

# WORKWAVE

## FREE TRIAL AGREEMENT

**PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS OF USE CAREFULLY. THIS IS A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN YOU AND WORKWAVE, LLC, STATING THE TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE WORKWAVE SOFTWARE TRIAL. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” AND “YOUR” SHALL REFER TO SUCH ENTITY. BY CLICKING “I ACCEPT” OR BY USING THE WORKWAVE SOFTWARE TRIAL, YOU ARE AGREEING TO ALL OF THE TERMS AND CONDITIONS STATED HEREIN (“ACCEPTANCE”). IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK “I ACCEPT,” AND DO NOT USE THE WORKWAVE SOFTWARE TRIAL.**

### **A. Agreement Definitions**

“WorkWave” refers to WorkWave, LLC. “You” and “your” refers to the individual or entity that has ordered the WorkWave Software Trial by having clicked “I ACCEPT” during the order process or otherwise having used the WorkWave Software Trial.

The terms “WorkWave Software Trial,” the “Trial,” and the “services,” mean the service offerings that WorkWave makes available through its webportal or otherwise, including any software (including WorkWave programs), technology platform and other materials that WorkWave makes available as part of the services for your access and use with the Trial environment. The WorkWave Software Trial may be used for trial, non-production purposes only.

The term “WorkWave programs” refers to the software products owned or distributed by WorkWave to which WorkWave grants you access as part of its platform or the services, including user guides, and any program updates provided as part of the services.

The term “users” means those individuals authorized by you or on your behalf to use the services.

The term “your content” means all software, data, and data files provided by you or any user and that reside on, or run on or through, your Trial environment. You agree not to include any production data in your content.

### **B. Trial Period**

This Agreement is effective upon your Acceptance of this agreement (the “Effective Date”), and will remain in effect for the duration of the trial period (the “Trial Period”). If you would like to use the services after the Trial Period or for production purposes, provided that WorkWave has made the services commercially available, you must purchase such services from WorkWave under a separate contract.

### **C. Rights Granted**

For the duration of the Trial Period, you have the nonexclusive, nontransferable, non-assignable, limited right to use the services, subject to the terms of this agreement, and solely for your internal business purposes to evaluate WorkWave’s Service offering and not for any production or commercial purposes. You may allow your users to use the services for this purpose and you are responsible for your users’ compliance with this agreement.

You acknowledge that WorkWave has no delivery obligation and will not ship copies of any WorkWave programs to you as part of the services. Third party technology that may be appropriate or necessary for use with some WorkWave programs will be specified by WorkWave. Your right to use such third party technology is governed by the terms of the third party technology license agreement specified by WorkWave and not under this agreement.

You do not acquire any license to use the services, including any WorkWave programs to which WorkWave provides you with access as part of the services, in excess of the scope and/or duration of the services defined in this agreement. Upon the end of this agreement or the services hereunder, your right to access or use the services and WorkWave programs shall terminate.

### **D. Ownership and Restrictions**

You retain all ownership and intellectual property rights in and to your content. WorkWave or its licensors retain all ownership and intellectual property rights to the services and WorkWave programs, including derivative works thereof, and anything developed and delivered by WorkWave under this agreement.

You may not, and may not cause or permit others to:

- remove or modify any program or services markings or any notice of WorkWave's or its licensors' proprietary rights;
- make the services, including any WorkWave programs or materials to which you are provided access, available in any manner to any third party;
- modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute, republish or download any part of the services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by WorkWave programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to WorkWave;
- disclose results of any benchmark tests or performance tests of the services or WorkWave programs without WorkWave's prior written consent;
- perform or disclose any of the following security testing of the services environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, WorkWave programs or materials available, to any third party.

#### **E. Disclaimers and Exclusion of Warranties**

THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND WORKWAVE HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTEES, AND CONDITIONS WITH REGARD TO (A) THE SERVICES, INCLUDING BUT NOT LIMITED TO SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS AND (B) MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

WORKWAVE DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT WORKWAVE WILL CORRECT ALL ERRORS IN THE SERVICES; (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR WITH ANY OTHER SOFTWARE, HARDWARE, SYSTEMS, OR DATA; (C) YOUR CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED; AND (D) THE SERVICES, INCLUDING ANY PRODUCTS, INFORMATION OR OTHER MATERIAL YOU OBTAIN OR PURCHASE FROM WORKWAVE UNDER THIS AGREEMENT, WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT WORKWAVE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WORKWAVE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

YOU ARE SOLELY RESPONSIBLE FOR ANY CONTENT THAT YOU LOAD INTO OR CREATE WITHIN THE TRIAL ENVIRONMENT, AND AGREE, AT YOUR SOLE COST AND EXPENSE, TO DEFEND WORKWAVE AGAINST ANY CLAIM AND INDEMNIFY WORKWAVE FROM ANY DAMAGES, LIABILITIES, COSTS AND EXPENSES OR THE SETTLEMENT AGREED TO BY YOU, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CONTENT. WORKWAVE IS NOT RESPONSIBLE FOR THE SECURITY OF ANY CONTENT THAT YOU LOAD INTO OR CREATE WITHIN THE TRIAL ENVIRONMENT.

WORKWAVE RESERVES THE RIGHT TO MAKE CHANGES OR UPDATES TO THE SERVICES, WORKWAVE PROGRAMS AND TRIAL AT ANY TIME WITHOUT NOTICE.

#### **F. User Accounts**

Access to and use of password protected or secure areas of the Trial site is restricted to authorized users only. You may not share your password(s), account information, or access to the Trial site. You are responsible for all activities that occur under your and your users' passwords or accounts or as a result of your or your users' access to the Trial site, and agree to notify WorkWave immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Trial.

#### **G. Support Services**

The WorkWave Software Trial provides an opportunity for current and potential WorkWave customers to experience WorkWave Services before purchasing the service. The Trial is provided as a convenience and you agree that WorkWave is not obligated to provide any technical support, phone support, or updates for the services or for any WorkWave program accessed or used within the Trial environment. As a Trial user, you agree not to open WorkWave service requests, use WorkWave support channels, or otherwise contact WorkWave to request assistance with questions or problems experienced during the use of the Trial.

## **H. End of Agreement**

Services provided under this agreement shall be provided for the Trial Period defined above unless earlier terminated in accordance with this agreement. At the end of the Trial Period, all rights to access or use the services, including any WorkWave programs that are part of the services, shall end.

You may discontinue your use of the services at any time. WorkWave may terminate your password, account, and access to or use of the services at any time for any reason. You acknowledge and agree that WorkWave has no obligation to retain your content and that your content will be irretrievably deleted, following the termination of the services.

Provisions that survive termination or expiration of this agreement are those which by their nature are intended to survive.

## **I. Fees and Taxes**

The services under this agreement are provided to you free of charge during the Trial Period.

## **J. Nondisclosure**

By virtue of this agreement, you may have access to information that is confidential to WorkWave, including but not limited to the services and WorkWave programs, and any information related to the services and WorkWave programs ("WorkWave Confidential Information"). WorkWave Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. You agree, both during the term of this agreement and for a period of three years after termination of this agreement and of all licenses granted hereunder, to hold WorkWave's Confidential Information in confidence. You agree not to make WorkWave's Confidential Information available in any form to any unauthorized third parties. You agree to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this agreement.

## **K. Entire Agreement**

You agree that this agreement including the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this agreement. It is expressly agreed that the terms of this agreement shall supersede the terms in any purchase order or other non-WorkWave document and no terms included in any such purchase order or other non-WorkWave document shall apply to the services ordered. This agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of you and of WorkWave. Notwithstanding the foregoing, WorkWave may make changes to the services and this agreement, and you agree that your continued use of the services constitutes your acceptance of, and agreement to, such changes.

## **L. Limitation of Liability**

IN NO EVENT SHALL WORKWAVE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, EVEN IF WORKWAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WORKWAVE'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES EXCEED THE AMOUNT OF ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00).

## **M. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the services. You agree to comply fully with export laws and regulations of the United States and any other applicable export laws ("Export Laws") to assure that none of the services (including technical data), any services deliverables provided under this agreement, or any direct products thereof, are: (1) exported, directly or indirectly, in violation of this agreement or Export Laws; or (2) used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## **N. Miscellaneous**

1. WorkWave is an independent contractor and we each agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. WorkWave reserves the right to provide the services from locations, and/or through use of affiliates and subcontractors, worldwide.

2. You are responsible for obtaining at your sole expense any rights and consents from third parties necessary for your content and other vendors' products provided by you and used with the Trial environment, including all rights and consents to such content and products necessary for WorkWave to provide the services.
3. This agreement is governed by the substantive and procedural laws of the State of Delaware and you and WorkWave agree to submit to the exclusive jurisdiction of, and venue in, the courts in Monmouth county in New Jersey in any dispute arising out of or relating to this agreement.
4. Notices to WorkWave shall be sent to the attention of the General Counsel at our address as listed from time to time on our website or to [generalcounsel@workwave.com](mailto:generalcounsel@workwave.com). WorkWave may give notice applicable to WorkWave's services customer base by means of a general notice on the WorkWave website and/or portal for the services, and notices specific to you by electronic mail to your e-mail address on record in WorkWave's account information or by written communication sent by first class mail or pre-paid post to your address on record in WorkWave's account information.
5. You may not assign this agreement or give or transfer the services or an interest in them to another individual or entity.
6. Except for actions for breach of WorkWave's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.
7. WorkWave may use software tools to audit and otherwise request information from you regarding your use of the services. You agree to cooperate with WorkWave's audit and provide reasonable assistance and access to information.
8. The Uniform Computer Information Transactions Act does not apply to this agreement or orders placed under it. You understand that WorkWave's business partners, including any third party firms retained by you to provide computer consulting services, are independent of WorkWave and are not WorkWave's agents. WorkWave is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as a WorkWave subcontractor on an engagement ordered under this agreement.

**O. Force Majeure**

Neither of us shall be responsible for events outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event.

**P. Your Content**

WorkWave makes no assurances that any of your content loaded into the Trial environment will be secured or that such data will remain confidential. You acknowledge that the WorkWave Software Trial is not designed for use with production data (including business content and personal information) and accordingly, you shall not include any production data in your content or use the services for any commercial purpose. **YOU SHOULD FREQUENTLY BACK UP ANY CONTENT THAT YOU LOAD INTO, OR CREATE WITHIN, THE TRIAL ENVIRONMENT. WORKWAVE RESERVES THE RIGHT AT ITS SOLE DISCRETION TO DELETE, AT ANY TIME AND FOR ANY REASON, ANY CONTENT IN THE TRIAL ENVIRONMENT, AND ANY SUCH CONTENT MAY BECOME PERMANENTLY LOST IF SO DELETED.**

WorkWave has no obligation to monitor your content, but at its sole discretion, may access, monitor, and/or review your activity and content in the environment. You agree to provide any notices and obtain any consents related to your use of the services and WorkWave's provision of the services, and you shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of your content. You warrant and represent that your content does not contain any viruses, Trojan horses, worms or other components that would limit or harm the functionality of a computer including WorkWave's services.

You shall not upload, email, post, publish, distribute or otherwise transmit any of your content containing a solicitation of funds, promotion, advertising, solicitation for goods or services, or other commercial matter. You agree that WorkWave has no obligation to retain or archive any content posted on the Trial site. At the end of the Trial Period, WorkWave will disable the Trial accounts and remove any associated content.

Your content may be disclosed as required by law without your prior consent. WorkWave will use diligent efforts to inform you, to the extent permitted by law, of any request for such disclosure promptly upon receipt of such request.

You remain solely responsible for your regulatory compliance in connection with your use of the services.

**Q. Restrictions on Use of the Services**

WorkWave Free Trial Agreement V.06-2020

You agree not to use or permit use of the services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to WorkWave under this agreement, WorkWave reserves the right to remove or disable access to any material that violates the foregoing restrictions. WorkWave shall have no liability to you in the event that WorkWave takes such action. You agree to defend and indemnify WorkWave against any claim arising out of a violation of your obligations under this section.

**R. Third Party Web Sites, Content, Products and Services**

WorkWave is not responsible for any third party Web sites or third party material provided on or through the services. You bear all risks associated with the access and use of such Web sites and third party material, products and services.

**S. Feedback**

“Feedback” shall mean any input regarding WorkWave’s products and/or services (including the Trial), including changes or suggested changes to WorkWave’s current or future products and/or services. Notwithstanding anything that you may note or state in connection with providing Feedback, all Feedback provided by you shall not be considered confidential information and shall be received and treated by WorkWave on a non-confidential and unrestricted basis. You agree that WorkWave or its licensors retain all ownership and intellectual property rights (including all derivatives or improvements thereof) in and to any Feedback provided by you or any other party, and acknowledge that WorkWave may use the Feedback for any purpose, including but not limited to incorporation or implementation of such Feedback into an WorkWave product or service, and to display, market, sublicense and distribute such Feedback as incorporated or embedded in any product or service distributed or offered by WorkWave.

**T. API**

Certain Trials under this Agreement may allow access to WorkWave’s Application Programming Interface for its software (“API”). If permitted API access, you shall comply with the API Terms and Conditions of Use which can be found at: <https://www.workwave.com/api-terms/>. WorkWave may make reasonable changes to the services.

**U. Beta Disclaimer**

To the extent you use a beta version of any WorkWave programs, then such WorkWave programs are provided on an “as is” and “as available” basis. WorkWave does not give any warranties, whether express or implied, as to the suitability or usability of such WorkWave programs. WorkWave will not be liable for any loss, whether such loss is direct, indirect, special or consequential, suffered by any party as a result of their use of the beta version of any WorkWave programs. Any use of such WorkWave programs is done at the user’s own risk and the user will be solely responsible for any damage to any computer system or loss of data that results from such activities. Should you encounter any bugs, glitches, lack of functionality or other problems on a beta version of any WorkWave programs, please let your point of contact at WorkWave know immediately so we can rectify these accordingly.