



terms & conditions



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Terms and Conditions

These Terms and Conditions covers the terms and conditions under which Thirsty Horses Solutions (THS) will provide the Client with the Services and Support for the Application referred to in Schedule 1 and any ad hoc services in Schedule 3.

Definitions and Interpretation

- 1 The following expressions in these Terms and Conditions have the meanings shown below:

“Application” means the applications as described in Schedule 1

“Business Day” means Monday to Friday 9am to 6pm

“Confidential Information” means all information in respect of the business of the Parties from time to time, including without prejudice to the generality of the foregoing, any ideas, business methods, finance, marketing, development plans, computer systems and software and know-how and all the information which is by its very nature confidential

“Force Majeure” means any cause preventing either Party from performing all or any of its obligations, which arise from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented, including without limitation: strikes, lockouts, other industrial disputes or other restraints or stoppages of labour provided that the Party claiming Force Majeure is not acting unreasonably with regard to the settlement of the strike, lockout or other industrial action; acts of God, war, riot, civil commotion, terrorism, malicious damage; compliance with any law or governmental order, rule or direction; inability to obtain supplies, accident breakdown of equipment or machinery; failure of public telecommunications networks; lightning, earthquake, hurricane, storm, fire, flood, drought, accumulation of snow or ice and other extreme weather or environmental conditions.

“Party” and **“Parties”** means either one or both of the Client or THS

“Services and Support” means the provision of technical services required to meet Client’s support requirements as set out in the Service Level Agreement.

“Service Level Agreement” means Schedule 4 of these Terms and Conditions

“Start Date” means the date of these Terms and Conditions

“Term” means a fixed period from the Start Date and then to continue unless terminated by either Party on 3 month’s notice.

2 In these Terms and Conditions:

- The masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa as the context shall admit or require;
- The expression “person” means any individual, firm, company, unincorporated association, partnership, government, state or agency of a state and joint venture;
- The Schedules form part of these Terms and Conditions and shall have full force and effect as if expressly set out in the body of these Terms and Conditions, and any reference to these Terms and Conditions shall include the Schedules;
- Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced provided that in the case of amendment, consolidation, modification, extensions, re-enactments or replacements made after the date of these Terms and Conditions they shall not have effected a substantive change to that provision;
- The headings to the clauses of these Terms and Conditions are for ease of reference only and shall not affect its construction

THS Responsibilities

- 3 To provide the Services and Support to meet Client’s requirements from time to time and to ensure the integrity and security of the Client’s data and to have in place arrangements sufficient to ensure business continuity as set out in the Service Level Agreement in Schedule 4 of these Terms and Conditions.

Client’s Responsibilities

- 4 To provide THS on a timely basis with such access to members of the Client’s staff, information and other support as may be reasonably required for the purposes of THS delivering the Services and Support
- 5 To provide THS and any of their consultants and contractors who may be working on the Client’s premises with adequate working and storage space and such other facilities as they may reasonably require from time to time for THS to provide the Services and Support

- 6 To observe any common law or statutory requirements relating to health and safety in the Client's premises where the Services and Support are being carried out by THS
- 7 To make the payments as referred to in conditions 8 and 9 and set out in Schedule 1 and Schedule 3 where a properly submitted VAT invoice has been submitted to the Client for payment

Payments

- 8 The charges for the Services and Support to the Client are as set out in the Pricing Structure
- 9 Additional charges to the Client are as set out in Schedule 3 for ad hoc services that require a formal Purchase Order to be submitted to THS by the Client

Confidentiality

- 10 The Client and THS are each at liberty to disclose to any third party that the Client is a user of the Application
- 11 Subject to conditions 12, 13 and 14 in all other matters, including the terms of these Terms and Conditions, both parties will treat information provided by one Party to the other as confidential, and will not disclose matters of any Confidential Information to any other person or organisation without the express written permission of the other Party

Termination

- 12 The Client may terminate these Terms and Conditions in the following circumstances:
 - THS is in breach of any of these Terms and Conditions and has not remedied these to the Client's satisfaction within 14 days of written notice
 - THS is in breach of these Terms and Conditions and such breach is not capable of remedy
 - THS has a receiver or administrative receiver appointed over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to

that effect or if THS shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order

- THS ceases, or threatens to cease, to carry on business
- By giving THS three months written notice to terminate after the fixed period of the Term

13 THS may terminate these Terms and Conditions if:

- The Client is in breach of these Terms and Conditions and has not remedied these to THS satisfaction within 14 days of written notice
- If any sums due hereunder remain unpaid for more than 60 days after the due date
- By giving the Client three months written notice to terminate after the fixed period of the Term

Force Majeure

14 Neither Party shall be obliged to carry out its obligations under these Terms and Conditions during any period of Force Majeure

Consequences of Termination

15 On termination:

- Any rights and obligations under these Terms and Conditions that by their nature may reasonably be deemed to apply after any termination shall survive these Terms and Conditions
- Any sums properly due to THS or refundable to the Client will be paid in full
- Subject to conditions 12, 13 and 14 the confidentiality conditions 10 and 11 shall remain in effect
- THS will supply the Client with all data relating to the Client's employees held on the systems and data will be supplied via the Microsoft Excel spreadsheet, MySQL Database or CSV file format to be agreed between THS and the Client
- THS recognises that the data in the Client's database is the property of the Client, including data on "Best Practice" and other data transferred from THS's own sources.

Indemnities and Limitation of Liability

- 16 The Client shall not under any circumstances be liable to THS whether in contract, tort (including negligence) or otherwise, for any indirect or consequential loss, loss of profit, or indirect or consequential damage or injury howsoever caused or arising out of, or in the course of, or in connection with, these Terms and Conditions except in relation to any deliberate or reckless act or omission of the Client or any of its employees and in particular any negligent act or omission giving rise to death or personal injury or in relation to any fraudulent statement made by the Client in relation to the contents of these Terms and Conditions. The Client's liability for damages (excluding liability for intellectual property infringement, any liability for death or personal injury resulting from negligence, and fraud) shall not exceed one month's support charge. In no circumstances will the Client be liable for lost profits or any incidental, special, indirect, or consequential damages except as result of wilful damage
- 17 THS shall not under any circumstances be liable to the Client whether in contract, tort (including negligence) or otherwise, for any indirect or consequential loss, damage or injury howsoever caused or arising out of, or in the course of, or in connection with, these Terms and Conditions except in relation to any deliberate or reckless act or omission of THS or any of its employees and in particular any negligent act or omission giving rise to death or personal injury or in relation to any fraudulent statement made by THS in relation to the contents of these Terms and Conditions. THS liability for damages (excluding liability for intellectual property infringement, any liability for death or personal injury resulting from negligence, and fraud) shall not exceed one month's support charge. In no circumstances will THS be liable for lost profits or any incidental, special, indirect, or consequential damages except as result of wilful damage

Disputes

- 18 These Terms and Conditions are open to negotiation and will represent the outcome of that negotiation (whether or not any change has been made to the terms during such negotiation)
- 19 The Parties hereby acknowledge that the specification of both Parties' duties and obligations as contained in these Terms and Conditions accord with both parties expectations and are fair and reasonable

- 20 Some limitation of liability is to be expected. The limitation of liability for breach of these Terms and Conditions is fair and reasonable in light of:
- The fees to be paid,
 - The nature of the Application, Services and Support, and
 - Any provisions in these Terms and Conditions for remedying defects on delivery and payment inherent in this commercial and industrial context
- 21 The Parties acknowledge that disputes may arise during the term of these Terms and Conditions and in such event Parties agree to make all reasonable attempts to resolve such disputes using negotiated settlement or mediation or arbitration by an independent body wherever possible

Notices

- 22 Any notice required to be given under these Terms and Conditions shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or fax to each Party required to receive the notice. Any notice shall be deemed to have been duly received by a Party if:
- Delivered personally, when left at the address and for the contact agreed upon during contract agreement;
 - sent by fax or email to the contact agreed upon during contract agreement before 4.00pm on a Business Day that day or if sent after 4.00pm on a Business Day or a day which is not a Business Day at 9.00am on the next Business Day; or
 - sent by pre-paid first-class post or recorded delivery to the contact agreed during contract agreement at 9.00am on the second Business Day after posting

Contacts

- 23 For the purposes of these Terms and Conditions the contacts for any notices, or on a day to day basis for the Services and support and payments, shall be as follows – or such other change in contact as is notified by one Party to the other Party in writing:

For THS

Ray Pendleton
Managing Director
E-mail: ray@workpal.com
Phone: 07826 526181

For the Client

TBC

Miscellaneous

- 24 These Terms and Conditions are the entire agreement between the Parties in respect of the matters covered, and supersede all prior or contemporaneous understandings or agreements, whether oral or written. Both Parties acknowledge that neither Party is relying on any agreement, understanding, warranty, term or representation that is not set out in these Terms and Conditions (save to the extent that any such agreement, understanding, warranty, term or representation has been made fraudulently)
- 25 Unless expressly provided in these Terms and Conditions, no term of these Terms and Conditions is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it
- 26 These Terms and Conditions can be changed only in writing and under the signature of both Parties
- 27 These Terms and Conditions shall be governed by English Law and both Parties irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales with respect to all disputes arising out of or in connection with these Terms and Conditions
- 28 Neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) sub-contract, assign,

transfer, mortgage, charge or deal in any other manner with any of its rights or obligations under these Terms and Conditions

- 29 No failure or delay by a Party to exercise any right or remedy under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy
- 30 If any provision of these Terms and Conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, apply with the minimum modification necessary to make it. The validity and enforceability of the other provisions of these Terms and Conditions shall not be affected
- 31 These Terms and Conditions can only be amended by agreement in writing signed by a duly authorised person of each Party
- 32 Nothing in these Terms and Conditions shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent of the other for any purpose whatsoever

Schedule 1 --- Services and Support

The Application

The system will be known within the Client as “workpal.”

As part of the implementation and set up of workpal, it will be tailored to the client with their content (dependent on functionality chosen for implementation, e.g. Values and Behaviours, corporate priorities and the ‘golden thread’, learning and development, etc).

Enhancements

THS does not provide bespoke enhancements to the core system. Clients make recommendations from time to time which may have general value to all clients. THS, in its sole discretion, may add these to a future release but will not be held to the date of the release of the technical provision of the enhancement.

If requested, THS will quote for work on reports or enhancements outside the core application with cost, payment phases and scope of the agreed deliverable so the client can make a decision and, if appropriate, raise a purchase order.

THS may provide bespoke reports from the system. This may also be on a chargeable basis.

Fees

Fees are as included in the Pricing Structure.

Time Period for Support

THS will provide coverage as follows:

- Email support is available Monday to Friday 8am – 8pm.
- Phone support is available Monday to Friday 9am – 6pm.
- The Client is able to raise tickets 24 hours via through our Service Desk

Schedule 2 – Technical and Implementation Services

Fixed Fee

These services are provided as set out in Schedule 1 for a fixed fee.

What is included:

1. Getting Started

- a. Share best practice of what has worked well in organisations from similar sectors – including initial conversations regarding organisational readiness
- b. Set up workpal ready for use – including sourcing client specific content as needed (e.g. values and behaviours, organisational priorities and the 'golden thread', learning and development, etc.)

2. Upload Data

- a. Provide the medium for data upload (spreadsheet, csv file or xml)
- b. Fill gaps and work with the Client to clean staff data as needed (e.g. staff hierarchies etc.)
- c. Upload the data and run data checks

3. Implementation

- a. Meet with the client to agree a project plan and roles
- b. Provide coaching around internal marketing, including sharing a draft Engagement and Communication Strategy
- c. Introduce premium content to support the wider implementation and subsequent activities
- d. Be available for support when the first demonstration is made to the pilot group
- e. Provide a single point of contact throughout the duration of implementation

What is not included:

1. Technical
 - a. XML methods (in/out)
 - b. Bespoke reports/enhancements
2. Organisational Development Support
 - a. Consultancy activities (including in-depth organisational readiness diagnostic)
 - b. Workshops with Managers and Users
 - c. Executive briefings and reviews
 - d. Post-launch reviews
 - e. Marketing activities

Schedule 3 – Ad Hoc Services

Provision of Ad Hoc Consulting Services

The Client may use THS resources at any time during the Term to complement the application with consulting services. The Client will be provided with a “Consultancy Portfolio” covering support provided by THS.

Service Charges

The rate for Ad Hoc Services ranges between £250 and £1,400 (excluding VAT) per day depending on type, level and volume of consultancy, plus reasonable expenses (agreed in advance between THS and the Client).

Consultancy Level	*Charge to Client (£ per day)
Executive / Board	1200 - 1400
Strategic Consultancy	1000 - 1200
Management Development	800 - 1000
Training	600 - 850
Project Management	250 - 400

*The day rate is negotiable depending on the volume of days contracted.

Schedule 4 – Service Level Agreement

Development roadmap

We have a philosophy of continuous improvement that underpins the release of new versions of workpal. We regularly consult with our clients to ensure that our development roadmap takes account of the requirements of our users.

Thirsty Horses use SCRUM as a development process, which provides flexibility and ensures that all development is planned, controlled and fully tested before deployment.

As we write this document we have a defined development path reaching beyond 2024 that will occupy our developers full time. This is to ensure we continue to deliver improvements that support clients' continually changing environment and requirements.

Bug Fixes

We have a structured fortnightly development and release cycle – where the system is developed, reviewed, refined and tested. This structured release cycle helps to dramatically reduce the likelihood of bugs or defects being introduced into the live system.

In the rare event that this does occur, Thirsty Horses has a structured approach for quickly addressing reported issues.

Essentially our approach to resolving technical incidents or issues is based on prioritisation by:

- Severity – to what extent is the incident affecting the use of the system for the client?
- Fix simplicity / complexity – to what extent can the incident or issue be fixed quickly and simply without impacting other parts of the system or other clients' use of the system?

We communicate with clients throughout the process to ensure that they are aware of what is happening at every stage.

Ticketing System

Thirsty Horses Solutions' client administrators are trained to handle small queries.

Additionally, a ticketing system is available for queries reported by clients. The team that respond to these queries has access (agreed by THS and clients) with which to fulfil security roles, administer profiles, produce reports, and issue emails.

Reporting on the Ticketing System

All software work procedures are documented with:

- Client and Officer
- Priorities (by the Client, and separately by Us and You)
- Feature involved
- Detail of the request
- Documentation attachments on the request
- Notes by the involved officers
- Our allocated officer
- Date and Time Logged
- Date and Time Fixed
- Date and Time Tested and Accepted

Priority

Our responses to client issues are outlined below:

<i>Status</i>	<i>Client</i>	<i>Thirsty-Horses</i>
System Down	Client will issue an email alert and phone the Thirsty Horses contact	Immediate attention and delivery of the fix
Critical	Client will issue an email alert and phone the Thirsty Horses contact	Immediate attention and delivery of a fix within 8 hours
Urgent	Client will issue an email	Delivery of a fix within 48 hours

	alert	
Not Urgent	Client will issue an email	Thirsty Horses will respond but no immediate action will be taken. Action will be scheduled and clients notified
Cosmetic	Client will issue an email	Thirsty Horses will respond but no immediate action will be taken. Action will be scheduled and clients notified
Information	No action	No action

Glossary of Terms

These are typical examples.

System Down – The workpal system cannot be accessed. A user cannot access the login screen.

Critical – A user cannot complete the Assessment process or information entered through the workpal system is being lost or saved incorrectly.

Urgent – Urgent issues are usually where a user reports that some of their information is missing or the system has behaved in a way they do not understand. In the majority of cases this turns out to be user error or lack of understanding how the system works. Other examples include data entered through the system being displayed back onto the screen incorrectly.

Not Urgent – Usually a question or request on some minor detail of functionality within the system.

Cosmetic – self explanatory.

Information – self explanatory.

Testing

Testing procedures will be as follows:

- Some programs may have an agreed test procedure and THS will test using that procedure
- For programs without a test procedure THS will use best practice
- THS will notify the Client that the fix is complete

For status “System Down” and “Critical” there may not be time for the Client to be involved in the testing procedure.

Unreasonable use of Status Codes

The use of status codes “System Down” and “Critical” should only be used in the exceptional cases for which they are defined as their use immediately triggers escalation within THS.

If the Client consistently uses a higher status than is reasonable THS will notify the Client in writing. If the abuse continues THS will seek a meeting with the Client’s senior executives in writing in the first instance and may choose to automatically down-grade all use of those status codes to “Urgent” in the interim.