

TERMS OF USE
ACCEPTANCE OF TERMS
(The Agreement)

SECTION 1: DESCRIPTION OF SERVICES

1.1 EB Systems Services. EB Systems has developed the EB Systems Workforce Management and Automation Solution (Solution), a mobile workforce automation solution that provides simple, easy to use workflow applications for companies with mobile workforces. Client desires to engage with EB Systems to provide certain services to Client using the EB Systems Workforce Management and Automation Solution, which services are designed to facilitate workflow and communication between Client, Client's customers, and employees (the Service). Client acknowledges that EB Systems is not licensing the EB Systems Workforce Management and Automation Solution to Client, but rather EB Systems uses the Solution to provide the Service to Client and others.

SECTION 2: CLIENT OBLIGATIONS

2.1 Technology Infrastructure. EB Systems is providing apps to smart mobile devices as well as web site services. The Client recognizes that providing, maintaining and ensuring the existence of compatible infrastructure technology including, but not limited to, PC's, any hardware, smart phones, telecommunication services, operating systems, internet service, networks, electrical, and other physical requirements are the sole responsibility of the Client in order to ensure the proper functionality of the Service for itself, its customers, or any third parties authorized to use the Services.

Client shall be responsible for selecting and training adequate personnel with the requisite experience necessary to operate Client's systems, and Client shall limit use and solely to those of its employees whose duties require such use and access and shall undertake best efforts to ensure that EB Systems Confidential Information and the EB Systems Intellectual Property are kept secure.

2.2 Client Information. Client shall provide EB Systems with any requested Client information as soon as practicable and in any event within seven (7) calendar days of request by EB Systems or as

otherwise reasonably necessary for EB Systems to comply with any deadline around customization of the Service for Client. This includes, but is not limited to Client logos, location information, list of authorized users, and Client customer authorization and information for installation of any location proximity devices, beacons, or other identification technology.

2.3 Access Provided by Client. Client shall provide EB Systems access to and permission to use all information, materials, internal resources, facilities and personnel as necessary to complete any and all Services.

2.4 Consents and Approvals. If required, Client shall obtain the prior written consent of all persons, Client customers, or other authorized parties receiving communications via the Solution provided by EB Systems. Client shall retain sole responsibility for obtaining all such consents, any other consents or regulatory approvals and for compliance with all applicable federal, state and local laws and regulations relating to the Services and the Deliverables, including but not limited to consumer protection laws. Client acknowledges that EB Systems is not obligated or expected to determine whether its Services will comply with such laws.

SECTION 3: FEES AND PAYMENTS

3.1 Fees. Client shall pay EB Systems fees for the Services in the amount, at the times and in the manner set forth in the Purchase Order (Fees). These Fees do not include any applicable taxes or duties, including without limitation, state and local use, sales and property taxes and duties, which shall be the responsibility of Client. Client is responsible for all taxes and duties incurred as a result of providing the Service.

3.2 Miscellaneous Expenses. From time to time, Client may request the EB Systems to perform additional services above and beyond those Services that EB Systems are obligated to do as part of an existing Purchase Order. EB Systems will itemize any such costs incurred by EB Systems and will bill the Client at actual cost. Such costs may include, but are not limited to travel, lodging, meals, shipping, and other direct out-of-pocket expenses.

3.3 Invoices. Unless otherwise noted in a Purchase Order, EB Systems shall issue invoices quarterly for fees and expenses related to the Service provided to Client. These services will be invoiced for the upcoming quarter. Any prior miscellaneous expenses incurred will also be invoiced at this time.

3.4 Payments and Late Payments. All invoices shall be paid within thirty (30) days of invoice. Client shall pay a late charge of one percent (1%) per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar quarter or fraction thereof that any payments are in arrears beyond 60 days. EB Systems shall be entitled to any reasonable expenses incurred in collecting any amounts due pursuant to this Agreement or in addressing any violations by Client of the terms and conditions of this Agreement, including, without limitation, reasonable attorneys' fees. If any amount is in arrears beyond 90 days, EB Systems reserves the right, at any time any such amount remains unpaid and without notice, to discontinue providing services under this Agreement or any Purchase Order, including, if applicable, terminating access to the Solution by Client and, if applicable, Client's end users.

SECTION 4: TERM AND TERMINATION

4.1 Term. The term of this Agreement is perpetual; however, Service shall be provided as part of a Purchase Order and Client is not obligated to sign a Purchase Order.

4.2 Termination With Cause. Either EB Systems or Client may terminate a Purchase Order upon sixty (60) days prior written notice to the other party in the event that the other party: (a) violates any material provision of a Purchase Order and fails to cure such violation within such 60-day period, or (b) is the subject of a reorganization or liquidation proceeding, involuntary or voluntary bankruptcy, is insolvent, makes an assignment for the benefit of creditors or documents in writing its inability to pay debts when due. A party may terminate a Purchase Order without terminating other Purchase Orders that exist between EB Systems and Client.

4.3 Termination by EB Systems. Notwithstanding Sections 3.4, 4.1 or 4.2, a Purchase Order and this Agreement may be terminated or cancelled, or performance suspended, by EB Systems at any time upon written notice to Client if Client fails to make any payment when due and such failure continues for fifteen (15) days after written notice from EB Systems.

4.4 Actions Upon Termination. Without limiting EB Systems' or Clients' rights and remedies for the other party's breach of this Agreement or a Purchase Order, upon the termination of the Agreement or Purchase Order for any reason, (a) Client shall not thereafter use Solution provided as

part of Service or any related EB Systems Intellectual Property, (b) Client shall immediately return to EB Systems all related EB Systems Intellectual Property and any other property, documentation, equipment and other materials provided to Client by EB Systems, or immediately destroy such property at EB Systems' sole option and direction, (c) each party shall remove from its web site any links or other references to the other party's site, products or services in a timely manner, (d) Client shall certify its compliance with this Section to EB Systems in writing, and (v) Client shall pay EB Systems for any fees and expenses for services performed or products delivered under a Purchase Order through the date of termination. If this Agreement is terminated for any reason other than EB Systems breach of the Agreement, EB Systems shall be entitled to retain all prepaid amounts and Fees and all remaining amounts due and owing for all uncompleted Service to compensate EB Systems for lost opportunities, as liquidated damages and not a penalty, in addition to all other rights and remedies available to EB Systems in law and in equity which may be granted by a court of competent jurisdiction. If Client terminates this Agreement or a Purchase Order prior to its scheduled expiration or termination date, other than due to a material breach by EB Systems or pursuant to an express right of Client to do so, without limiting EB Systems other rights or remedies, and in addition to other amounts due hereunder, Client shall pay to or reimburse EB Systems for all costs reasonably incurred by EB Systems that are directly attributable to the termination or the discontinuation of Service hereunder or under a Purchase Order to the extent relating to items or arrangements acquired or entered into by EB Systems to provide the Service to Client.

SECTION 5: CONFIDENTIALITY AND OWNERSHIP

5.1 Confidential Information. Any information concerning Client's and EB Systems' businesses that is identified in writing to the other party (Recipient Party) as confidential is to be treated as confidential. Also, any of the following information shall be considered confidential: financial information, pricing, customer lists, product documentation, product information, and any information obtained or accessed by either party which, if not otherwise described above, is of such nature that a reasonable person would believe it to be confidential (Confidential Information). Recipient Party shall keep in confidence and trust and will not disclose or use, or allow any employee, other person or agent working under receiving party's direction to disclose or use, any

Confidential Information to any other person or for any purpose other than those set forth in this Agreement.

Excluded from the definition of Confidential Information is information which (1) is now, or hereafter becomes, generally known or available to the public through no act or failure to act on the part of the Recipient Party or its employees, representatives, or other agents; (2) is rightfully known on a non-confidential basis by Recipient Party at the time of receiving such information from Disclosing Party; (3) is hereafter rightfully furnished to Recipient Party by a third party (unrelated to EB Systems or Client) which is entitled to disclose it; or (4) is independently developed by Recipient Party through its agents who have not had access to the Confidential Information. Notwithstanding any other provision of this Agreement, nothing herein contained shall be deemed to prevent the disclosure of any Confidential Information if such disclosure is required by court order, or if such disclosure is required by applicable law or rules and regulations of any administrative or governmental agency (a "Legal Disclosure"); provided, however, in the event of any Legal Disclosure, the Recipient Party required to disclose shall immediately provide written notice to the other party for purposes of allowing the other party to challenge or dispute such Legal Disclosure. Such challenge will be at the sole and respective discretion and expense of said party.

The provisions of this section shall continue in full force and effect for so long as Confidential Information continues to be exchanged between the two parties, and for a period of five (5) years thereafter.

5.2 Client Information. Client may provide EB Systems with certain corporate logos, graphics, photos, images, illustrations, texts, employee lists, customer location information, and other information (Client Information) to be included in or associated with the Solution being provided as a Service pursuant to this Agreement. Client understands and agrees that it is solely responsible for obtaining the necessary licenses, rights and permissions to use the Client Information in conjunction with the Solution. Client represents and warrants that it either owns the Client Information or has secured sufficient licenses, rights or permissions from the owners of such Client Information to use the Client Information, including, without limitation, all intellectual property rights, rights of publicity and/or privacy, and any other similar or equivalent rights. Furthermore, Client agrees to defend, indemnify and hold harmless EB Systems against, for and from all claims, liability, costs, damages, demands, and losses related to EB Systems use thereof under this Agreement.

5.3 Intellectual Property Rights. Notwithstanding any other provision of this Agreement, EB Systems shall retain sole ownership of the Solution including, without limitation, all modifications or enhancements made to Solution including, without limitation, modifications and enhancements made by EB Systems in order to provide the Service. Examples include the creation of new application reports, added functionality, new workflows, aggregate reports, and other features added to the Solution, and all associated Intellectual Property defined in the below paragraph (collectively, the “EB Systems Intellectual Property”).

For purposes of this Agreement, “Intellectual Property” includes, without limitation, all tangible and intangible legal rights or interests evidenced by or embodied in (a) any idea, design, concept, technique, invention, discovery or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (b) any work of authorship, regardless of whether or not it can be copyrighted, but including copyrights and any moral rights recognized by law; (c) any trademark, trade name or service mark; and (d) any other intellectual property, proprietary or similar rights, including all goodwill pertaining thereto and in each case, on a worldwide basis.

SECTION 6: GENERAL PROVISIONS

6.1 Status, Authorization and Validity of Agreement. Client hereby represents and warrants to EB Systems that it (a) is validly existing and in good standing under the laws of its state of formation and in each state in which it conducts business; (b) has the power and authority to execute and perform under this Agreement; and (c) this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

6.2 Independent Contractor. Neither EB Systems nor its employees or agents of any of them shall be deemed to be employees or agents of Client, it being understood that EB Systems is an independent contractor for all purposes and at all times.

6.3 Binding Nature of Agreement and Assignment. Except as otherwise noted herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that Client may not assign or transfer its rights or obligations under or interest in this Agreement or any Purchase Order without

the prior written consent of EB Systems. EB Systems may, in its sole discretion, assign this Agreement or subcontract its obligations.

6.4 Severability. If any provision of this Agreement is found to be invalid under any applicable statute or rule of law, then that provision notwithstanding, the terms and conditions of this Agreement will remain in full force and effect. Furthermore, in such an occurrence, such provision will be changed and interpreted in a manner that best accomplishes the objectives of the unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

Upon termination of the Agreement, the following sections survive the termination of the Agreement: Section 3.1, Section 3.4, Section 4.4, Section 5.1, Section 5.2, and Section 5.3.

6.5 Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

6.6 Marketing. Client grants EB Systems the right to refer to the name and logo of Client, Client's products and services and the business in which the products and services are used for marketing purposes by EB Systems on their web site, press releases, and marketing materials without the further consent of Client.

6.7 Governing Law. This Agreement shall be governed by and shall be construed, interpreted and enforced in accordance with the laws of the State of Missouri, without reference to its internal principles of conflicts of law. The parties agree that the Services will be performed in Missouri (EB Systems principal place of business), and therefore the sole and exclusive jurisdiction and venue for any disputes arising hereunder shall be in any court located in Jackson County, Missouri. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANYWAY CONNECTED WITH THIS AGREEMENT.

6.8 Remedies. Client agrees that a breach of any provision of Section 5 may cause EB Systems irreparable injury and damage, and that in such event EB Systems shall be entitled to injunctive and other equitable relief in addition to any other remedy to which EB Systems might be entitled. All

remedies for such a breach shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy with respect to the subject matter hereof.

6.9 Notices. All notices and other communications given under this Agreement shall be in writing and shall be deemed to have been duly delivered if delivered personally, delivered by a nationally recognized overnight courier (e.g., Federal Express), mailed via registered mail (postage prepaid) to the attention of the Client representative who executed this Agreement or e-mailed to the attention of the Client representative who executed this Agreement (with satisfactory evidence of transmission).

6.10 Entire Agreement. This Agreement, including any Purchase Orders executed by the parties, shall be the entire agreement between the parties with respect to the transactions contemplated herein and supersedes all other negotiations, communications, commitments and writings. No alteration, modification or change of this Agreement or any Purchase Order shall be valid unless made in writing and executed by the parties. If any provisions contained in a Purchase Order expressly conflict with any terms, conditions or clauses contained in this Agreement, the provisions of the Purchase Order shall govern.

6.11 No Waiver. No failure or delay by any party in exercising any right hereunder shall operate as a waiver of any right hereunder. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No partial exercise of any right shall preclude the further or full exercise thereof. No waiver shall be effective unless made in writing. All remedies for a breach shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy.

6.12 Access to Data. EB Systems agrees that all Client data acquired and collected during the use of the Solution will be available to Client and will be provided in a mutually agreeable electronic format upon a written request by Client. EB Systems is allowed a reasonable amount of time to satisfy such requests, and such requests are in no way intended by the Client to disrupt normal operations of EB Systems. Some data may not be available after it has aged due to documented purge policies that are part of the Solution.

SECTION 7: DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNITY

7.1 Disclaimer. THE EB SYSYEMS WORKFORCE MANAGEMENT AND AUTOMATION SOLUTION AND THE SERVICE ARE PROVIDED “AS IS” AND EB SYSTEMS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICE OR EB SYSYEMS WORKFORCE MANAGEMENT AND AUTOMATION SOLUTION WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EB SYSTEMS MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE OR EB SYSYEMS WORKFORCE MANAGEMENT AND AUTOMATION SOLUTION..

7.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, AND NOTWITHSTANDING THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT: (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR NON-CONTRACTUAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND (B) THE TOTAL AGGREGATE LIABILITY OF EB SYSTEMS TO CLIENT OR ANY THIRD PARTY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO ITS PERFORMANCE OF THE SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED EB SYSTEMS TOTAL AFTER TAX PROFITS RECEIVED FOR ONE YEAR UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO SUCH CLAIM.

IN NO EVENT SHALL EB SYSTEMS BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OR DELAY OF EB SYSTEMS IN THE DELIVERY OF THE SERVICE OR SOLUTION TO THE EXTENT CAUSED BY ACTS OF GOD, INTERNET OR OTHER COMPUTER SYSTEMS DISRUPTIONS, FIRE, WAR, RIOTS, STRIKES, QUARANTINES, EMBARGOES OR OTHER CAUSES BEYOND THE REASONABLE CONTROL OF EB SYSTEMS.

7.3 Indemnity. Subject to Section 7.2 and the other limitations hereof, (a) EB Systems agrees to indemnify, defend and hold Client and its directors, officers, employees, members, agents, parents, subsidiaries and affiliated companies harmless from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees) that may at any time be incurred by such parties and that arise out of or relate to any breach by EB Systems of its representations, warranties, covenants, agreements or obligations under this Agreement, and (b) Client agrees to indemnify, defend and hold EB Systems and its directors, officers, employees, members, agents, parents, subsidiaries and affiliated companies harmless from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees) that may at any time be incurred by such parties and that arise out of or relate to any breach of Client's representations, warranties, covenants, agreements or obligations under this Agreement or otherwise relating to the provision of Service by EB System hereunder or the use of the Solution by Client, its employees or its agents or others, except to the extent caused by EB Systems' breach of its representations, warranties, covenants, agreements or obligations under this Agreement.