt to probe, scan or test the vulnerability of the Software or to breach the security or authentication measures of the Software; or
       11. access the Software other than through the Supplier’s interface; or
       12. use the Software to send payments directly or indirectly to, or for the benefit of, any person or entity that is identified on any Kenyan or U.S. government’s or the United Nations Security Council’s list of prohibition, including the Specially Designated Nationals and Consolidated Sanctions List of the Office of Foreign Assets Control, U.S. Department of the Treasury or owned or controlled by any such sanctioned person; or
       13. use the Software in a manner that offends the provisions of the Proceeds of Crime and Anti- Money Laundering Act, 2009.

## Compliance with Laws

* + 1. The Client is responsible for ensuring that it, its Administrator, and its Users comply with Applicable Law while using the Software, including the intellectual property and third-party rights of others.

# Term and Termination

* 1. This Agreement shall, unless otherwise terminated as provided in this Section 3, commence on the Effective Date and shall continue for the Initial Subscription Term. Thereafter, this Agreement shall be automatically renewed for successive periods equal to the shorter of the Initial Subscription Term or twelve (12) months (each a **Renewal Period** and both the Initial Subscription Term and the subsequent Renewal Periods hereinafter referred to as the **Subscription Term**), unless:
     1. either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
     2. this Agreement is otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

* 1. The Supplier shall be entitled to terminate this Agreement with immediate effect if the Client fails to abide by the provisions of Clause 2.7 of this Agreement.
  2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
     1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default for a period of thirty (30) days after being notified in writing to make such payment;
     2. the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
     3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
     4. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
     5. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
  3. On termination of this agreement for any reason:
     1. all licences granted under this agreement shall immediately terminate and the Client shall immediately cease all use the Software;
     2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
     3. the Supplier may destroy or otherwise dispose of any of the Client Data in its possession unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within thirty (30) days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Data;
     4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
  4. If this Agreement is terminated by virtue of the Supplier ceasing to be a going concern, the Supplier shall refund the Client any prepaid and unused fees as of the effective date of the termination.
  5. The Client may deactivate its Account at any time by using the tools provided in the Software. That said, such a deactivation will not be deemed a termination of the Agreement or any associated payment obligations and the terms of this Agreement shall continue to apply until the end of the then-current Subscription Term. The Client will remain obligated to pay any outstanding fees to the Supplier pursuant to the terms of this Agreement and the Supplier may accelerate the Client’s unpaid payments or fees so that all such payment obligations become immediately due and payable.
  6. Without limiting the Supplier’s other rights or remedies, the Supplier may temporarily suspend the Client’s access to any portion of the Software without prior notice if:
     1. the Supplier reasonably determines that:
        1. there is a threat or attack on the Software or other event that may create a risk to the Software, the Client, the Client Data or any other Supplier’s client; or
        2. the Client’s use of the Software disrupts or poses a security risk to the Software or any other Supplier’s Client; or
        3. the Client is in breach of Clauses 2.7 and 2.8 of this Agreement: or
     2. the Supplier has notified the Client that any amount owed by the Client under this Agreement is thirty (30) or more days overdue, and the Client has failed to submit payment in full within five (5) days of receipt of such notice; or
     3. there has been a force majeure event pursuant to clause 11.2 that affects the delivery of the Software.

The Supplier will provide notice of any Service Suspension following the commencement of the suspension and provide updates regarding resumption of the Software following any suspension. The Supplier will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that the Client may incur as a result of any service suspension under this Clause 3.7.

# Supplier’s rights and obligations

## Fees

* + 1. The Client shall pay the Subscription Fees to the Supplier for the Software Subscription in accordance with this Section.
    2. The Supplier shall on the Effective Date provide the Client with an invoice to pay the Subscription Fees. The Supplier shall, within thirty (30) days before the expiry of the Initial Subscription Term or a Renewal Period, invoice the Client for the Subscription Fees for the next Renewable Period. The Client must notify the Supplier in writing if the Client disputes any portion of any invoice issued by the Supplier pursuant to this Clause 4.1.2. The Supplier and the Client shall in good faith work towards correcting the invoice, if applicable.
    3. If there is no dispute relating to the invoice issued pursuant to Clause 4.1.2, the Client will not be entitled to dispute the Invoice and shall, within thirty (30) days after the date of such invoice, settle the said invoice in full.
    4. If the Supplier has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of the Supplier:
       1. the Supplier may, without liability to the Client, disable all or parts of the Client's Account access. The Supplier shall be under no obligation to provide any Account access or retain any Client Data while the invoice(s) concerned remain unpaid; and
       2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to three (3) percentage points over the then current base lending rate of the Supplier's bankers in Kenya from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement. All amounts and fees stated or referred to in this agreement:
       3. shall be payable in Kenya Shillings or in United States Dollars, upon the discretion of the Supplier;
       4. are, non-cancellable and non-refundable; and
       5. are exclusive of taxes, which shall be added to the Supplier's invoice (s) at the appropriate rate.
    5. The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period or upon a ninety (90) days' prior notice to the Client and the Order Form shall be deemed to have been amended accordingly.
    6. The Client commits to a minimum number of employees and Subscription Fees for each Subscription Term, as stated in the Order Form. The number of employees set out in the Order Form cannot be decreased during the Subscription Term. The Client can however reallocate any unused employees’ fees to newly hired employees when they join.
    7. The Client agrees to pay all associated Subscription Fees for the remainder of the Subscription Term for any employees added above the maximum employees in the Order Form. The additional Subscription Fees will be based on the calendar month in which an extra employee above the maximum set out in the Order Form is enrolled or added to the Account, regardless of whether the employee is only enrolled on the Account for a portion of such month. By way of example, if the Client adds an extra employee on month twelve (12) of the Subscription Term of twelve (12) months, the initial Subscription Fees will run for eleven months but the employee will be required to pay extra Subscription Fees for month twelve (12).
    8. If the Client uses the Software to manage its expenses and payment disbursements, the Client authorizes the Supplier and its designated payment processors to store the Client’s and its employee’s designated bank account information and other related information. The Client also authorizes the Supplier to automatically debit all applicable charges for such a service from the Client’s designated bank or mobile wallet account.
    9. If the provisions of this Clause 4.1 differ from the terms of the order form set out in the Order Form, the provisions of the Order Form shall prevail and take precedence.
    10. Please note that any discount set out in the Order Form is only applicable for the Initial Subscription Term and for the successive Renewal Periods, the SUbscription Fees shall apply without any applicable discount.

## Software Training Sessions

* + 1. In addition to the Documentation that provides information on how to use the Software, the Supplier shall organize a training session between its representative, the Administrator and Users and any other person who the Client invites to the training session. The training session shall ensure that the Administrator is trained on the features, functionalities and use of the Software. After the training session, the Client shall sign off, in accordance with sub-clause 2.1.1, a document in an agreed form indicating that the Administrator and the Users have received sufficient training on the Software, to enable the Administrator and the Users to use the features and functionalities of the Software.
    2. The Client may request for retraining or refresher sessions and the Supplier shall at its discretion provide such retraining or refresher sessions. The Client acknowledges that the Supplier may charge a separate fee for such a retraining session.

## Service Level Commitments

* + 1. The Supplier shall abide with the service level commitments set out in the Order Form. These service level commitments include the Supplier’s Product Support channels and its response commitments as well as its commitment in respect of the availability of the Software.

## Data Privacy and Cyber security

* + 1. The Supplier shall abide with the service level commitments set out in Section 6 and in the Supplier’s Data Privacy Policy.

## Protection of Supplier’s Network and Software

* + 1. The Supplier reserves the right to protect its network and Software from external threats, including by restricting network access from various hosting providers, traffic proxies, and locations that would affect the Software or the Supplier’s network and systems.

# Proprietary Rights

* 1. The Client acknowledges and agrees that the Supplier owns all intellectual property rights related to the Software and its Documentation. Except as expressly stated herein, this Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Software or Documentation.
  2. The Supplier confirms that it has all the licences, consents, permissions and rights in relation to the Software and Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
  3. The Client may from time to time provide the Supplier with suggestions or comments for enhancements or improvements, new features or functionality or other feedback with respect to the Software. The Supplier will at its discretion determine whether or not to proceed with the development of any requested enhancements, new features or functionality. The Supplier will have the full, unencumbered right to use, incorporate and otherwise fully exercise and exploit any such feedback in connection with the Software.
  4. All the rights, title, and interest in and to the Data that the Client creates on the Software, including the Client’s Account Information will remain vested in the Client.

# Data Privacy and Security

* 1. The Supplier will process the Client’s Data in accordance with the terms set forth in the Supplier’s [Data](https://www.myworkpay.com/privacy-policy) [Privacy Policy](https://www.myworkpay.com/privacy-policy). The Supplier will implement and maintain commercially reasonable and industry standard administrative, physical, organizational and technical safeguards designed to prevent unauthorized use, access, processing, destruction, loss, alteration or disclosure of any Client Data as further explained in the Supplier’s Data Privacy Policy.

# Confidentiality

* 1. **Confidential Information** means all confidential information (however recorded or preserved) stored on the Client’s Software Account or disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with this Agreement and the provision of the Software including but not limited to:
     1. the existence and terms of this Agreement or any Agreement entered into in connection with this Agreement;
     2. any information that would be regarded as confidential by a reasonable business person relating to:
        1. the business, assets, affairs, customers, suppliers, or plans, intentions, or market opportunities of the disclosing party or of any member of the group of companies to which the disclosing party belongs; and the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party or of any member of the group of companies to which the disclosing party belongs;
     3. any information developed by the parties in the course of carrying out this agreement and the parties agree that:
        1. details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
        2. Client data shall constitute Confidential Information.

**Representatives** mean, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

* 1. The provisions of this clause shall not apply to any Confidential Information that:
     1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
     2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
     3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
     4. the parties agree in writing is not confidential or may be disclosed; or
     5. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
  2. Each party shall keep the other party's Confidential Information secret and confidential and shall not:
     1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement; or
     2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Section 7.
  3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
     1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure and enters into a non-disclosure agreement with such Representatives; and
     2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
  4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any Competent Authority (including, without limitation, by a court, competent tax authority or other authority of competent jurisdiction) provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
  5. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.
  6. On termination of this agreement, each party shall, in addition to the provisions of sub-clause 6.2.5 (g):
     1. destroy or return to the other party all documents and materials and any copies containing, reflecting, incorporating or based on the other party's Confidential Information (to the extent technically, operationally, and legally practicable); and upon request, erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically, operationally, and legally practicable).
  7. Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
  8. The above provisions of this section shall continue to apply after termination of this agreement.

# Disclaimer

* 1. The Supplier, to the fullest extent permitted by law:
     1. does not, whether expressly or impliedly, warrant that:
        1. the Client’s use of the Software will be uninterrupted or error-free;
        2. the Software will meet all of the Client's requirements; or
        3. it will amend or customise the Software to serve all of the Client’s needs.
  2. No advice or information, whether oral or written, provided by the Supplier or any of the Supplier’s employees either through the Software or through any other medium will create any warranty.
  3. This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

# Indemnity

* 1. The Client shall defend, indemnify and hold harmless the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client’s breach of this Agreement and any other policy or Agreement that relates to the Software and this Agreement, provided that:
     1. the Client is given prompt notice of any such claim;
     2. the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client’s expense; and
     3. the Client is given sole authority to defend or settle the claim.
  2. The Supplier shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Software or Documentation in accordance with this agreement infringes any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgement or settlement of such claims, provided that:
     1. the Supplier is given prompt notice of any such claim;
     2. the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
     3. the Supplier is given sole authority to defend or settle the claim.
  3. In the defence or settlement of any claim, the Supplier may procure the right or licence for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, immediately terminate this Agreement. In no event shall the Supplier, its employees, agents and subcontractors be liable to the Client to the extent that the alleged infringement is based on:
     1. a modification of the Software by the Client or anyone other than the Supplier; or
     2. the Client’s use of the Software in a manner contrary to this Agreement or the instructions given to the Client by the Supplier.
  4. This Section 9 states the Client’s sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality relating to the Software.

# Limitation of Liability

* 1. To the extent allowable under Applicable Law and regardless of whether the Supplier had been advised on the possibility of a liability:
     1. the Supplier shall not be liable whether in tort, contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
     2. the Supplier's total aggregate liability in contract including in respect of the indemnity set out in Section 9, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid by the Client for the Software Subscription during the twelve (12) months immediately preceding the date on which the claim arose.
  2. Nothing in this agreement excludes the liability of the Client for any breach, infringement or misappropriation of the Supplier’s Intellectual Property Rights.

# Miscellaneous

## Governing Law and Dispute Resolution

* + 1. This Agreement will be governed by the laws of the Republic of Kenya. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction and venue of the courts of Kenya, and the Parties hereby consent to the jurisdiction of these courts.
    2. Before the Client proceeds to court pursuant to clause 11.1.1, the Client shall first raise its issue in writing to the Supplier through the channels set out in the Order Form. If the Supplier fails to satisfactorily resolve the Client’s issue within sixty (60) days from the date the Client raises the issue, the Client will be entitled to proceed to Court pursuant to clause 11.1.1.
    3. The Client and the Supplier agree that clauses 11.1.1 and 11.1.2 will not apply to any disputes relating to the Supplier’s intellectual property (e.g., trademarks, trade dress, domain names, trade secrets, copyrights or patents) and that such disputes may be brought in any court that has jurisdiction over such claims.

# Force Majeure

* + 1. If either party is delayed, hindered, or prevented from performing its obligations under the Agreement by reason of war, riot, sabotage, terrorist act, flood, fire, earthquake, hurricane, tornado, radiological emergency, pandemic, computer virus or worm, governmental or quasi-governmental law, regulation, or court order, or any other cause of like nature beyond its reasonable control (each, a “Force Majeure Event”), such party will be excused from performing hereunder while such Force Majeure Event renders its performance impossible or commercially impracticable but will be obligated to make commercially reasonable efforts to resume its performance as soon as practicable under such circumstances.

# Assignment and Permitted Transfers

* + 1. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by the Client without the prior written consent of the Supplier, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempted transfer or assignment in violation of this sub-clause 11.3.1. shall be null and void. The Supplier, in its sole discretion, may use vendors or contractors to help provide the Software to the Client, and may change our use of vendors or contractors without notice to the Client. The Supplier will remain responsible for the acts and omissions of such vendors and/or contractors.

# Notices

* + 1. The Supplier may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to the Client, the Administrator and the Users via email notice, text message (e.g. SMS or MMS), mail, written or hard copy notice, or through posting of such notice on the Account, as determined by the Supplier in its sole discretion.
    2. The Supplier reserves the right to determine the form and means of providing notifications to the Client, the Administrator or the Users, provided that the Client may opt out of certain means of notification as provided in the Account. The Supplier is not responsible for any automatic filtering the Client’s network provider may apply to email notifications that the Supplier may send to the email address provided by the Client.
    3. The Supplier may, in its sole discretion, modify or update this Agreement from time to time (such modification may include the uploading of the terms set out in this Agreement onto the Software if this Agreement has not been delivered through the Software). The Client will be notified in the event of such changes. Any such changes will become effective no earlier than thirty (30) days after they are posted, except that changes addressing new functions of the Software or changes made for legal reasons will be effective immediately. Your continued use of the Software after the date when any such change becomes effective constitutes your acceptance of this Agreement, as updated. If you do not agree to any of these terms or any future terms, you may not use or access the Software and you will inform the Supplier immediately through the channels set out in the Order Form.

# Waiver

* + 1. If a Party shall waive any breach, default or omission hereunder, no such waiver shall apply to, or operate as, a waiver of similar breaches, defaults or omissions or be deemed a waiver of any such breach, default or omission hereunder.

# Severance

* + 1. In the event that any part (including any Clause or part thereof) of this Agreement shall be void or unenforceable under any law, it shall be deleted or enforced as nearly as possible in accordance with the stated intention of the parties and the remaining parts of this Agreement shall continue in full force and effect and if necessary, the Parties shall use their best endeavours to agree any amendments to the Agreement necessary to give effect to the spirit of this Agreement.

# Entire Agreement

* + 1. In this Clause 11.7, **Representation** means a representation, warranty, statement or assurance (whether contractual or otherwise).
    2. This Agreement together with any documents referred to in this Agreement constitute the whole and only agreement between the Parties in relation to the subject matter of this Agreement. Accordingly, this Agreement supersedes and extinguishes all previous agreements, promises, assurances, warranties and understandings between and (unless, but only to the extent, incorporated in this Agreement) all Representations given by the Parties which are not expressly incorporated into this Agreement.
    3. Each Party acknowledges that it has not relied on, or been induced to enter into this Agreement, by any Representation given by any person (whether a Party to this Agreement or not) that is not incorporated in this Agreement.
    4. Each Party acknowledges and agrees that except as otherwise expressly provided for in this Agreement, its only right or remedy in connection with this Agreement shall be for breach of contract to the exclusion of all other rights and remedies.

## Marketing

* + 1. The Client agrees that the Supplier may use the Client’s name and logo on its website and in other promotional marketing materials, unless the Client opts out of such usage by sending an email to [legal@myworkpay.com.](mailto:legal@myworkpay.com)

## Third Party Distribution Channels

* + 1. The Software may be made available through the Apple App Store, Android Marketplace or other distribution channels (the **Distribution Channels**). If the Client obtains the Software through a Distribution Channel, the Client may be subject to additional terms of the Distribution Channel. This Agreement is between the Client and the Supplier only, and not with the Distribution Channel. To the extent that the Client utilises any other third party products and services in connection with the use of the Software, the Client agrees to comply with all applicable terms of any Agreement governing such third party products and services.

## Relationship

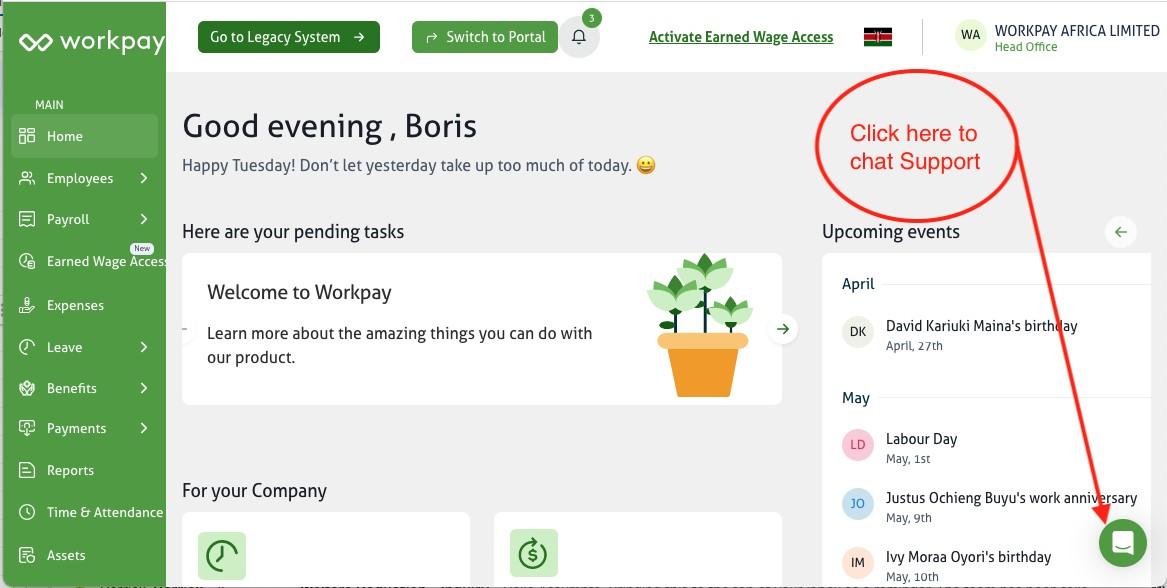
* + 1. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

# Schedule 1 Service Level Commitments of the Supplier

1. **Product Support**

For fast response to time-sensitive Software-related issues, Workpay will provide the Client with access to a dedicated Product Support Team, which is accessible from 8:00 am to 5:00 pm on a Business Day (the **Support Hours**).

## Product Support Chat

The fastest and recommended way for the Client’s Administrator and/or Users to engage the first available Product Support Executive is via the Software’s built-in Support chat feature, accessible at the lower right chat icon as shown below:

The first available Product Support Executive will respond to your chat and advise on a path to resolution, endeavoring to resolve all questions within the chat by providing expert answers and/or directing the Client to the relevant Knowledge Base instructional resources. For issues requiring more than a day ro resolve, the responding Product Support Executive will raise a ticket with Workpay’s engineering team. Product Support will subsequently follow up via email and phone until the issue is resolved.

Administrators and Users will be trained on how to use the Product Support Chat feature as part of onboarding. Product Support Chat should be used for any time-sensitive issues related to:

* Apparent bugs, glitches, or faults in the Workpay Software;
* Failed payments / transactions;
* Questions and / or clarifications needed in regard to configuring and using the Workpay software;
* “How-to” questions while using the Workpay Software; and
* Changes in Software Administrators or Users.



## Other Product Support Channels

Workpay’s Product Support Team also maintains a shared phone number for WhatsApp and telephone call Support, and a shared email for email-based Product Support:

| Product Support phone & WhatsApp line: | +254 702 016 666 |
| --- | --- |
| Product Support email: | [support@myworkpay.com](mailto:support@myworkpay.com) |

The Product Support Phone line is affiliated with Workpay’s WhatsApp Business line, so messages will be responded to by the first available Product Support Executive to ensure speed. The Product Support Email is managed by the entire Product Support team as a shared Inbox, so email inquiries will be picked up and responded to by the first available Product Support Executive.



# Customer Success / Account Management

In addition to having access to the Product Support Team via the above channels, the Client will be assigned a dedicated Customer Success Executive (**CSE**) to serve as the Client’s Account Manager. The difference:

* Product Support will address and help Users and Administrators resolve *time-sensitive* issues related to day-to-day usage of the Software.
* Customer Success is responsible *over the long-term* for ensuring your organisation derives maximum business value from the Software.

To begin onboarding, you will be connected with the Customer Success Manager (**CSM**) via [success@myworkpay.com](mailto:success@myworkpay.com). The CSM will then assign your dedicated CSE, providing their direct business email and phone number, which can later also be found on the Help page of your Account. Your CSE will be responsible for and should be engaged in regards to any big picture discussion about your relationship with Workpay and the value being derived or expected from the Software including:

* Guidance through account setup, data upload, configuration, and training during onboarding.
* Setup and deep-dive training for new modules or features, as well as occasional retraining and initial training of new Administrators as necessary (training of new users should be done by Administrators).
* Utilising new modules, adding new employees, setting up new subsidiaries and creating Accounts in new countries of operation.
* Renewing or modifying a Software Subscription.
* Question about the Agreement or related documents.
* Product feedback and specialised feature requests for consideration.
* Referrals.



# Wallet Top-ups and Payments

If using the Software’s Payouts feature, the Client will from time-to-time need to top up their digital wallet on their Account. Deposits for wallet top ups should be made to Workpay’s float bank accounts or mobile-money wallet accounts which have been set out on the Client’s Account.

As soon as the bank transfer is made, the Client should email [payments@workpay.co](mailto:payments@myworkpay.com).ke with a PoP to ensure the topup reflects as soon as possible.



# Software Availability Commitments

The Supplier warrants that the Software shall be available 99.9% of the time, excluding scheduled maintenance. In the event of any fault, the Supplier shall support the Client in accordance with the following table:

| Severity level of Fault | Definition | Service Level Response Time |
| --- | --- | --- |
| Critical Fault | Critical Failures: An error in or failure of the Software such that the Software is inaccessible. | The Supplier will acknowledge receipt of the Client’s support request within four (4) hours.  The Supplier shall work on the problem continuously and implement a solution for the problem within twenty-four (24) hours of receipt of the Client’s support request. |
| Major Fault | Major Fault: The Software is operational, but a major function is not operating, and the fault affects the normal operation of the Software | The Supplier will acknowledge receipt of the Client’s support request within four (4) hours.  The Supplier shall within five (5) Business Days after the support request provide:   1. a Software fix or workaround to make the Software accessible and the functionalities usable; and/or 2. update release which allows the Client to continue to use all functions of the Software in all material respects. |
| Minor Fault | Minor Fault: The Software has an isolated or minor error that:  a. does not significantly affect the Software’s functionality or security. | The Supplier will acknowledge receipt of a support request within twenty-four (24) hours. |

|  | a. does not significantly affect the Software’s functionality or security. | The Company shall provide a permanent correction as soon as reasonably practicable no later than sixty (60) Business Days after the support request. |
| --- | --- | --- |

The parties may, on a case by case basis, agree in writing to a reasonable extension of the Service Level response times.

# Scheduled Maintenance

The Supplier shall conduct regular scheduled maintenance on the Software but shall inform the Client of such maintenance within forty-eight (48) hours before the scheduled maintenance. The maintenance will be, for the most part, conducted during the Client's off-peak hours to minimise any impact on the Client. The Supplier shall ensure that the scheduled maintenance is done for a maximum of eight (8) hours. The Supplier shall update the Client once the scheduled maintenance has been completed.