



## Terms and Conditions

Weworkbook is owned and operated by Worksorted Pty Ltd  
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**WARNING: PERMISSION TO ACCESS WEWORKBOOK IS CONDITIONAL UPON YOU, THE CUSTOMER, AGREEING TO THE TERMS OF THIS AGREEMENT SET OUT BELOW.**

DO NOT ACCESS WEWORKBOOK UNTIL YOU HAVE READ AND ACCEPTED ALL THE TERMS OF THIS AGREEMENT AND WISH TO GAIN ACCESS TO WEWORKBOOK. ACCEPTANCE SHALL BIND YOU AND ALL OF YOUR EMPLOYEES TO THE TERMS OF THIS AGREEMENT. YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS OF THIS AGREEMENT ON ACCESS TO WEWORKBOOK.

IF YOU DO NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT, DO NOT ACCESS WEWORKBOOK AND ANY ANNUAL FEES YOU MAY HAVE PAID WILL BE REFUNDED TO YOU.

### 1. Background

- 1.1 Worksorted Pty Ltd (Worksorted) has secured a multi-user license and distribution rights to a training schedule management system software product known as WEWORKBOOK.
- 1.2 Worksorted provides its customers access to the WEWORKBOOK application through remote internet connection to its computer facilities.
- 1.3 The Customer has sought access to Worksorted's computer facilities and to utilise the WEWORKBOOK application in its business and Worksorted will provide such access and rights on the terms of this Agreement.

### 2. Access to WEWORKBOOK

- 2.1 Worksorted will provide the Customer with access to the System and the right to utilise WEWORKBOOK on the terms of this Agreement. The Customer will access the System by utilising the Access Devices for Registered Users only.
- 2.2 If the Customer wishes to access WEWORKBOOK by more than the number of Registered Users, it may do so upon receipt of written consent from Worksorted and upon payment of additional Charges as set out in Schedule 1.

### 3. Customer's Facilities

- 3.1 The Customer will be responsible for providing the Customer's Facilities and Access Devices as specified by Worksorted and will provide Worksorted with access to the Customer's Facilities as required pursuant to this Agreement.

3.2 Worksorted shall supply such information and assistance as is reasonably required by the Customer to enable the Customer to provide the Customer's Facilities.

3.3 The Customer will comply with any directions and specifications issued by Worksorted and ensure a continuous and adequate electrical supply and communications access and maintain appropriate environmental conditions for the Customer's Facilities.

#### **4. Charges**

4.1 The Customer will pay the Charges at the rate and in the manner specified in Schedule 1, including:-

(a) the Installation Charge to gain access to WEWORKBOOK;

(b) the Annual Access Fee for continued access and Support; and

(c) for other Services as specified in Schedule 1 or as requested by the Customer at the Hourly Rate.

4.2 Worksorted reserves the right to review the Charges and the Hourly Rate:-

(a) every 2 years based on the higher of the increase in CPI, the direct cost of providing access to WEWORKBOOK or Support or the commercial price of comparable applications or hourly rates;

(b) on release of a new version of WEWORKBOOK, which includes new or enhanced functionality.

4.3 Charges are GST inclusive and the Customer is responsible for all GST. Charges are payable by the Customer within 14 days of receipt of a Tax Invoice from Worksorted without deduction or set-off.

#### **5. Customer Data**

5.1 Worksorted acknowledges that the Customer Data remains the property of the Customer and will make backup copies of the Customer Data on a regular basis but will not be responsible for any loss or cost of reproduction of Customer Data.

5.2 Worksorted shall on reasonable notice make the Customer Data and related data, documentation or records maintained on behalf of the Customer available for inspection by the Customer or the Customer's auditors.

5.3 The Customer may be required to pay Worksorted an additional Charge in respect of additional services provided by Worksorted pursuant to this clause at the Hourly Rate.

5.4 The Customer is responsible for the accuracy and completeness of the Customer Data entered by its Registered Users and as processed by WEWORKBOOK and/or stored on the System.

5.5 Worksorted is under no obligation to refrain from delivering the Customer Data or related data, documentation or records into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to WEWORKBOOK, the System or the Customer Data or related data, documentation or records, if Worksorted receives a request or demand for such information.

5.6 The Customer shall indemnify Worksorted against all costs and liability incurred as a result of Worksorted's possession of the Customer Data or incurred as a result of delivering such information to any persons or instrumentalities under the preceding sub-clause.

## **6. Documentation and Training**

6.1 Worksorted shall provide the Customer with access to user help files as designated by Worksorted for training purposes and to enable the Registered Users to access the System and use WEWORKBOOK. The Customer acknowledges that the help files may not be copied, modified or used in any way not contemplated or expressly authorised by this Agreement.

6.2 Worksorted will provide initial web-based training on the use of WEWORKBOOK.

6.3 The Customer undertakes the following obligations:

- (a) To ensure that its employees, sub-contractors and other agents who have authorised access to WEWORKBOOK have read the help files and receive adequate training on accessing the System and use of WEWORKBOOK; and
- (b) Not to provide access to the System, use of WEWORKBOOK, or access to the help files to any person other than those authorised persons with proper training referred to in the above paragraphs.

6.4 Worksorted reserves the right to charge for additional training or excessive use of Support if in the opinion of Worksorted the Customer has failed to ensure that its employees, sub-contractors and other agents have been provided with access to the help files or received adequate training.

## **7. Support**

7.1 During the term of this Agreement and subject to the payment of the Charges, Worksorted will provide Support, including:

- (a) email and telephone support on technical issues relating to access to the System and use of WEWORKBOOK during the hours 9am and 5pm (Central Standard Time) Monday to Friday;
- (b) access to any updated versions of WEWORKBOOK; and
- (c) on-site support at the Customer's site if required by the Customer at the Hourly Rate.

7.2 Worksorted may in its absolute discretion, upon the Customer's request provide additional services not usually or normally provided under this Agreement for an additional Charge at the Hourly Rate.

7.3 The Customer will reimburse Worksorted at cost for the cost of any reasonable travel and accommodation expenses incurred in providing the Services that may be provided under this Agreement.

## 8. Customer Modifications

The Customer may request modifications to be made to WEWORKBOOK to add or improve the functionality of WEWORKBOOK. If agreed to by Worksorted, the Customer will pay for such Services provided by Worksorted at the Hourly Rate or as otherwise agreed by Worksorted and the Customer.

## 9. System Specifications

Worksorted may substitute the System or any component of the System prior to or during the period of this Agreement without consultation with the Customer if, in the reasonable opinion of Worksorted, such substitution will not cause a material adverse effect on the Customer's access to the System or use of WEWORKBOOK.

## 10. Warranty

10.1 Worksorted warrants that:

- (a) it has the right to grant access to the System and use of WEWORKBOOK;
- (b) WEWORKBOOK will operate in accordance with the help files; and
- (c) it will provide the Services with due care and skill.

10.2 Worksorted cannot and does not warrant that:

- (a) WEWORKBOOK is bug-free or does not contain non-material errors;
- (b) access to the System and WEWORKBOOK will be continuous or uninterrupted; and
- (c) WEWORKBOOK complies with all applicable laws.

10.3 The Customer acknowledges that it has exercised its independent judgment in acquiring WEWORKBOOK and has not relied on any representation made by Worksorted, which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in the help files or in any other document including catalogues or publicity material produced by Worksorted.

10.4 WHILE EVERY EFFORT IS MADE TO ENSURE COMPLIANCE OF DATA FORMAT WITH REPORTING REQUIREMENTS, WORKSORTED MAKES NO REPRESENTATION IN THIS OR ANY OTHER RESPECT. IT IS A CONDITION OF WEWORKBOOK THAT WORKSORTED ACCEPTS NO RESPONSIBILITY AND DISCLAIMS ALL LIABILITY FOR ANY EXPENSES, LOSSES, DAMAGES, COSTS OR LIABILITIES YOU MAY INCUR, OR CLAIMS THAT MAY BE MADE ON YOU, WHETHER DIRECT OR INDIRECT, AS A RESULT OF RELIANCE ON THE REPORTING WITHIN WEWORKBOOK. IT IS EACH USER'S RESPONSIBILITY TO ENSURE DATA IS ENTERED ACCURATELY AND COMPLETELY, THAT IT IS ENTERED AS REQUIRED BY THAT USER'S REPORTING JURISDICTION AND THAT IT MEETS ALL VALIDATION AND OTHER APPLICABLE REQUIREMENTS.

10.5 The customer acknowledges that they retain all responsibility of ensuring that certificates issued through Weworkbook meet their legal requirements and obligations. This includes wording, information inclusion and delivery method and format of the certificate.

## 11. Intellectual Property

11.1 The Customer acknowledges that:-

- (a) WEWORKBOOK, help files and Documentation is the subject of copyright and which is the sole and exclusive property of Worksorted; and
- (b) Worksorted remains the sole owner or licensee of WEWORKBOOK and all Intellectual Property Rights associated with WEWORKBOOK.

11.2 The Customer shall not during or any time after the expiry or termination of this Agreement permit any act which infringes Worksorted or any third parties' Intellectual Property Rights and, without limiting the generality of the foregoing, the Customer specifically acknowledges that it may not copy WEWORKBOOK or any part of it except as otherwise expressly authorised by this Agreement.

11.3 The help files and/or Documentation may not be copied under any circumstances.

11.4 The Customer shall indemnify Worksorted fully against all liabilities, costs and expenses that Worksorted may incur to a third party as a result of the Customer's breach of the Intellectual Property Rights provisions of this Agreement.

## 12. Term and Termination

12.1 This Agreement will commence on payment of the Charges payable pursuant to this Agreement including the Access Fee.

12.2 Subject to payment of the Access Fees (as an annual or monthly payment), this Agreement will continue for subsequent monthly or annual periods until determined pursuant to this Agreement.

12.3 This Agreement may be terminated in the following circumstances:

- (a) by the Customer, on a minimum 3 month's written notice expiring on any anniversary of Commencement;
- (b) by Worksorted, on a minimum 3 month's written notice by Worksorted, expiring on any anniversary of Commencement, that it will no longer provide Support for any version of WEWORKBOOK provided that such notice will not be given earlier than 2 years after Commencement;
- (c) by Worksorted, if the Customer is in breach of any term of this Agreement and fails to remedy such breach within such reasonable period based on the nature of the breach, as set out in a written notice to be given by Worksorted to the Customer setting out the nature of the breach;
- (d) by Worksorted, if the Customer:
  - (i) being a corporation, becomes the subject of any form of insolvency administration;
  - (ii) being a firm or partnership, is dissolved;
  - (iii) ceases or threatens to cease to carry on its business in the normal manner;

- (iv) destroys or damages WEWORKBOOK and any related files or Documentation for any reason; or
- (v) sells its business without the prior written consent of Worksorted (such consent not to be unreasonably withheld).

12.4 On termination of this Agreement but subject to the following sub-clauses on the transfer of the Customer Data:

- (a) the Customer will immediately cease to access or use WEWORKBOOK;
- (b) Worksorted may retain any monies paid by the Customer;
- (c) Worksorted will be regarded as discharged from any further obligations under this Agreement.

12.5 On termination of this Agreement, Worksorted will provide reasonable assistance to the Customer to transfer its Customer Data from Worksorted to the Customer or the Customer's new service provider and will continue to provide access to the System and use of WEWORKBOOK pursuant this Agreement until the date all Customer Data is transferred and the Customer is no longer using WEWORKBOOK but is under no obligation to do so after 30 days of termination.

12.6 The transfer of the Customer Data from the System shall be provided at the Customer's sole cost and expense and the Customer shall pay Worksorted such additional Charges for the provision of those services in accordance with Worksorted's current terms and conditions, including applicable Hourly Rates.

12.7 Termination pursuant to this clause shall not affect any rights or remedies that Worksorted may have otherwise under this Agreement or at law.

12.8 All provisions of this Agreement regarding confidentiality, copyright, limitations of actions and liability, title, use, copying or disclosure of WEWORKBOOK, assignment, use of the Customer's name and on transfer of the Customer Data shall survive the expiration or termination of this Agreement, regardless of the cause or reason for expiration or termination.

### **13. Force Majeure**

13.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

13.2 If a delay or failure of a party to perform its obligation is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

13.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

## 14. Risk and Losses

- 14.1 Worksorted will be under no liability to the Customer in respect of any consequential or indirect cost, loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of the access to the System or use of WEWORKBOOK pursuant to this Agreement or in respect of a failure or omission on Worksorted's part to comply with its obligations or any warranty under this Agreement.
- 14.2 Notwithstanding any other term of this Agreement, other than the sub-clause 3 below, Worksorted's total liability, in aggregate to the Customer for all claims by or on behalf of the Customer in respect of any circumstances in any way connected with this Agreement is limited to the amount paid by the Customer for Annual Access Fees during the preceding 12 month period.
- 14.3 This clause does not apply to any liability which cannot by law be excluded, in which case the liability of Worksorted shall be limited to the extent permitted by law.
- 14.4 The Customer will at all times indemnify and hold harmless Worksorted and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified where such loss or liability was caused by:
- (a) A breach by the Customer, its employees, sub-contractors and/or agents of its obligations under this Agreement; or
  - (b) Any wilful, unlawful or negligent act or omission of the Customer, its employees, sub-contractors and/or agents, including, without limitation, any loss or liability caused by any breach of the privacy laws or any other legislative or regulatory compliance issues and any infection of or distribution of viruses to the System.

## 15. Confidentiality

- 15.1 A party shall not, without the prior written consent of the other party, disclose the other party's Confidential Information unless compelled by law.
- 15.2 Each party shall take all reasonable steps to ensure that its employees, ex-employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- 15.3 Notwithstanding any other provision of this clause, Worksorted may:
- (a) collect data in respect of the Customer's use of WEWORKBOOK (including reports, but excluding Confidential Information relating to the identity of the Customer or any clients of the Customer) to generate diagnostics for Worksorted and comparative assessment of all of Worksorted's customer's use of WEWORKBOOK;
  - (b) disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers or accountants, and shall ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to Worksorted;
  - (c) include the Customer's name in any complete or partial listing of Worksorted's customers for its own marketing purposes.

15.4 Worksorted and the Customer shall use their respective reasonable endeavours to comply with the National Privacy Principles in relation to any personal information relating to the clients of the Customer.

## 16. Assignment

16.1 The benefit of this Agreement shall not be dealt with in any way by the Customer (whether by assignment, sub-licensing or otherwise) without Worksorted's written consent, which consent is not to be unreasonably withheld.

16.2 Worksorted may assign the benefit of this Agreement or sub-contract the performance of any part of this Agreement to a third party.

## 17. Waiver

Failure or neglect by either party to enforce at any time any provisions of this Agreement shall not be construed or deemed to be a waiver of that party's rights under this Agreement.

## 18. Governing law

This Agreement shall be governed by and construed according to the law of South Australia and the parties submit to the jurisdiction of the Courts of that State.

## 19. Definitions

In this Agreement:

**Access Devices** means the computer, internet, broadband facilities, internet protocol address, other equipment or devices and computer software and/or programs necessary for the Customer to access WEWORKBOOK, which are approved by Worksorted and must comply with or exceed the minimum requirements specified by Worksorted;

**Access Fee** means that part of the Charges as specified in Schedule 1 payable by the Customer to Worksorted that relates to the continuing access to and Support of the Application by Worksorted;

**Application** means the computer software application known as WEWORKBOOK referred to in clause 1.1 above and more particularly is a training schedule management system for use in the education and training industry;

**Charges** means the Charges payable by the Customer to Worksorted as specified in Schedule 1;

**Commencement** means the date on which payment of the Access Fee is first made;

**Confidential Information** means the confidential information of a party that relates to the subject matter of this Agreement and includes information relating to the terms upon which WEWORKBOOK is being supplied pursuant to this Agreement and any personal information relating to the identity of any client of the Customer;

**Customer Data** means data supplied by the Customer to Worksorted and stored on the System pursuant to this Agreement or data which may otherwise be generated, compiled, arranged or developed using WEWORKBOOK by either party pursuant to this Agreement.

**Customer's Facilities** means the facilities necessary to access the System and use WEWORKBOOK and includes the Access Devices, hardware, software, and printers which must comply with or exceed the minimum requirements specified by Worksorted;

**Documentation** means any help file or instructional information detailing the operation and function of WEWORKBOOK;

**Force Majeure** means a circumstance beyond the reasonable control of the parties, which results in a party being unable to observe or perform on time an obligation under this Agreement;

**Hourly Rate** means Worksorted's standard hourly rate as specified in Schedule 1, as varied or otherwise published by Worksorted from time to time;

**Intellectual Property Rights** means copyright, trade mark, design, patent, semiconductor or circuit layout rights or any other intellectual property rights;

**Registered Users** means the users able to access the System and use WEWORKBOOK at any one time as specified in Schedule 1 or determined from the Charges;

**Services** means the services to be provided by Worksorted to the Customer pursuant to this Agreement, including:-

- (a) implementation and training in the access to the System and use by the Customer of WEWORKBOOK;
- (b) additional services provided at the request of the Customer; and
- (c) services on termination or expiration of this Agreement.

**Site** means the location where the client head office is based, where WEWORKBOOK is predominantly accessed by the Customer;

**Support** includes:-

- (a) the provision of upgrades of WEWORKBOOK but does not extend to new functionality of WEWORKBOOK; and
- (b) the services referred to in clause 7;

**System** means Worksorted's computer facilities on which WEWORKBOOK is installed and is to be accessed by the Customer pursuant to this Agreement.

## **SCHEDULE 1**

### **CHARGES**

Please note: All charges listed are in Australian Dollars and are inclusive of Australian Goods and Services Tax (GST), where applicable.

The following Charges are payable by the Customer to Worksorted (including GST):

- \$220 per month for the first 3 months - \$77 per user per month thereafter
- A discount of 7.5% will apply to payments of the annual license fee when paid in advance
- Initial online training is included in license fee
- Worksorted reserve the right to charge for additional training
- Worksorted reserve the right to charge for excessive support (refer 6.4)
- Worksorted standard hourly rate is \$121 (including GST)
- Data import service is available – price on application

Weworkbook Access Agreement effective from November 2011, Updated March 2014