

TERMS FOR USE OF E-LEARNING PRODUCT



DATED: {Date}

POSTURITE

and

{The Customer}

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THIS AGREEMENT is made on {DATE}

BETWEEN

- (1) **POSTURITE LIMITED** incorporated and registered in England and Wales with company number 02574809 whose registered office is at The Mill, Station Road, Berwick, Polegate, East Sussex, BN26 6SZ (**Posturite**); and
- (2) **{THE CUSTOMER}** incorporated and registered in England and Wales with company number {00000000} whose registered office is at {ADDRESS} (**Customer**).

BACKGROUND

- (A) Posturite has developed certain e-learning products (WorkRite) which it supplies to customers for the purpose of standardising health and safety training and assessment procedures in the workplace.
- (B) The Customer wishes to use Posturite's Product (WorkRite) in its business operations.
- (C) Posturite has agreed to provide and the Customer has agreed to take and pay for Posturite's Product (WorkRite) subject to the terms and conditions of this agreement.
- (D) Further, if indicated below, the Customer has also requested Posturite to provide additional bespoke Products on the terms of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Anti-Slavery Laws: the Modern Slavery Act 2015 or any similar or analogous laws in any other relevant jurisdiction.

Applicable Law: means as applicable and binding on the Customer or Posturite:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree; or
- (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;

Authorised Sub-Processor: Those parties listed in Schedule 6.

Bribery Laws: the Bribery Act 2010, all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction.

Business Day: a day other than a Saturday, Sunday, public holiday in England when banks in London are open for business or any day in any year between the 26 December and 1 January inclusive.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5.

Customer Data: the data inputted by the Customer, Licensed Users, or Posturite on the Customer's behalf for the purpose of using the Products and Professional Services or facilitating the Customer's use of the Products and Professional Services.

Customer Data Breach: means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Customer Data;

Data Controller: has the meaning given to that term (or to the term 'controller') in Data Protection Laws;

Data Processor: has the meaning given to that term (or to the term 'processor') in Data Protection Laws;

Data Protection Laws: means as applicable and binding on the Customer, Posturite and/or the Services:

(a) in the United Kingdom:

(i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or

(ii) the GDPR, and/or any corresponding or equivalent national laws or regulations;

(b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and

(b) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time.

Data Subject: has the meaning given to that term in Data Protection Law.

Data Subject Request: means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

Effective Date: the date of this agreement.

GDPR: means the General Data Protection Regulation (EU) 2016/679;

GDPR Date: means from when the GDPR applies on 25 May 2018;

Initial Term: the initial term of this agreement commencing on the Product Commencement Date and continuing for a period of 3 years.

Licensed Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Product, as further described in clause 2.2.3.

Normal Business Hours: 9.00am to 5.00pm local UK time, each Business Day.

Personal Data: has the meaning given to that term in Data Protection Laws.

Product: the licence to access and use the e-learning products (WorkRite) together with associated maintenance support Products provided by Posturite to the Customer under this agreement, as more particularly described in the Product Specification, in Schedule 2.

Product Commencement Date: the date from which the parties intend that the Customer may use the Product.

Product Fees: the fees payable in respect of the Products and Professional Services payable by the Customer to Posturite, as set out in Schedule 1.

Product Specification: the detailed specification describing the Products and any Professional Services provided by Posturite to the Customer under this agreement as set out in Schedule 2.

Professional Services: additional Products that can include bespoke training, consultancy, assessments, managed Products, configuration and bespoke training, as selected by the Customer and provided by Posturite to the Customer under the terms of this agreement.

Professional Services Commencement Date: the date for the commencement of the Professional Services as specified in the Professional Services Specification.

Renewal Period: the period described in clause 15.1.

Software: the licensed online software applications provided by Posturite as part of the Products.

Term: the Initial Term together with any subsequent Renewal Periods.

User Licences: the user licences purchased by the Customer pursuant to clause 10.1 which entitle Licensed Users to access and use the Products in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any

programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

WorkRite: The name of the division within Posturite managing the e-learning software and services and the name given to the e-learning product.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER LICENCES

- 2.1 Subject to the Customer purchasing the User Licences in accordance with clause 3.3 and clause 10.1, Posturite grants to the Customer, a non-exclusive, non-transferable right to use the Products (WorkRite) during the Term.
- 2.2 In relation to the Licensed Users, the Customer undertakes that:
 - 2.2.1 the maximum number of Licensed Users that it authorises to access and use the Products shall not exceed the number of User Licences it has purchased as set out in Schedule 2;
 - 2.2.2 each Licensed User shall keep a secure password for his use of the Products, and each Licensed User shall keep his password confidential; and

- 2.2.3 it shall maintain a written, up to date list of current Licensed Users and provide such list to Posturite within 5 Business Days of Posturite's reasonable request at any time.
- 2.3 The Customer shall not, and shall procure that the Licensed User shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Products, and Posturite reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not:
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.4.2 access all or any part of the Products in order to build a product or Product which competes with the Products; and
- 2.4.3 subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Products available to any third party except the Licensed Users.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Products and, in the event of any such unauthorised access or use, promptly notify Posturite.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, but shall include any subsidiary, holding company, or associate of the Customer, with the prior written consent of Posturite.
- 3. ADDITIONAL USER LICENCES**
- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during the Term, purchase additional User Licences. If the purchase is in excess of the number User Licences set out in Schedule 1, Posturite shall grant access to the Products to such additional Licensed Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Licences, the Customer shall notify their Posturite Account Manager.
- 3.3 If Posturite approves the Customer's request to purchase additional User Licences, the Customer shall, within 30 days of the date of Posturite's invoice, pay to Posturite the relevant fees for such additional User Licenses.

4. PRODUCTS AND MAINTENANCE

- 4.1 Posturite shall, during the Term, provide the Products and Professional Services on and subject to the terms of this agreement.
- 4.2 Posturite shall, as part of the Products, provide the Customer with Posturite's maintenance support services during Normal Business Hours. Telephone support is available on 0845 345 0030 and email support is available on support@workrite.co.uk.
- 4.3 Posturite shall use all reasonable endeavours to respond to support issues within 4 hours of notification by the Customer or its Licensed Users.
- 4.4 Posturite shall prioritise support issues according to their urgency and severity following a discussion with the Customer.
- 4.5 Posturite shall notify the Customer of any planned maintenance and shall use all reasonable endeavours to give the Customer at least 5 Normal Business Hours' notice of unscheduled maintenance.
- 4.6 If Posturite carries out maintenance outside of Normal Business Hours at the request of the Customer, Posturite shall be entitled to charge the Customer for such maintenance in accordance with Posturite's standard service charges.
- 4.7 Unless specifically included within the Products supplied, the Customer is responsible for the costs of any required third party software upgrades.

5. PROFESSIONAL SERVICES

- 5.1 Where the Customer requests Professional Services, Posturite shall provide the same in accordance with the provisions of Schedule 3 – Professional Services and Schedule 4 – Professional Services Specification shall apply to the Professional Services.
- 5.2 All other provisions of this Agreement shall apply to the Professional Services save where there is any conflict between them and the provisions of Schedule 3 and Schedule 4, in which case the provisions of Schedule 3 and Schedule 4 shall take priority.

6. CUSTOMER DATA

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Posturite shall, in providing the Products and Professional Services, comply with its Information Security and Data Protection Policy relating to the privacy and security of the Customer Data available at [available on request], as such document may be amended from time to time by Posturite in its sole discretion.
- 6.3 The parties agree that, in respect of the Customer Data, the Customer shall be the Data Controller and Posturite shall be a Data Processor and shall

process the Customer Data in compliance with the obligations of Data Processors under Data Protection Laws.

- 6.4 The Customer warrants, represents and undertakes, that:
 - 6.4.1 all data sourced by the Customer shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws; and
 - 6.4.2 all instructions given by it to Posturite in respect of Personal Data shall at all times be in accordance with Data Protection Laws.
- 6.5 Posturite, as Data Processor, shall:
 - 6.5.1 inform the Customer if Posturite becomes aware of any instruction that, in the Posturite's opinion, infringes Data Protection Laws, provided that to the maximum extent permitted by mandatory law, Posturite shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information.
 - 6.5.2 implement and maintain at its own cost and expense, technical and organisational measures, taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Customer Data;
 - 6.5.3 refer all Data Subject Requests it receives to the Customer within five Business Days of receipt of the request;
 - 6.5.4 maintain, in accordance with Data Protection Laws binding on Posturite, written records of all categories of processing activities carried out on behalf of the Customer;
 - 6.5.5 subject to clause 6.6.1, ensure that all persons authorised by Posturite to process Customer Data are subject to a binding written contractual obligation to keep the Customer Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Posturite shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure);
 - 6.5.6 ensure that the Authorised Sub-Processor shall to the extent applicable, be subject to clauses substantially no less onerous to those clauses contained within this clause 6; in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate Posturite's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the

Customer) for this purpose, subject to the Customer giving Posturite reasonable prior notice of such information request;

- 6.5.7 in respect of any Personal Data Breach, Posturite shall, without undue delay:
- (a) notify the Customer of any Customer Data Breach; and
 - (b) provide the Customer with details of the Customer Data Breach; and
- 6.5.8 Posturite shall either delete or return all the Customer Data to the Customer in such form as the Customer reasonably requests within a reasonable time once processing by Posturite of any Customer Data is no longer required for the purpose of Posturite's performance of its relevant obligations under this agreement.
- 6.6 The processing of Personal Data by Posturite to be carried out in accordance with the change control procedure in Schedule 3 under this agreement and shall comprise the information contained in Schedule 6, and may be updated from time to time in accordance with any change control procedure in Schedule 3.
- 6.7 Posturite shall not:
- 6.7.1 With the exception of the Authorised Sub-Processors, engage any other party (a '**Sub-Processor**') for carrying out any processing activities in respect of the Customer Data without the Customer's written authorisation authorising the appointment of that specific Sub-Processor; or
- 6.7.2 transfer or store any personal data outside the EEA or the country where the Customer and the Licensed Users are located in order to carry out the Products and Professional Services and Posturite's other obligations under this agreement.
- 6.8 The Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Posturite so that Posturite may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 6.9 The Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable Data Protection Laws.
- 6.10 Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Customer Data or any personal data or its accidental loss, destruction or damage.
- 6.11 All obligations relating to GDPR within this clause 6 shall only commence from the GDPR Date.

7. POSTURITE'S OBLIGATIONS

- 7.1 Posturite undertakes that the Products and Professional Services will be performed in accordance with this agreement and with reasonable skill and care.

- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Products contrary to Posturite's instructions, or modification or alteration of the Products by any party other than Posturite or Posturite's duly authorised contractors or agents.
- 7.3 Notwithstanding the foregoing, Posturite does not warrant that the Customer's use of the Products will be uninterrupted or error-free and the Customer acknowledges that the Products may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 This agreement shall not prevent Posturite from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, and/or Products which are similar to those provided under this agreement.

8. WARRANTIES

- 8.1 Posturite warrants and represents that:
- 8.2 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement;
- 8.2.1 it will perform its obligations under this agreement within a reasonable time and in a reliable and professional manner, in conformity with good industry practice, by a sufficient number of competent personnel with appropriate skills, qualifications and experience and has, and will at all times have, the ability and capacity to meet such requirements; and
- 8.2.2 it is in compliance with, and will perform its obligations under this agreement in compliance with, all applicable law and regulations

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- 9.1.1 provide Posturite with:
- (a) all reasonable assistance necessary co-operation in relation to this agreement; and
 - (b) all reasonable assistance necessary access to such information as may be required by Posturite;
- in order to provide the Products and Professional Services, including but not limited to Customer Data, security access information and maintenance Products;
- 9.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 9.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's

provision of such assistance as agreed by the parties, Posturite may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 9.1.4 ensure that the Licensed Users use the WorkRite Products in accordance with the terms and conditions of this agreement and shall be responsible for any Licensed User's breach of this agreement;
- 9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Posturite, its contractors and agents to perform their obligations under this agreement, including without limitation the Products and Professional Services;
- 9.1.6 ensure that its network and systems comply with the relevant specifications provided by Posturite from time to time; and
- 9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Posturite's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay the Product Fees to Posturite for the Products and Professional Services in accordance with this clause 10 and Schedule 1.
- 10.2 Posturite shall invoice the Customer on or before the Product Commencement Date for the Product Fees payable in respect of the Initial Term and subject to clause 15.1, at least 30 days prior to each anniversary of the Product Commencement Date for the Product Fees payable in respect of the next Renewal Period.
- 10.3 The Customer shall pay each invoice for Product Fees and Professional Services charges and any other amounts invoiced within 30 days after the date of such invoice and no payment shall be deemed to have been received until Posturite has received cleared funds from the Customer.
- 10.4 If Posturite has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Posturite:
 - 10.4.1 Posturite may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Products and Posturite shall be under no obligation to provide any or all of the Products or Professional Services while the invoice(s) concerned remain unpaid; and
 - 10.4.2 Posturite may suspend all Professional Services until payment has been made in full; and
 - 10.4.3 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc, commencing on the due date and continuing until fully paid.

- 10.5 All amounts and fees stated or referred to in this agreement shall be payable in pounds sterling and are exclusive of value added tax, which shall be added to Posturite's invoice(s) at the appropriate rate.
- 10.6 Posturite shall be entitled to increase the Product Fees and the fees payable in respect of the additional User Licences purchased pursuant to clause 3.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.
- 10.7 All sums payable to Posturite under this agreement shall become due immediately on its termination, despite any other provision. This clause 10.7 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 10.8 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Customer acknowledges and agrees that Posturite owns all intellectual property rights in the Products, Professional Services and Software. This agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Products, Professional Services or Software.
- 11.2 Unless otherwise agreed in writing, as between the Customer and Posturite, all Intellectual Property Rights and all other rights in the deliverables produced pursuant to the Professional Services shall be owned by Posturite. Subject to clause 10.2, Posturite licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the deliverables and the Professional Services. If this agreement is terminated, this licence will automatically terminate.
- 11.3 Posturite confirms that it has all the rights in relation to the Products, Professional Services and the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;

- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Products and Professional Services, and the results of any performance tests of the Products, constitute Posturite's Confidential Information.
- 12.6 Posturite acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 This clause 12 shall survive termination of this agreement, however arising.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

13. INDEMNITY

- 13.1 The Customer shall defend, indemnify and hold harmless Posturite against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Products, Professional Services and Software, provided that:
- 13.1.1 the Customer is given prompt notice of any such claim;
 - 13.1.2 Posturite provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 13.1.3 the Customer is given sole authority to defend or settle the claim.

- 13.2 Posturite shall defend the Customer, its officers, directors and employees against any claim that the Products, Professional Services or Software infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 13.2.1 Posturite is given prompt notice of any such claim;
- 13.2.2 the Customer provides reasonable co-operation to Posturite in the defence and settlement of such claim, at Posturite's expense; and
- 13.2.3 Posturite is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, Posturite may procure the right for the Customer to continue using the Products or Professional Services, replace or modify the Products or Professional Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Posturite, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 13.4.1 a modification of the Products or Software by anyone other than Posturite; or
- 13.4.2 the Customer's use of the Products, Professional Services or Software in a manner contrary to the instructions given to the Customer by Posturite; or
- 13.4.3 the Customer's use of the Products or Software after notice of the alleged or actual infringement from Posturite or any appropriate authority.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 sets out the entire financial liability of Posturite (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 14.1.1 arising under or in connection with this agreement;
- 14.1.2 in respect of any use made by the Customer of the Products, Professional Services and Software or any part of them; and
- 14.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 14.2 Nothing in this agreement excludes the liability of Posturite:
- 14.2.1 for death or personal injury caused by Posturite's negligence; or
- 14.2.2 for fraud or fraudulent misrepresentation.

- 14.3 Subject to clause 14.2:
- 14.3.1 Posturite shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 14.3.2 Posturite's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total sums paid to Posturite during the 12 months immediately preceding the date on which the claim arose.
- 15. TERM AND TERMINATION**
- 15.1 This agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Term and shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- 15.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or 30 days before the end of any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- 15.1.2 otherwise terminated in accordance with the provisions of this agreement.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 15.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period 30 days after being notified in writing to do so;
- 15.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 15.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or

- enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 15.2.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 15.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.4 to clause 15.2.9 (inclusive); or
- 15.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.3 On termination of this agreement for any reason:
- 15.3.1 all licences granted under this agreement shall immediately terminate;
- 15.3.2 each party shall return and make no further use of any equipment, property, information and other items (and all copies of them) belonging to the other party;
- 15.3.3 Posturite may destroy or otherwise dispose of any of the Customer Data in its possession unless Posturite receives, no later than 10 Business Days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Posturite shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination); and
- 15.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. ANTI-BRIBERY

- 16.1 For the purposes of this clause 16 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 16.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 16.2.1 all of that party's personnel;
 - 16.2.2 all others associated with that party; and
 - 16.2.3 all of that party's subcontractors;
 - 16.2.4 involved in performing this agreement so comply.
- 16.2.5 Without limitation to clause 16.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 16.3 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 16.

17. ANTI-SLAVERY

- 17.1 Posturite undertakes, warrants and represents that:
- 17.1.1 neither Posturite nor any of its officers, employees, agents or subcontractors has:
 - 17.1.2 committed an offence under Anti-Slavery Laws (a **Slavery Offence**); or
 - 17.1.3 been notified that it is subject to an investigation relating to an alleged Slavery Offence or prosecution under Anti-Slavery Laws; or
 - 17.1.4 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged Slavery Offence or prosecution under the Anti-Slavery Laws;
 - 17.1.5 it shall comply with Anti-Slavery Laws and the Customer's anti-slavery and human trafficking policy in force and notified to Posturite from time to time; and
 - 17.1.6 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Posturite's obligations under clause 17.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of Posturite's obligations.

17.2 Any breach of clause 17.1 by Posturite shall be deemed a material breach of this agreement and shall entitle the Customer to terminate this agreement with immediate effect.

18. FORCE MAJEURE

Neither party shall have liability to the other party under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility Product or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 6 months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

19. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

20. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

23.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

23.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24. ENTIRE AGREEMENT

24.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

24.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

25. ASSIGNMENT

25.1 The Customer shall not, without the prior written consent of Posturite, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

25.2 Subject to clause 6, Posturite may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

26. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. NOTICES

28.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

28.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender or on the email header) and shall be followed up by a copy sent by recorded delivery post.

29. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Product Fees

[INSERT]

SCHEDULE 2

Product Specification

[INSERT]

SCHEDULE 3

Professional Services terms

1. POSTURITE'S OBLIGATIONS

- 1.1 Posturite shall provide the Professional Services to the Customer from the Professional Services Commencement Date and for the duration specified in the Professional Services Specification.
- 1.2 Posturite shall use reasonable endeavours to provide the Professional Services, and to deliver the Deliverables to the Customer, in accordance with the Professional Services Specification in all material respects.
- 1.3 Posturite shall use reasonable endeavours to meet any performance dates specified in the Professional Services Specification, but any such dates shall be estimates only and time for performance by Posturite shall not be of the essence of this agreement.
- 1.4 Posturite shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under paragraph 2.1.5, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

2. CUSTOMER'S OBLIGATIONS

- 2.1 The Customer shall:
 - 2.1.1 co-operate with Posturite in all matters relating to the Professional Services;
 - 2.1.2 provide, for Posturite, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Posturite or any of them;
 - 2.1.3 provide, in a timely manner, such input material and other information as Posturite may reasonably require, and ensure that it is accurate in all material respects;
 - 2.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Professional Services;
 - 2.1.5 inform Posturite of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
 - 2.1.6 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Professional Services and conforms to all relevant United Kingdom standards or requirements;
 - 2.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Professional Services, the installation

- of Posturite's equipment, the use of input material and the use of the Customer's Equipment in relation to Posturite's equipment, in all cases before the date on which the Professional Services are to start;
- 2.1.8 keep, maintain and insure Posturite's equipment in accordance with Posturite's instructions as notified in writing from time to time and shall not dispose of or use Posturite's equipment other than in accordance with Posturite's written instructions or authorisation.
- 2.2 If Posturite's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Posturite shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 2.3 The Customer shall be liable to pay to Posturite, on demand, all reasonable costs, charges or losses sustained or incurred by Posturite (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Posturite confirming such costs, charges and losses to the Customer in writing.
- 2.4 The Customer shall not, without the prior written consent of Posturite, at any time from the Effective Date to the expiry of 6 months after the termination of this agreement, solicit or entice away from Posturite or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Posturite in the provision of the Professional Services.
- 2.5 Any consent given by Posturite in accordance with paragraph 2.4 shall be subject to the Customer paying to Posturite a sum equivalent to 20% of the then current annual remuneration of Posturite's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.
- 3. CHANGE CONTROL**
- 3.1 If either party wishes to change the scope or execution of the Professional Services, it shall submit details of the requested change to the other in writing.
- 3.2 If either party requests a change to the scope or execution of the Professional Services, Posturite shall, within a reasonable time, provide a written estimate to the Customer of:
- 3.2.1 the likely time required to implement the change;
- 3.2.2 any necessary variations to Posturite's charges arising from the change;
- 3.2.3 the likely effect of the change on the Professional Services Specification;

- 3.2.4 the changes to the charges for the Professional Services; and
- 3.2.5 any other impact of the change on this agreement.
- 3.3 If the Customer wishes Posturite to proceed with the change, Posturite has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Professional Services, the relevant Professional Services Specification and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 20.
- 3.4 Notwithstanding paragraph 3.3, Posturite may, from time to time and without notice, change the Professional Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Professional Services.
- 3.5 Posturite may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with paragraph 4.

4. CHARGES AND PAYMENT

- 4.1 In consideration of the provision of the Professional Services by Posturite, the Customer shall pay the charges as set out in the Professional Services Specification, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Paragraph 4.2 shall apply if Posturite provides Professional Services on a time and materials basis and paragraph 4.4 shall apply if Posturite provides Professional Services for a fixed price. The remainder of this paragraph 4 shall apply in either case.

Time & Materials

- 4.2 Where Professional Services are provided on a time and materials basis:
- 4.2.1 the charges payable for the Professional Services shall be calculated in accordance with Posturite's standard daily fee rates;
- 4.2.2 Posturite's standard daily fee rates for each individual person are calculated on the basis of an seven and a half -hour day, worked between Normal Business Hours;
- 4.2.3 Posturite shall ensure that every individual whom it engages on the Professional Services completes time sheets recording time spent on the Professional Services, and Posturite shall use such time sheets to calculate the charges covered by each monthly invoice referred to in paragraph 4.2.4; and
- 4.2.4 Posturite shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this paragraph 4.2 and paragraph 4.5.

- 4.3 Posturite reserves the right to charge the Customer if Posturite's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, including, without limitation to the Customer's obligation under paragraph 2.1.3.

Fixed Fee

- 4.4 Where Professional Services are provided for a fixed price, the total price for the Professional Services shall be the amount set out in the Professional Services Specification. The Customer shall pay the total price to Posturite (without deduction or set-off) in instalments, as set out in the Professional Services Specification. At the end of a period specified in the Professional Services Specification in respect of which an instalment is due, Posturite shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in paragraph 4.5.
- 4.5 Any fixed price and daily rate contained in the Professional Services Specification excludes:
- 4.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Posturite engages in connection with the Professional Services, the cost of any materials and the cost of Professional Services reasonably and properly provided by third parties and required by Posturite for the supply of the Professional Services. Such expenses, materials and third party Professional Services shall be invoiced by Posturite; and
- 4.5.2 any other expenses or disbursements that Posturite incurs that are deemed to be excluded from the fixed price and daily rate.

SCHEDULE 4

Professional Services Specification

[INSERT]

SCHEDULE 5

Data Processing Details

Subject Matter of processing	[insert]
Duration	During period of validity of this agreement only
Nature and Purpose of the processing	[insert]
Type of Personal Data	Names, address and other contract details [including [insert]]
Categories of Data Subjects	Individuals using WorkRite. [insert]
Processing Instructions	As agreed between the parties in this agreement

Signed by [NAME OF DIRECTOR]
for and on behalf of POSTURITE
LIMITED

Director

Signed by [NAME OF DIRECTOR]
for and on behalf of {The Customer}

Director