

**Note to copy:**

For Clients that would like to receive a pdf copy of the Workzoom Terms of Service, we have made this copy available to you. No changes made to this copy are agreed to by Nortek Solutions Inc. (dba Workzoom) or its affiliates.

Please note that we update the Workzoom Terms of Service as we describe in the 'Amendment; No Waiver' section below. The current version of the Workzoom Terms of Service is available at <https://www.workzoom.com/legal/tos>. Archived versions of the Workzoom Terms of Service, the Workzoom Privacy Policy, Workzoom Support Services and Workzoom Data Processing Agreement are available at <https://www.workzoom.com/legal/archive>.

If you would like to receive an email notification when we update the Workzoom Terms of Service, please complete the form found at <https://www.workzoom.com/legal/subscribe-to-updates>.

If you have any questions, please contact your Workzoom representative.

The following terms and conditions are incorporated into the Order Form between you and Nortek Solutions Inc. (dba Workzoom) and form an integral part of the Agreement.

**1. DEFINITIONS**

**"Authorized Users"** means the employees, contractors, volunteers, retirees and other users who are authorized by you to use the Subscription Services or Professional Services.

**"Confidential Information"** means all oral, written, or machine-readable data and information that is not generally known to the public which includes, but is not limited to, research and development plans, technical information, intellectual property, current and future services and products, business plans, business policies and procedures, financial/tax information and employee information.

**"Client Data"** means the data inputted by the you, Authorized Users or Workzoom on your behalf for the purpose of using the Services or facilitating your use of the Services.

**"Documentation"** means any documentation provided by us to you relating to the use of the Services and can include technical publications and instructional information in any form including electronic document formats, video and self-help tools.

**"Good Industry Practice"** means, in respect of a party, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking as that party under the same or similar circumstances.

**"Intellectual Property"** means the designs, specifications, configurations and program code of any web applications used to provide the Services.

**"Order" or "Order Form"** means the Workzoom-approved form or online subscription process by which you agree to subscribe to the Subscription Service and purchase Professional Services.

**"Personal Data"** means any information provided or made available to us, by or on your behalf, in connection with the Services and which relates to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, genetic, mental, economic, cultural or social identity. For the avoidance of doubt, Personal Data includes personally identifiable information.

**"Professional Services"** means the additional services provided to you by us, which may include training services, installation, integration, or other consulting services.

**"Services"** means collectively the Subscription Services and the Professional Services.

**"Subscription Services"** means all of our web-based applications, tools and platforms that you have subscribed to through an Order Form or that we otherwise make available to you, and are developed, operated, and maintained by us, and any ancillary products and services that we provide to you.

**"Subscription Term"** means the initial term of your subscription to the applicable Subscription Service, as specified on an Order Form, and each subsequent renewal term.

**"Support Services Policy"** means our policy for providing support in relation to the Services as may be notified to you from time to time.

**"You", "your" or "Client"** means the person or entity using the Subscription Service or receiving the Professional Services and identified in the Order Form.

**"We", "us", "our" or "Workzoom"** means Nortek Solutions Inc.

## **2. SERVICES**

2.1 During the Subscription Term, we will provide the Services to you subject to the terms of this Agreement.

2.2 We will use commercially reasonable efforts to make the Subscription Services available 24 hours a day, 7 days a week, except for:

- (a) planned downtime (which we will schedule to the extent practicable after business hours);
- (b) any unavailability caused by circumstances beyond our reasonable control, including, but not limited to, acts of God, acts of government, floods, fires, earthquakes, pandemics, civil unrest, acts of terror, strikes or other labour problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks, or;

(c) as necessary to update the Subscription Service to ensure its security and integrity.

### **3. CLIENT DATA**

3.1 You own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

3.2 In the event of any loss or damage to Client Data, your sole and exclusive remedy shall be for Workzoom to use reasonable commercial endeavors to restore the lost or damaged Client Data from the back-ups maintained by us. We shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by us to perform services related to Client Data maintenance and back-up).

3.3 We shall, in providing the Services, protect Client Data as described in the Workzoom Privacy Policy and otherwise in accordance with Good Industry Practice.

3.4 When we process any Personal Data on your behalf in performance of our obligations under the Agreement, you will be the data controller and we will be a data processor and in any such case:

(a) you will ensure that you are entitled to transfer the relevant Personal Data to us so that we may lawfully use, process and transfer the Personal Data in accordance with the Agreement on your behalf;

(b) you will ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(c) we will process the Personal Data only in accordance with the terms of the Agreement and any lawful instructions reasonably given by you from time to time; and

(d) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

### **4. THIRD PARTY WEB SITES**

4.1 You acknowledge that the Services may enable or assist you to access the website content of or correspond with and/or purchase products and services from third parties via third-party websites and that you do so solely at your own risk. Third party websites are web pages/web applications that are not hosted or managed by us but may be reached via links through our Subscription Services for your convenience and reference. We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not Workzoom. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **5. CLIENT RESPONSIBILITIES**

5.1 To realize the full value of the Services, your participation, effort and assistance are needed. In particular, you will need to:

- (a) ensure you make available appropriate resources with knowledge of your requirements, policies, data and practices as they relate to the use of the Services;
- (b) provide us with any data and information required in order for us to provide the Services and maintain responsibility for the accuracy and completeness of that data and information;
- (c) participate in launch, configuration and training sessions as required; and
- (d) carry out all other of your responsibilities set out in the Agreement in a timely and efficient manner.

5.2 If there are any delays on your part in carrying out your responsibilities, we may reasonably adjust any timetable or delivery schedule as a result.

5.3 You are responsible for:

- (a) ensuring that Authorized Users use the Services and the Documentation in accordance with the terms and conditions of the Agreement and you are responsible for any Authorized User's breach of the Agreement;
- (b) obtaining and maintaining all necessary licenses, consents, and permissions required from Third Party suppliers for interfaces and other extensions, so that we and any of our contractors and agents can perform our obligations under the Agreement; and
- (c) complying with all applicable laws and regulations with respect to your activities under the Agreement.

5.4 You will not:

- (a) permit any third party to access the Services except as permitted herein,
- (b) create derivate works based on the Services except as authorized herein,
- (c) copy, frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes,
- (d) reverse engineer the Services, or
- (e) access the Services in order to build a competitive product or service, or copy any features, functions or graphics of the Services.

## **6. FEES AND PAYMENTS**

6.1 You will pay all fees to us in accordance with the payment terms specified in the Order. Except as otherwise specified:

- (a) fees are based on the Services purchased and not actual usage; and

(b) payment obligations are non-cancellable, and all fees paid are non-refundable.

6.2 All amounts and fees stated or referred to in the Agreement:

(a) shall be payable in the currency indicated in the Order;

(b) are subject to the Limitation to Liability clause, non-cancellable and non-refundable; and

(c) are exclusive of all taxes or duties imposed by governing authorities. Other than sales taxes which Workzoom may be required to collect from you and remit to appropriate taxing authorities, you are solely responsible for payment of all such taxes or duties.

6.3 Your Per Employee Fee shall be fixed throughout your Subscription Term unless you change your Subscription Service through an Order in which case your Per Employee Fee may be adjusted to reflect those changes.

6.4 Workzoom shall be entitled to increase its Professional Services Rates, upon ninety (90) days' prior notice.

## **7. PROPRIETARY RIGHTS**

7.1 Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services, including all related Intellectual Property rights. No rights are granted to you hereunder other than as expressly set forth herein.

7.2 The Agreement shall not prevent us 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 the Agreement.

7.3 Workzoom shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by you, including Authorized Users, relating to the operation of the Services.

## **8. CONFIDENTIALITY**

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.

8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5 You acknowledge that details of the Services and Documentation constitute Workzoom's Confidential Information.

8.6 We acknowledge that the Client Data is your Confidential Information.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Client represents and warrants to Workzoom that it has the legal right and authority to enter into and perform its obligations under the Agreement.

9.2 Workzoom represents and warrants to the Client that:

(a) Workzoom has the legal right and authority to enter into and perform its obligations under the Agreement;

(b) the execution and performance of the Agreement or any part of the Agreement by Workzoom does not and will not violate any contract or other obligation of Workzoom, and Workzoom knows of no circumstances which would prevent Workzoom's performance of the Agreement or any part thereof;

(c) Workzoom will perform its obligations under the Agreement with reasonable care and skill and in a professional and workmanlike manner;

(d) the Services will not infringe any person's Intellectual Property Rights;

(e) Workzoom has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of the Agreement; and

(f) Workzoom has and will maintain all necessary licenses, consents, and permissions necessary for the performance of our obligations under the Agreement.

9.3 The undertaking shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Workzoom's instructions, or modification or alteration of the Services by any party other than Workzoom or Workzoom's duly authorized contractors or agents. If the Services do not conform to the foregoing undertaking, Workzoom will, at our expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide you with an

alternative means of accomplishing the desired performance. Notwithstanding the foregoing, Workzoom:

(a) does not warrant that the Client's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

(c) The Client acknowledges that:

- i. complex software is never wholly free from defects, errors and bugs, and Workzoom gives no warranty or representation that the Services will be wholly free from such defects, errors and bugs;
- ii. Workzoom does not warrant or represent that the Services will be compatible with any application that is not specifically identified as compatible on the Order; and
- iii. Workzoom will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Services and (except to the extent expressly provided otherwise) Workzoom does not warrant or represent that the Services will not give rise to any civil or criminal legal liability on the part of the Client or any other person.

## **10. INDEMNITIES**

10.1 The Client shall defend, indemnify and hold harmless Workzoom against 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 use of the Services and/or Documentation, provided that:

(a) the Client is given prompt notice of any such claim;

(b) Workzoom provides reasonable co-operation to the Client in the defense and settlement of such claim, at the Client's expense; and

(c) the Client is given sole authority to defend or settle the claim, provided that Client shall obtain Workzoom's consent prior to the settlement of the claim (which shall not be unreasonably withheld).

10.2 Workzoom shall defend the Client, its officers, directors and employees against any claim as of the Effective Date of a relevant Order Form that the Services or Documentation infringes any patent, copyright, trademark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:

(a) Workzoom is given prompt notice of any such claim;

(b) the Client provides reasonable co-operation to Workzoom in the defense and settlement of such claim, at Workzoom's expense; and

(c) Workzoom is given sole authority to defend or settle the claim, provided that Workzoom shall obtain Client's consent prior to the settlement of the claim (which shall not be unreasonably withheld).

10.3 In the defense or settlement of any claim, Workzoom may procure the right 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, terminate the Agreement on two (2) business days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

10.4 In no event shall Workzoom, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than Workzoom;

(b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Workzoom; or

(c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Workzoom or any appropriate authority.

10.5 The foregoing states the Client's sole and exclusive rights and remedies, and Workzoom's (including Workzoom's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

## **11. LIMITATION OF LIABILITY**

11.1 This clause sets out the entire financial liability of Workzoom (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

(a) any breach of the Agreement;

(b) any use made by the Client of the Services and Documentation or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

11.2 Except as expressly and specifically provided in the Agreement:

(a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use.

(b) Workzoom shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Workzoom by the Client in connection with the Services, or any actions taken by Workzoom at the Client's direction;



(c) the representations, warranties and conditions expressly stated in the Agreement are in lieu of all other representations, warranties and conditions, express or implied, or statutory, including implied warranties of merchantability and fitness for a particular purpose or any other obligations or liabilities on Workzoom's part; and

(d) the Services and the Documentation are provided to the Client on an "as is" basis.

11.3 Neither Workzoom, nor any third parties who have been involved in the creation, production, or delivery to the Client of any goods or services which are the subject of the Agreement, shall be liable for any special, indirect, consequential, or incidental damages (including damages for loss of prospective business profits or revenue, business interruption, economic losses, and the like) arising under the Agreement, even if Workzoom has been advised of the possibility of such damages and regardless of the form of action, whether in contract or tort, including negligence or based upon any other legal or equitable theory such as fundamental breach.

11.4 Notwithstanding anything herein to the contrary, the maximum aggregate amount of money damages for which Workzoom may be liable to the Client under the Agreement, resulting from any cause whatsoever, shall be limited to the lesser of \$500,000 or the amounts actually paid by the Client to Workzoom under the Agreement for the Subscription Services during the twelve (12) months immediately preceding the date on which the claim arose. The existence of claims or suits regarding more than one item supplied under the Agreement will not enlarge or extend this limitation of liability. The Client releases Workzoom from all obligations, liabilities, claims or demands in excess of this limitation of liability.

## **12. TERM AND TERMINATION**

12.1 This Agreement will remain in effect as long as you have an active subscription for the Services. If you elect to use the Service for a free trial period, and do not purchase a subscription before the end of such period, this Agreement will expire at the end of the free trial period.

12.2 Unless otherwise specified in your Order, Subscriptions purchased by you commence on the date specified in the Order and continue for the Subscription Term identified in the Order.

12.3 Subscriptions automatically renew for the shorter of the Subscription Term identified in the Order, or one year. Unless otherwise specified in your Order, to prevent renewal of your subscription, you must give us at least one (1) month notice, and we must give you at least six (6) months' notice.

12.4 You may choose to cancel your subscription early; however, we will not provide any refunds of prepaid fees or unused Subscription Fees, and you will promptly pay all unpaid fees due through the end of the Subscription Term.

12.5 Either party may terminate this Agreement for cause, as to any or all Subscription Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject

of a petition in bankruptcy or any other proceeding relating to insolvency, cessation of business, liquidation or assignment for the benefit of creditors.

12.6 Upon termination for cause by you, we will refund any prepaid but unused fees covering use of the Subscription Service promptly after the effective date of the termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

12.7 Upon termination of the Agreement for any reason:

- (a) with the exception of the sections outlined in clause 12.7 (d), all the provisions of the Agreement will cease to have effect;
- (b) each party shall return and make no further use of any property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Workzoom shall provide you with instructions on how to extract your data in Excel format within ten (10) days of termination, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination); and
- (d) Section 6 (Fees and Payments), Section 7 (Proprietary Rights), Section 8 (Confidentiality), Section 10 (Indemnities), Section 11 (Limitation of Liability) and Section 16 (General Provisions) shall survive any termination or expiration of this Agreement.

### **13. SUSPENSION OF SERVICES**

13.1 Suspension for Prohibited Acts. We may suspend your access to any or all Subscription Services without notice for use of the Subscription Service in a way that violates applicable local, state or provincial, federal, or foreign laws or regulations or the terms of this Agreement,

13.2 Suspension for Non-Payment. We may suspend or terminate your services if you do not make full payment as per the Fees and Payment section in your Order Form. We will not suspend the Subscription Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If a Subscription Service is suspended for non-payment:

- (a) interest shall accrue at a rate of 1.5% of the outstanding amount per month, commencing on the due date and continuing until fully paid, whether before or after judgment;
- (b) we may charge a re-activation fee to reinstate the Subscription Service; and
- (c) if you fail to make payment within 60 days of the due date, we may remove your Workzoom environment(s) and data.

### **14. PUBLICITY**

14.1 Unless otherwise agreed to by you and Workzoom, during the Subscription Term, we may disclose your name as a customer of Workzoom and/or subscriber to the Services, and you hereby

grant us the right to display your name, company, and logo in our marketing materials and on our public website, in each case in accordance with any branding guidelines you may provide to us.

## **15. UPDATES AND UPGRADES**

15.1 Workzoom will make updates and upgrades to the Subscription Services (tools, utilities, improvements, third party applications, general enhancements) available to you at no charge as they are released generally to our customers as part of the Subscription Services. You agree to receive those updates automatically as part of the Subscription Services. We may also offer new products and/or services to you at an additional charge. You will have the option of subscribing to these new products and/or services under a separate Order.

## **16. GENERAL PROVISIONS**

16.1 Amendment; No Waiver. We may modify any part or all of the Agreement by posting a revised version at <https://www.workzoom.com/legal>. The revised version will become effective and binding the next business day after it is posted. If you wish to be notified of any such updates, you can sign up for our email notification service at <https://www.workzoom.com/legal/subscribe-to-updates>.

If you do not agree with a modification to the Agreement, you must notify us in writing within thirty (30) days after we send notice of the revision. If you give us this notice, then your subscription will continue to be governed by the terms and conditions of the Agreement prior to modification until your next renewal date, after which the current terms posted at <https://www.workzoom.com/legal> will apply. However, if we can no longer reasonably provide the subscription to you under the terms prior to modification (for example, if the modifications are required by law or result from general product changes), then the Agreement and/or affected Subscription Services will terminate upon our notice to you and we will promptly refund any prepaid but unused fees covering use of the Subscription Service after termination.

No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

16.2 Force Majeure. Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

16.3 No Partnership or Agency. Nothing in the Agreement is intended to or shall operate to create a partnership between the parties or authorize either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power.

16.4 Third Party Rights. The Agreement does not confer any rights on any person or party other than the parties to the Agreement and, where applicable, their successors and permitted assigns.

16.5 Severability. If any provision of the Agreement shall be found to be restricted, prohibited or unenforceable, then, notwithstanding, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of the Agreement will not be affected. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY OR LIMITED WARRANTY IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

16.6 Entire Agreement. The Agreement constitutes the complete and exclusive statement of the agreement between Workzoom and Client in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them.

16.7 Assignment. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

16.8 Breach. No consent by either party to a breach of the Agreement by the other party, whether express or implied, shall constitute a consent to, waiver of, or excuse for any other different, continuing, or subsequent breach.

16.9 Notices. All notices will be in writing and considered given when delivered either in electronic form to a respective party's representative identified in the Order or to the address set forth in an Order.

16.10 Governing Law. This agreement is a contract made under, governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

16.11 Precedence. In the event of a conflict between the terms of the Agreement and an Order, the terms of the Order will control, but only as to that Order.