



# eWorkplace Apps

## End User License Agreement

This End-User License Agreement (this “EULA”) is an agreement between the individual or business entity obtaining a license for the Software according to the terms of this EULA (“you” and “your”, as context may require), and eWorkplace Apps LLC, a California limited liability company with its principal office address located at 9861 Irvine Center Drive, Irvine, CA 92618 (“eWorkplace Apps”). Each of you and eWorkplace Apps is referred to in this EULA as a “party” and collectively as “parties”.

Read the terms and conditions of this EULA carefully, as it becomes effective upon the earlier of (i) issuance of a License Key to the Software, (ii) your first use of the Software, or (iii) entering into your Order Form.

### 1. Definitions

“Affiliate” means any entity, existing now or in the future, owning or owned by, either directly or indirectly, or controlling, controlled by or directed by such party, and their directors, officers and employees.

“Annual Software Maintenance Plan” means a maintenance plan for the Software provided by eWorkplace Apps.

“Authorized Reseller” means a business partner that has entered into a contractual relationship with Acumatica, Inc. or eWorkplace Apps to sell software licenses and/or services to end users.

“Confidential Information” means all of your and eWorkplace Apps’s information, material and data or that of any third party, (i) which includes any non-public information or data that either provides to or discloses to the other party, in any form whatsoever or in or by any medium whatsoever, including without limitation, all information of disclosing party, both tangible and intangible, (ii) which is verbal and the disclosing party advises the receiving party is proprietary or confidential, or (iii) which, in view of the nature of such information and/or the circumstances of its disclosure the receiving party knows or reasonably should know is confidential or proprietary, including, but not limited to, software, information relating to financial data, plans, forecasts, intellectual property, methodologies, algorithms, agreements, market intelligence, technical concepts, customer information, strategic analyses, internal developments, and any information related to eWorkplace Apps pricing and discounts offered. Confidential Information does not include information (i) which is or becomes publicly known without any fault of or participation by the receiving party, (ii) was in receiving party’s possession prior to the time it was received from disclosing party or came into receiving party’s possession thereafter, in each case lawfully obtained from a source other than disclosing party and not subject to any obligation of confidentiality or restriction on use, or (iii) is independently developed by the receiving party by persons not having exposure to disclosing party’s Confidential Information.

“Documentation” means the user manuals accompanying the Software.

“Employee” means your employees, consultants, contingent workers, independent contractors, and retirees and of your Affiliates whose business record(s) are or may be managed by the Software and for which a license for the Software has been purchased.

“Intellectual Property” means the Software, Documentation, and all trademarks and service marks owned, used, or licensed by eWorkplace Apps, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws.

**“License Key”** means the data string provided to you that, upon installation, permits the use of the Software in a production environment in accordance with your Order Form.

**“Licensing Guide”** which can be found at [www.eWorkplaceApps.com/agreements](http://www.eWorkplaceApps.com/agreements) provides guidance to help you answer questions on the Software and your use of the Software.

**“Order Form”** means the Order Form you signed when you purchased your Perpetual License or Subscription License from your Authorized Reseller or eWorkplace Apps.

**“Perpetual License”** means a license for which you pay a one-time Fee to obtain the right to use and deploy the Software, whether on your premises or at your preferred hosting provider.

**“Software”** means eWorkplace Apps’s proprietary software, you may elect to install, subscribe to or use. For purposes of this EULA, the “Software” includes any Updates you are entitled to install or use.

**“Subscription License”** means a license for which you pay a periodic fee to obtain the right to use and deploy the Software, whether on your premises or at your preferred hosting provider.

**“Tenant”** means a single database instance used for the purpose of storing electronic data and files for a single company.

**“Updates”** means any corrections and enhancements including hot fixes, patches, updates, changes, and upgrades to the Software if and when made available to end-users by eWorkplace Apps. Updates do not include new module or add-ons to the Software which include new functionality for which eWorkplace Apps charges a separate fee to its end users.

**“Your Input”** means suggestions, enhancement requests, recommendations or other feedback provided by you and your Employees and relating to the functionality of the Software.

## 2. License

**2.1 Nature of License.** Subject to your Order Form, this EULA is for the license of the Software on one of the following basis:

- Perpetual License, or
- Subscription License

**2.2 Grant of License.** eWorkplace Apps hereby grants to you, and you accept, a limited, nonexclusive license to use the Software, in machine-readable, object code form only and the Documentation, only as authorized in this EULA. The Software is licensed based on one or more of the following as set forth in your Order Form:

- the number of Tenants;
- the number of users that can access the Software; and
- the modules/add-ons licensed.

**2.3 Temporary Limited License.** In the event eWorkplace Apps has provided the Software to you (i) to evaluate the Software, (ii) as an eWorkplace Apps Authorized Reseller, not for resale, (iii) as an institution of higher education, for use by staff and/or students, without fees, or (iv) when otherwise no fees are charged for use of the Software, then, subject to your compliance with the terms and conditions of this EULA, eWorkplace Apps grants you a nonexclusive, non-transferable license to use and operate the Software solely for the purpose(s) agreed upon by eWorkplace Apps and you. The license granted under this Section 2.3 shall be limited as follows: (a) you may use the Software only for the purposes expressly authorized by eWorkplace Apps and subject to such further restrictions agreed upon by eWorkplace Apps and you; (b) the license grant may be terminated by eWorkplace Apps upon ten

(10) days written notice; (c) the Software and any related Documentation is provided “As Is” without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness, or for a particular purpose; and (d) Sections 2.1, 2.2, 2.6, 4, 5.3, 6.1 and 7 of this EULA shall not apply.

**2.4 Scope of Use.** You or your Affiliates may use the Software for the number of Tenants and number of users licensed. No other right or license to use of the Software is granted or implied. You are responsible for ensuring your Affiliates comply with the terms of this EULA. Except as otherwise expressly provided in this EULA, you may not:

- use the Software, or any copy, adaption, transcription, or merged portion thereof, except as expressly authorized by this EULA;
- permit any person other than authorized users and authorized Affiliates to use the Software;
- reverse engineer, decompile or disassemble the Software;
- publish the Software for others to copy;
- rent, lease or lend the Software; or
- use the Software for commercial software hosting services.

You may make copies of and modify the Documentation for the purpose of internal employee training.

**2.5 Operating Environments.** You acknowledge that eWorkplace Apps licenses the Software for use with operating environments as noted in the Licensing Guide.

**2.6 Software Updates.** In the case of Subscription Licenses, so long as you are current on your Annual Software Maintenance Plan fees, eWorkplace Apps will provide you with Updates at no additional charge. In the case of Perpetual Licenses, Updates will be provided to you as long as you are currently covered by an Annual Software Maintenance Plan. Updates are only available if you have, or have upgraded to, a then-current supported version of the Software. In the case of a Perpetual License, if your Annual Software Maintenance Plan lapses, you may be charged fees for the lapsed period, reinstatement fees and penalties in order to purchase a new Annual Software Maintenance Plan.

**2.7 License Keys.** The Software, when used in production, requires a License Key to install or access it. You are responsible for the use of any License Key(s) assigned to you and must not share the License Key(s) with any third party. If your License Key is stolen, or if you suspect any improper or illegal usage of your License Key, you should promptly notify eWorkplace Apps of such occurrence. A replacement License Key will be issued to you and the compromised License Key will be disabled.

**2.8 Use Reporting.** eWorkplace Apps reserves the right to gather data on usage of the Software to ensure that the Software is being used in accordance with the terms of this EULA and the type of license purchased by you. The Software monitors user counts, number of Tenants, resource level utilization, License Key numbers, server IP addresses and other information. In the event (a) the counts exceed the number of users licensed and/or the number of Tenants licensed, or (b) any other unauthorized use of the Software is discovered, it shall be considered a material breach of this EULA. You agree not to block, electronically or otherwise, the transmission of data required for the monitoring of compliance with this EULA. Any blocking of data required for compliance may result in immediate termination of this EULA.

### **3. Intellectual Property and Confidentiality**

**3.1 Ownership and Reservation of Rights to Intellectual Property.** eWorkplace Apps and its licensors own all right, title and interest in and to the Intellectual Property. Subject to the limited rights expressly granted hereunder,

eWorkplace Apps reserves all rights, title and interest in and to the Intellectual Property. No rights are granted to you pursuant to this EULA other than as expressly set forth in this EULA.

**3.2 Your Input.** eWorkplace Apps shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any of Your Input. eWorkplace Apps shall have no obligation to add Your Input to the Software. You shall have no obligation to provide Your Input.

**3.3 Confidentiality.** A party shall not disclose or use any Confidential Information of the other party, except as reasonably necessary to perform its obligations or exercise its rights pursuant to this EULA. Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care. No disclosure of any Confidential Information will be construed as granting (a) a license of such Confidential Information, including without limitation any intellectual property rights, except for any limited license expressly set forth in this EULA, or (b) any right of ownership in such Confidential Information. A disclosure by one party of Confidential Information of the other party to the extent required by law shall not be considered a breach of this EULA, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's expense, if the other party wishes to contest the disclosure.

**3.4 Remedies.** If a party violates (or threatens to violate) the terms of Section 3, the other Party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

#### **4. Fees and Payments**

**4.1 License fees.** License fees for the Software in the case of a Perpetual License, or for the subscription term specified in the Order Form in the case of a Subscription License, are due and payable to your Authorized eWorkplace Apps Partner, or eWorkplace Apps as provided in your Order Form. Unless otherwise expressly provided in your Order Form, in the case of a Subscription License, the license fees for renewal terms shall be based on the then current list price for the Subscription License purchased by you.

**4.2 Interest.** Any amounts due to eWorkplace Apps, which are not paid within thirty (30) days after they become due under this EULA, shall incur interest at the rate of one and one half percent (1½ %) per month or the highest rate permitted by applicable law, whichever is less. The interest shall be calculated from the date payment is originally due until the date payment is received in full.

**4.3 Taxes.** You acknowledge and agree that all fees and pricing specified in the Order Form(s) do not include taxes, inclusive of tariffs, duties or other assessments of any kind. You shall, in addition to the required payments specified on the Order Form, pay any and all applicable sales, use, transfer, or other taxes and all duties or other assessments, whether national, state or local, however designated, which are levied or imposed at any time on you or eWorkplace Apps by reasons of your purchase transactions, excluding income taxes on the net profits of eWorkplace Apps. You shall reimburse eWorkplace Apps for the amount of any such taxes or duties paid or incurred directly by eWorkplace Apps by reasons of your purchase transactions. If you reside in a state or a region that imposes such taxes on business software delivered through Internet downloads or other means, then it is your responsibility to pay such taxes directly to the appropriate government authorities unless such taxes have already been collected from you as part of the purchase transaction.

**4.4 No Refunds.** Except as otherwise expressly provided in this EULA, eWorkplace Apps does not refund fees. You are not entitled to any refunds from eWorkplace Apps of license fees or Annual Software Maintenance Plan fees upon your return of all or any portion of the Software or upon cancellation of an Annual Software Maintenance Plan for any reason.

**4.5 Early Termination Fee.** In the event that the term of any Subscription License, as specified on the Order Form, is terminated early for any reason, except for those reasons identified under Section 5.3, you will be responsible for all Subscription License fees for the remaining months of the term (the “**Early Termination Fee**”).

**4.6 Pricing and Discounts.** Any discounts offered to you on the Order Form apply to the purchases made pursuant to that Order Form and may not be extended on subsequent purchases.

## **5. Term and Termination**

**5.1 Term for Perpetual Licenses Only.** The term of your Perpetual License commences on your acceptance and execution of the Order Form. The term of this EULA shall continue in effect until terminated as provided in Section 5.3.

**5.2 Term for Subscription Licenses Only.** The term of your Subscription License is specified in your Order Form. This EULA will terminate upon expiration of the initial term of your Subscription License or any renewal term of the Subscription License. eWorkplace Apps is not liable for any damages or costs incurred in connection with expiring Subscription Licenses.

**5.3 Termination.** Either party may terminate this EULA: (a) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such 30-day notice period; or (b) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. eWorkplace Apps may terminate this EULA, upon fifteen (15) days prior written notice to you, if you fail to pay any license fees and you do not cure such failure within the 15-day notice period. In the case of a Subscription License, upon any termination by you pursuant to this Section, eWorkplace Apps shall refund you a prorated portion of any prepaid license fees for your Subscription License for the remaining months of the then current term. In the case of a Perpetual License, upon any termination by you pursuant to this Section, eWorkplace Apps shall refund a prorated portion of your Annual Software Maintenance Plan fees for the remaining months of the then current term.

**5.4 Effect of Termination.** Upon any termination of this EULA, you shall, as of the date of such termination, immediately cease using the Software, Documentation and eWorkplace Apps Confidential Information, and either (a) return the Software, Documentation, all copies thereof, and all License Keys that you have obtained to eWorkplace Apps, or (b) destroy all such materials and provide written verification of such destruction to eWorkplace Apps. Termination for any reason shall not relieve you of the obligation to pay any fees accrued or due and payable to eWorkplace Apps prior to the effective date of termination, including the Early Termination Fee, defined in Section 4.5 above.

## **6. Indemnification and Remedies**

### **6.1 Indemnification by eWorkplace Apps.**

**6.1.1. Infringement; Limitation.** eWorkplace Apps will, at its expense, indemnify and hold you harmless against any claims made by an unaffiliated third party that the Software infringes its patent, copyright, or trademark, or misappropriates its trade secret (“**Infringement Claim**”); provided: (a) you notify eWorkplace Apps, in writing, not later than thirty (30) days after you receive notice of the Infringement Claim, (b) you give eWorkplace Apps sole control of the defense and any settlement negotiations, and (c) you cooperate with eWorkplace Apps in defending against or settling the Infringement Claim. eWorkplace Apps’s obligation of indemnification will not apply to the extent that the Infringement Claim is based on (i) your use of the Software after eWorkplace Apps notifies you to discontinue use due to such a claim, (ii) your combining the Software with non-eWorkplace Apps product, data or business process including third party add-ons or programs, (iii) damages attributable to the value of the use of a

non-eWorkplace Apps product, data or business process, (iv) your altering or modifying the Software, including any modifications by third parties, or (v) your use of the Software in violation of this EULA. You agree to reimburse eWorkplace Apps for any costs or damages that result from these actions.

**6.1.2. Remedy for Infringement.** If eWorkplace Apps receives information concerning an Infringement Claim, eWorkplace Apps may, at its expense and without obligation to do so, either (a) procure for you the right to continue to run the Software or (b) modify the Software or replace it with a functional equivalent, to make it non-infringing, in which case you will stop using the allegedly infringing Software immediately. If, as a result of an Infringement Claim, your use of the Software is enjoined by a court of competent jurisdiction, eWorkplace Apps will, at its option, (i) procure the right to continue its use, (ii) replace it with a functional equivalent, (iii) modify it to make it non-infringing, or (iv) refund the license fees and terminate this EULA.

**6.1.3. Exclusive Remedy.** This Section 6.1 constitutes your exclusive remedy for Infringement Claims.

**6.2 Indemnification by You.** You will, at your own expense, indemnify and hold eWorkplace Apps, and its subsidiaries and Affiliates, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including reasonable attorneys' fees, arising out of any use of the Software by you, your Affiliates, any other party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this EULA.

## **7. Limited Warranties; Disclaimer**

**7.1 Limited Warranties.** eWorkplace Apps warrants to you that: (a) the Software will perform in all material respects as described in the Documentation, provided that, problems caused by your actions or failure to act, or caused by software or hardware not provided by eWorkplace Apps, shall be excluded; and (b) the Software will be, upon delivery, free of malicious code (software designed to intentionally infiltrate or damage a computer system without the owner's consent); provided the limited warranty in (b) does not extend to your media files, alterations and customizations, your data input, any malware originated from external sources, or third party applications or third-party customizations. This limited warranty covers the Software for a period of six (6) months after acquired by you. No advice or information provided by eWorkplace Apps shall create any warranty.

**7.2 Exclusions to Limited Warranties.** The limited warranty stated in Section 7.1 does not apply if: (i) you fail to notify eWorkplace Apps of a warranty claim within sixty (60) days of the first instance of the issue upon which the claim is based, (ii) you fail to upgrade to a supported version of the Software, (iii) you fail to meet recommendations in the Licensing Guide, or (iv) if the warranty claim is the result of a third party application or a customization of the Software prepared by you or a third party.

**7.3 Exclusive Remedies.** In the event of any breach of the limited warranty in Section 7.1(a), eWorkplace Apps will use reasonable efforts, at its expense, to make available to you corrections sufficient to eliminate any demonstrable breach within thirty (30) days of notice of the breach. In the event of any breach of the warranty in Section 7.1(b), eWorkplace Apps will promptly cure, at its expense, the breach. If eWorkplace Apps fails to provide the remedies specified in this Section within a reasonable period of time, which in no event will be less than thirty (30) days following notice of the breach, you may elect, as your exclusive remedy, to terminate this EULA, return the Software, and receive a refund as provided for in Section 5.3.

**7.4 Disclaimers.** Except as provided in this Section 7, eWorkplace Apps disclaims any and all warranties, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, to the extent authorized by law. Without limiting the foregoing, eWorkplace Apps expressly disclaims any warranty that the Software will meet your requirements or that operation of the Software will be uninterrupted or error free. You assume responsibility for selecting the Software to achieve your intended results, and for the results obtained from your use of the Software.

## 8. Limitation of Damages and Liability

**8.1 Limitation on Damages.** Except for a breach of Section 3, in no event shall either party be liable to the other or any other party for any indirect, incidental, consequential, special, exemplary, or punitive damages or lost profits, even if advised of the possibility of such damages.

**8.2 Limitation on Liability.** Except for eWorkplace Apps's indemnification obligations pursuant to Section 6, eWorkplace Apps's cumulative liability to you, your Affiliates, or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this EULA or use of Software, shall be limited to the Subscription License fees received by eWorkplace Apps for the preceding twelve (12) months. However, in the case of a Perpetual License, eWorkplace Apps's liability shall be limited to a one-fifth pro-rata portion of the Perpetual License fees received by eWorkplace Apps (based on a five year useful life term for the Software). This limitation on eWorkplace Apps's liability applies to all causes of action or claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentation, and other torts.

**8.3 Application of Limitations.** All limitations on liability, damages and claims are intended to apply without regard to whether other provisions of this EULA have been breached or have proven ineffective.

## 9. Third Party Applications

**9.1 No Warranty of third party applications.** eWorkplace Apps does not warrant any third party application regardless of who you may purchase or license the application from.

**9.2 No Obligation As to third party application.** eWorkplace Apps is not responsible for any aspect of a third party application that you may purchase, license, subscribe to or connect to through the Software, or any interoperation or other information related to the foregoing. eWorkplace Apps is not responsible for any exchange of data or other interaction between you and a third party provider of the third party application. Any such exchange or interaction is solely between you and such third party provider and is subject to a separate privacy policy or other terms governing your access to or use of the third party application. eWorkplace Apps shall not be responsible for any disclosure, modification, corruption or deletion of your data resulting from any such access by a third party application.

## 10. Governing Law, Dispute Resolution, Available Legal Remedies

**10.1 Governing Law; Waiver of Jury Trial.** This EULA and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, USA, exclusive of conflict or choice of law rules. Each party to this EULA hereby consents to the jurisdiction and venue of the state and federal courts located in Orange County, California for such purposes and waives any objection thereto, including without limitation, inconvenient forum. You and eWorkplace Apps agree that the Uniform Computer Information Transactions Act (UCITA) as adopted in any state or region, in which this EULA may be performed, shall not apply to this EULA. The parties shall submit to mediation and binding arbitration as described below for any dispute arising out of or related to this EULA, except where there is a need to address the courts for injunctive relief. Any arbitration shall be final and binding upon the parties in every respect, and there shall be no right to challenge or appeal the decision rendered in such arbitration. Judgment on the resulting award may be entered by any state or federal court having jurisdiction. In any dispute concerning this EULA, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees from the non-prevailing party. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of this EULA or related to use of the Software must be

filed within one (1) year after such claim or cause of action becomes known, or should have been known, or be forever barred.

## **10.2 Dispute Resolution**

It is agreed by you and eWorkplace Apps that any dispute(s) arising out of or related to this EULA shall be resolved following the steps described below:

**10.2.1 Problem Escalation, Negotiation.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this EULA promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for implementation or operation of the Software. Either party shall give the other party written notice of any dispute not resolved in the normal course of business. Within thirty (30) days after delivery of the notice, the receiving party shall submit to the other party a written response. The notice and response shall include with reasonable particularity (a) list of issues or problems sufficient in detail for the other party to be able to address all disputed issues, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place to attempt to resolve the dispute. If the dispute is not resolved by negotiation pursuant to this Section 10.2.1, then the matter will proceed to mediation and possibly to arbitration, as set forth below. At no time prior to the completion of the negotiation described above shall either party initiate mediation or arbitration.

**10.2.2 Mediation.** The parties agree that any and all disputes, claims or controversies arising out of or relating to this EULA, which have not been resolved through the problem escalation and negotiation step described above, shall be submitted to JAMS in Orange County, California, or its successor, for mediation. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. Each party will be responsible for its own legal representation expenses while common mediation fees shall be divided equally between the parties. If the matter is not resolved through mediation and at any time following the mediation, either party shall initiate binding arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration, no later than thirty (30) days following the completion of mediation.

**10.2.3 Arbitration.** The binding arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures or pursuant to JAMS' Streamlined Arbitration Rules and Procedures, as applicable. The parties understand and agree the amount of the disputed claim or counterclaim determines the number of arbitrators that will oversee the arbitration as set forth in the applicable JAMS rules and procedures. In the event that the Comprehensive Arbitration Rules shall apply, each party shall select an arbitrator (party arbitrator) within thirty (30) days and a third arbitrator (neutral arbitrator) shall be selected by arbitrators appointed by the parties. Judgment on the award may be entered in any court having jurisdiction.

**10.2.3.1 Document Requests, Discovery.** In any dispute arising out of or related to this EULA, requests for documents shall be (i) limited to documents which are directly relevant to significant issues in the case or to the case's outcome, and (ii) restricted in terms of time frame, subject matter and persons or entities to which the requests pertain. No such documents are required to be produced from backup servers, tapes or other media. In any arbitration arising out of or related to this EULA, each side may take three (3) discovery depositions. Each side's depositions are to consume no more than a total of eight (8) hours.

**10.2.3.2 Fees to Commence Arbitration.** Each party to the arbitration shall pay half of the total of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the arbitration, including professional, administrative, and case management fees and filing fees, all costs associated



with the neutral arbitrator. In the event there are more than two parties to the arbitration, each party shall pay its pro rata share of the total of all fees described above. In accordance with JAMS rules related to administrative fees, the parties understand JAMS's entire filing fee must be paid in full to commence arbitration proceedings. Both Parties are responsible for their own counsel or witness fees, or any other expenses incurred for their own benefit.

**10.2.3.3 Fees and Costs to Prevailing Party.** In any arbitration arising out of or related to this EULA, the arbitrator(s) shall award to the prevailing party, if any, the costs and attorneys' fees reasonable incurred by the prevailing party in connection with the arbitration.

**10.2.3.4 Punitive Damages.** In any arbitration arising out of or related to this EULA, the arbitrator(s) are not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages.

**10.2.3.5 Limitation of Liability.** In any arbitration arising out of or related to this EULA, the arbitrator(s) may not award any incidental, indirect or consequential damages, including damages for lost profits.

**10.3 Available Legal Remedies, Limitations.** As set forth above, in the event that any disputed issues are not resolved through negotiation, the Parties agree that the legal remedies available for such unresolved disputes will be through submission to mediation and subsequent binding arbitration as provided for by California law, and not by a lawsuit or by resorting to any court. Both Parties to this EULA forfeit any rights to have any such disputes decided in a court of law by a judge or before a jury, and instead are accepting the use of arbitration. Any disputed matters shall be waived and forever barred from consideration if a) the aggrieved party fails to pursue in good faith the Problem Escalation, negotiation, mediation and arbitration steps prescribed herein, or b) the aggrieved party circumvents the process and initiates arbitration without first completing the obligatory Problem Escalation, negotiation and mediation steps listed above, or c) the date of notice for any issues being disputed is more than one year from the time that the aggrieved party knew or should have known of the bases of the disputes.

## 11. General Terms

**11.1 No Representations or Warranties related to Third Parties.** No third party is authorized by eWorkplace Apps to make any representation or warranty to you regarding the Software or eWorkplace Apps. Any third parties, including Authorized Resellers or lenders: (i) are independent entities, (ii) are not agents of eWorkplace Apps, and (iii) have no authority to bind eWorkplace Apps.

**11.2 Severability.** If any term or provision of this EULA is declared void or unenforceable in a particular situation, this declaration shall not affect the validity or enforceability of the remaining terms and provisions of this EULA or the validity or enforceability of the offending term or provision in any other situation.

**11.3 Survival.** Sections 3, 5.4, 6, 7, 8, and 10 of this EULA shall survive the termination of this EULA, regardless of the cause for termination, and shall remain valid and binding indefinitely.

**11.4 Headings.** The Article and Section headings contained in this EULA are incorporated for reference purposes only and shall not affect the meaning or interpretation of this EULA.

**11.5 No Waiver.** The failure of either party to enforce any rights granted under this EULA or to take action against the other party in the event of any breach of this EULA shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**11.6 Right To Use Name.** Unless you provide eWorkplace Apps with written notice to the contrary, you give eWorkplace Apps the right to use your name in print, on-line, and in other multimedia advertising and marketing materials for the purpose of disclosing that you are a customer of eWorkplace Apps.

**11.7 Amendment and Revisions.** eWorkplace Apps reserves the right, in its sole discretion, to amend or revise this EULA from time to time. Any amendment or revision to this EULA is effective sixty (60) days after (i) the most

current version of eWorkplace Apps's EULA is posted at <http://www.eWorkplace Apps.com/agreements> and (ii) you have been informed via an email notification. Should you not agree to the terms and conditions of the amended or revised EULA, your sole remedy is to terminate this EULA.

**11.8 Assignments.** You may not sublicense, lease, rent, or assign your rights in the Software, Documentation, or License Keys, as granted by this EULA, to or with any third party (other than an Affiliate) without prior written consent of eWorkplace Apps. Notwithstanding the foregoing, you may assign your rights in this EULA and the Software without such consent in the case of a sale of substantially all of your assets or equity interests, or in the case of a merger, change in control or similar transaction, provided that (i) the assignee agrees in writing to be bound by the terms of this EULA, (ii) you are not in material breach or default under this EULA, and (iii) you agree to remain liable for any breach of this EULA by the assignee. Any attempt by a Party to assign its rights or obligations under this EULA other than as permitted by this Section shall be void and of no effect. Subject to the foregoing, this EULA shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.9 Export Regulations.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in licensing and using the Software. Without limiting the generality of the foregoing, you shall not make the Software available to any person or entity that is: (i) located in a country that is subject to a U.S. government embargo; (ii) listed on any U.S. government list of prohibited or restricted parties; or (iii) engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**11.10 United States Government Restricted Rights.** The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (b) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

**11.11 Notices.** All notices or reports which are required or may be given pursuant to this EULA must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by delivery service, charges prepaid, to whom such notice is required or permitted to be given. Notice will be considered to have been given when delivered to the respective offices of eWorkplace Apps and you at the addresses set forth on the Order Form. Either party may change its mailing address by notice as provided by this Section.

**11.12 Force Majeure.** Except for your payment obligations, neither party shall be liable for any failure or delay in performance under this EULA for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, epidemic, pandemic, quarantine, civil unrest, acts of terror, strikes or other labor problems (other than those involving eWorkplace Apps or your employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**11.13 Complete Agreement.** This EULA, together with your Order Form and any referenced documents constitutes the entire agreement between the parties with respect to the subject matter of this EULA. This EULA applies to eWorkplace Apps Software products that you may have purchased previously. This EULA supersedes all prior proposals or representations, written or oral, including emails, concerning the matters covered under this EULA.

**11.14 Order of Precedence.** In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this EULA and the Order Form in any respect, then the EULA shall prevail over the Order Form.