



WorkXpress 24/7/365 Terms of Service (TOS)

Current versions of this and other documentation may be found at:

<http://www.workxpress.com/support/index.php>

Terms of Service Version 2: The Terms of Service contained herein supersede and replace all previous Terms of Service versions distributed prior to June 25, 2007.

Support Availability: WorkXpress provides telephone, e-mail and Web support twenty-four (24) hours a day, seven (7) days a week, three-hundred and sixty five (365) days a year (24/7/365). This includes general information, technical notes, problem diagnosis of software failures, and isolation and verification of “Defects”. All support hours expended by Express Dynamics on behalf of Client may be generically referred to as “Flex Services”.

Support shall be available to the Authorized Client Project Managers as set forth in the Purchase Agreement. Client shall provide a list of the names of those Client Project Managers designated as eligible for support and shall provide Express Dynamics with modifications thereto as such arise.

Service Guide Changes: Express Dynamics reserves the right, at its sole discretion, to modify, add, or remove portions of these Terms of Service at any time. Please check these Terms of Service periodically for changes. Continued use of the Express Dynamics Products or Services (including but not limited to WorkXpress or FlexServices) after the posting of Services to these Terms of Service will mean Client has agreed to abide by these Services. Any amendment to these Terms of Service by any Express Dynamics Client must be agreed to by Express Dynamics in writing. The following table shows how Terms of Service version 2 replaces version 1.

“Terms of Service v 1.0” section...

Support Guideline #1 Universal Support Policy
Managed Server Guideline #1: Support Allowances
Managed Server Guideline #2: Data Backup, Redundancy and Recovery
Hosting Service Guideline #1: Availability
Hosting Service Guideline #2: Allowed Usage and Overage Penalties
Flex Service Guideline #1: Software Customization
Flex Service Guideline #2: Data Importation Process

Is replaced by “Terms of Service v 2.0” section...

TOS #1: Project Management
TOS #2: Defect Allowances
TOS #4: Data Backup, Redundancy and Recovery
TOS #3: Maintenance and Uptime
TOS #5: Hosted Service Usage and Overage Penalties
TOS #1: Project Management
TOS #1: Project Management

Exclusive Remedies: Except for the specific remedies expressly identified as such in these Terms of Service, Client’s exclusive remedy for any claim arising out of this Terms of Service or any applicable Purchase Agreement shall be for Express Dynamics, upon receipt of written notice, to use commercially reasonable efforts to cure the breach at its expense, or failing that, to return fees paid by Client for the specific work related to the breach.



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Definitions

General Terms

Services	These may include Design, Development, Training, Data Importation, Documentation or any other expenditure of time by an Express Dynamics employee at the Client’s request.
FlexServices	The aggregate name for all services provided by Express Dynamics employees.
Support	The provision of services as a required follow-up to some previous activity performed by Express Dynamics on behalf of the Client. Support may be result from the provision of services as a part of a Flex Services, Maintenance or Support Agreement; or, as a result of a defect or perceived defect in an Express Dynamics product or service.

Billing Terms

Hours Balance	The FlexService hours pre-purchased by the Client, less the approved hours spent by Express Dynamics. Billing for service work will occur according to some agreed-to cycle and will reference the Hours Balance.
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Documentation

Master Agreement	Umbrella agreement between Client and Express Dynamics detailing general issues of the contractual relationship
Hosted Service Agreement	Umbrella agreement between Client and Express Dynamics detailing specific issues of the hosted service relationship
Managed Service Agreement	Umbrella agreement between Client and Express Dynamics detailing specific issues of the managed service relationship
Purchase Agreement	An agreement between Client and Express Dynamics for Client to purchase goods or services
Web Form	Location for submitting service or support requests http://www.workxpress.com/support/index.php?selected_section=1



Terms of Service #1: Project Management

Project Management Terms

Project	The object of a Service or Support Request
Project Classification	A Project will be either a "Service" or a "Defect", suggesting and in some cases equating to financial responsibility on the part of the Client or Express Dynamics respectively.
Service	A Project that is requested by the Client and is not the result of a Defect
Defect	A Project that is the result of non-performance of a WorkXpress Product or Service to perform substantially in accordance with the most current documentation
Defect in Service ("tier 2")	A defect that specifically pertains to service work performed (aka Service Defect)
Defect in Engine ("tier 3")	A defect that specifically pertains to the WorkXpress engine (aka Engine Defect)
Severity Level	The urgency of a defect based on impact to the Client: Down, Critical or Non-Critical
Down	Systems are not available.
Critical	Functionality is seriously impaired causing a material (>5%) slow-down in business operations.
Non Critical	Project does not materially (<5%) impact business operations.
Specification Document	Form or Forms used to describe desired application functionality using the language of WorkXpress's 5 building blocks.
Work-time estimate	Projection of the amount of time required to build a specific set of functionality
Work-time	Time spent building functionality on the WorkXpress engine
Design-time estimate	Projection of the amount of time required to design and produce specification documents for a specific set of functionality
Design-time	Time spent designing and produce specification documents for a specific set of functionality
Rough estimate	a non-binding estimate
Firm estimate	an estimate that represents a commitment to deliver according to the prescribed conditions
Project Management Portal	The web interface that Clients and Express Dynamics use to document projects and communicate authorizations and activities.
Project Manager	The Express Dynamics employee responsible for an application development project
Client Project Manager	The Client representative responsible for an application development project who is authorized to approve hours expenditures on behalf of the Client
Authorization	Approval to expend hours on behalf of the Client. Client's hour's balance will be deducted immediately upon receipt of authorization. The change will be available to the next billing cycle.
Specification approval	Consent by Client that documentation is explicitly and exclusively representative of the functionality they desire.
Rollout	Movement of an application from one server environment to another
Testing Environment	Environment used to test an application, often using a copy of recently used production data
Production Environment	The Environment used by Users in the course of normal business

Response and Resolution Terms

Response Time	The time allowed for Express Dynamics to respond to a Support Request
Resolution (Resolve)	Either a modification or addition to or deletion from the Software that, when made to such software shall materially conform such software to the Documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates or otherwise mitigates the material adverse effect on Licensee of such Defect.
Resolution Time	The time allowed for WorkXpress to resolve a Support Request



Step 1: Project Submission

Project Submission is via Web-Form

Express Dynamics accepts only one form of Project Request, which is via a web-form. However, submission of a Project Request via telephone to 1-866-733-0687, or via e-mail hereby automatically constitutes authorization of Express Dynamics to submit a web-form on the Client's behalf. At this point, the web-form is assumed to have been submitted by the Client, and the process may continue.

Automatic Authorization of one (1) hour

Any Project Request hereby constitutes automatic authorization of one (1) hour of Flex-Service time to be spent reviewing, analyzing and managing that Project. This one (1) hour will immediately be deducted from the Client's available Hours Balance. This one (1) hour may be credited back to the Client in the event the Project Request is covered under a Defect Allowance, and according to the process described here and in Terms of Service #2: Defect Allowances below.

Severity Level

The Client must designate the Severity Level of the Project. If via email, the Client can elect to impart a Severity Level of the Project by using one of the following email addresses; (support@workxpress.com, critical@workxpress.com or down@workxpress.com). If for whatever reason the level of support is ambiguous, not specified or otherwise unclear, the Client hereby imparts approval to treat this request as though it were of a Non-Critical nature. If for whatever reason the Severity Level is overstated, meaning declared more severe than actual circumstances reveal, the Client may be liable for Support Overage (see Terms of Service #2: Defect Allowances and Billing).

Response

Response Time begins to accumulate upon submission of the Web-Form for this Project. "Response Time" shall mean the time elapsing from when the Web-Form is submitted, as set forth above, to when a WorkXpress Project Manager contacts the system administrator via a telephone callback or e-mail. If no one answers the telephone call to Client, the WorkXpress technical support representative can meet the Response requirement by leaving a voice message indicating that a response has been made and instructing the Client as to how to coordinate with the WorkXpress technical support representative. Time periods that result from a Defect in an emailing system or any other factor which is outside of the direct control of Express Dynamics will not be considered when calculating the Response Time.

Current Response and Resolution Time Frames

Severity	Email address	Response Time	Resolution Time	Overage Rate
Down	down@workxpress.com	.5 hours	4 hours	\$* / hour
Critical	critical@workxpress.com	2 hours	96 hours	\$* / hour
Non-Critical	support@workxpress.com	12 business hours	Next scheduled release	\$* / hour



Step 2: Project Classification – Defect or Service

All Projects must be classified for billing purposes before work can begin

WorkXpress and Client collaboratively work to isolate and identify the Project details. WorkXpress and Client agree on Classification of Issue (“Defect” or “Service”. Several sub-classifications of Service may be available for meetings, training, etc.), or if unable to mutually agree, Express Dynamics will assign a classification. WorkXpress and Client agree on Severity Level of Project (Down, Critical, Non-Critical). If the Issue is classified as a Defect, Resolution Time begins to accumulate. The Defect may be further classified as a Tier 2 (Service) or Tier 3 (engine) Defect. Tier 2 Defects result from provision of Services. Tier 3 Defects result from provision of the WorkXpress engine.

Next Step

If the Project is classified as a Defect, the Defect Resolution process may begin.

If the issue is classified as a Service, the Design process may begin.

Step 3: Design

Rough Estimates

You may request that, at the Clients expense, Express Dynamics produce a “Rough Estimate” of the project scope. This estimate is non-binding and has two components:

1. Design-time required to produce Specification Documents
2. Work-time required to complete the Project

Goals for Step 3: Design

Project Managers and Client Project Managers will work together during the design phase, to bring design to a conclusion.

The work-product for the design phase is:

1. Final Specification Documents. These documents must be in a specific format adhered to and approved by Express Dynamics. The purpose of this documentation and its format is to minimize or eliminate ambiguity or misunderstanding between the Client and Service Provider.
2. A firm Work-Time estimate. Express Dynamics will produce functionality exactly as per the specification documents within the time frame established in the Firm Work-Time Estimate.

Supplemental Hours Requests

If the time required by Express Dynamics to complete any aspect of Step 3: Design, including the Rough Estimate, is greater than the remaining Hours Balance of pre-approved hours for this project, a Supplemental Request will be sent seeking authorization to use and bill additional time.

Work will not be authorized to proceed until this supplemental hours request is approved.

This supplemental hours request does not represent a firm estimate of any kind. Additional supplemental hour’s requests may be provided at a later time.

Authorization to Continue

Client will be notified when their Design Specifications and Firm Work-time Estimate is ready. The Client must approve those designs and estimates using the Project Management Portal. Work may not continue until authorization is received from the Client via the Project Management Portal. Any changes to the design specifications will invalidate the old and necessitate a new Firm Work-time Estimate.

Billing

The Clients Hours Balance will be deducted immediately upon authorization of the hours requested in any Supplemental Hours Request or Firm Work-time estimate with Specification documents.



Step 4: Work

Work Order Set by Client

For any set of approved Specification Documents and Work-time Estimates, work will be conducted by Express Dynamics according to the priorities and in the order set by the Client by using the Project Management Portal.

Strict Adherence to Design Specifications and Firm Work-time Estimates

Work will be completed exactly as per the approved Specification Documents. Work-time billed will not exceed the Firm Work-time Estimate provided and approved during Step 3: Design.

Changes

Any change to work in progress may result in a new Project being created or a Supplemental Request for Time being submitted for authorization. Changes will not be accepted as a part of the existing Firm Work-time estimate.

Goals for Step 4: Work

The Project Manager for this Project will work to bring the Work phase to a conclusion, utilizing the WorkXpress hosted development environment. The Work-product for this phase is a set of features, exactly as described in the specification document, delivered to the testing environment.

Step 5: Testing

Clients Responsibility

It is the Client's responsibility to test features prior to production roll-out. The Testing process is used to test for Defects in the WorkXpress engine or for variance between the approved Specification Documents and what was actually built. Any other "perceived defect" will be considered a defect in design, and will be the responsibility of the Client.

Important Note: During the Testing phase, all development of features not already in QA may be temporarily suspended.

Defects

There can be only two types of Defects discovered during testing. Failure of the Project's features to function as described in the authorized Specification Documents constitutes a Service Defect (Tier 2 Defect) for purposes of Defect resolution.

Failure of the WorkXpress engine to behave as described in current documentation constitutes an Engine Defect (Tier 3 Defect) for purposes of Defect Resolution.

Service Requests

Failure to adequately verify the satisfactory nature of Specification Documents or to adequately interpret the behavior of the documented set of Features remains the responsibility of the Client. The Client may direct a new Project be undertaken at the Clients responsibility to address the gap between expectation and current functionality. As per these TOS, time spent by Express Dynamics to identify and manage perceived defects (Projects) will be the Client's responsibility. Should those Projects be classified as Defects, a Defect Allowance may cover the time spent by Express Dynamics.

Final Acceptance

The "Final Acceptance" occurs with either the first of 2 events;

1. The Project is Approved by the Client to move to production in the next Rollout
2. The feature remains in Testing for 30 days without related communication from Client



Step 6: Production

The Project, once approved for Rollout, will be moved into Production. Only variances in Production functionality relative to Testing functionality, or failure of the WorkXpress engine to perform according to current documentation, will be considered Defects for purposes of determining a Defect Allowance.

Defect Resolution

Defect Resolution Process

On a basis consistent with industry norms, WorkXpress will provide corrections for Defects reported according to the procedures and conditions described herein and in Terms of Service #2: Defect Allowances. WorkXpress shall use commercially reasonable efforts to correct Defects in accordance with the appropriate resolution times and with as little disruption to Clients' service as commercially practicable. If a Resolution can not be achieved within the Resolution Period, WorkXpress will use its commercially reasonable efforts to provide a workaround for a Defect within the Resolution period (a "Workaround") and a plan for final Resolution thereafter. WorkXpress shall regularly report the status of its efforts toward final resolution of a Support request via its Project Management Portal.

Defects that rise to the severity level of Critical will receive WorkXpress' commercially reasonable efforts to provide a Workaround and Resolution. Defects that rise to the severity level of Down will receive WorkXpress' commercially reasonable efforts on a 24/7 basis to provide a Workaround and Resolution.

Client Responsibilities

Client shall accurately assess the Severity Level of a Support Request. If Support is requested and the Client then realizes that the requested Severity Level was inaccurate, the Client must immediately notify WorkXpress of the change in Severity Level.

Client shall provide WorkXpress a reasonably detailed description and written documentation of any suspected Defect in the applicable Licensed Program to perform substantially in accordance with the most current documentation at a level of detail which allows WorkXpress to replicate and validate the suspected Issue and determine if a Defect exists. WorkXpress will investigate the facts and circumstances related thereto and Client agrees to cooperate fully with WorkXpress' investigation. If applicable, Client shall provide remote data communication access to enable WorkXpress to conduct remote diagnostic procedures.

The Support obligations of WorkXpress are based upon the Client's obligations to designate qualified system administrators and to assure that the following steps are taken in advance of any Support request to WorkXpress:

1. Client has first checked to ensure that use of the WorkXpress Platform is in accordance with its documentation; and
2. Client has taken reasonable steps to eliminate any hardware, operating system software and application software deficiencies; and
3. Client has collected all relevant data and documented all operating conditions and other operation information relating to the incident; and
4. Client fully implements any correction or Workaround, fully describes any limitations imposed by such correction or Workaround, and fully cooperates with WorkXpress.



Data Importation

Design

1. Meet until final decisions are made on;
 - a. File formats
 - b. Data sets
 - c. Import schedule (time table). Note: Scheduled import time is NOT considered Downtime for purposes of any Hosted Service Uptime or Support related calculation.
2. Customer prepares sample data files (small, accurate data sets are preferred) and delivers to WorkXpress

Work

3. WorkXpress prepares any import tool modifications necessary to facilitate a smooth import
4. Customer delivers complete data files, in the agreed upon format, at the agreed upon time
5. WorkXpress performs complete import on the QA system and verifies all data sets
 - d. Any Data sets not conforming to specifications are returned to the customer for corrections

Testing

Client may test the data import in the Testing Environment

Import to Production Environment

6. Once complete data sets that conform to the specifications are provided, and a final QA test-run completes successfully
 - e. WorkXpress performs data backup
 - f. WorkXpress and Client agree to final import time (usually outside business hours)
 - g. WorkXpress performs the import
7. WorkXpress runs confirmation scripts to ensure all data has been properly imported, and a report of completion details is sent to the customer for their review

Billing

Time spent by WorkXpress throughout the data importation process is credited against the Clients FlexService hours balance. Express Dynamics is not responsible for Client Data integrity or errors. All time spent by Express Dynamics managing client data will be applied to the Clients FlexService hours balance.

Defects

As part of a Flex Services Purchase Agreement, WorkXpress will provide a Defect Allowance for any data import in which;

1. The Importation Process above was followed and documented
2. The issue that results is the direct result of a Defect by Express Dynamics, and is in no way related to an unaccounted-for anomaly in the data supplied by the Client or a discrepancy between that Data and the agreed to import specifications



Terms of Service #2: Defect Allowances

Summary

Concurrent with a valid WorkXpress license and Flex Service Maintenance Agreement, WorkXpress will provide Defect Allowances for Defects in the WorkXpress Engine (see terms and conditions hereunder) and for Defects in Flex Service workmanship according to the specific Purchase Agreement and these TOS.

Definitions

Defect Allowance	Time spent by Express Dynamics employees that is covered as a Defect under any particular Flex Service or Licensing Purchase Agreement
Support Allowance	Time spent by Express Dynamics employees that is covered as a part of a Support or Maintenance Agreement.
Overage	Time spent by Express Dynamics employees ostensibly under some service or support agreement that, upon analysis, is not actually covered by the Defect or Support Allowances

Licensed Products, Hosted or Managed

A Defect Allowance, as Classified during the course of process described in the Terms of Service #1: Project Management, shall be provided for the licensed version of the WorkXpress Engine for the Term specified in the Hosted or Managed Service Purchase Agreement, provided that all terms and conditions of providing such Defect Allowance are met in the respective Purchase Agreement, under Terms of Service #1, and provided that these Terms of Service #2: are in place.

FlexServices

A Defect Allowance, as Classified during the course of process described in the Terms of Service #1: Project Management, shall be provided for the delivered FlexServices for the Term specified in the Flex Service Purchase Agreement, provided that all terms and conditions of providing such Defect Allowance are met in the respective Purchase Agreement, under Terms of Service #1, and provided that this Terms of Service #2: is in place.

Billing and Overage

Time spent by Express Dynamics resolving Defects will not be billed to the Client so long as the Client meets all four of the criteria below. WorkXpress reserves the right to invoice Client at the then current Support Overage labor rates if these criteria are not met:

1. A Support Allowance, Defect Allowance or Warranty exists to cover the particular Support Provided. It is common for a Client to receive Defect Allowances for Defects as a direct result of a Support Agreement; Tier 2 Defects are commonly covered as part of a Flex-Services engagement and Tier 3 Defects are commonly covered as part of a Hosted Service or Managed Service agreement.
2. Support was submitted with a Severity level at or below, but not above, the actual Severity level
3. Client adequately performed their responsibilities and obligations under all applicable Terms of Service, Purchase Agreements and Master agreement.
4. Client is current in its payments under the specific Purchase Agreement related to this Support Request



Terms of Service #3: Maintenance and Uptime

Maintenance

Summary:

Maintenance Agreements for Hosted or Managed Servers may include;

- Support Allowance against Tier 3 Defects
- Hardware monitoring and diagnostics
- Service availability monitoring
- Uptime service guarantee
- Software updates and engine enhancements
- Security updates and patches
- Updated Documentation

Support Allowance against Tier 3 “engine” Defects

On a basis consistent with industry norms, WorkXpress will provide corrections for Defects reported according to the procedures and conditions described herein, in Terms of Service #1 Project Management and in Terms of Service #2: Defect Allowances. WorkXpress shall use commercially reasonable efforts to correct Defects in accordance with the appropriate resolution times and with as little disruption to Clients' service as commercially practicable. If a Resolution can not be achieved within the Resolution Period, WorkXpress will use its commercially reasonable efforts to provide a workaround for a Defect within the Resolution period (a “Workaround”) and a plan for final Resolution thereafter. WorkXpress shall regularly report the status of its efforts toward final resolution of a Support request via its Project Management Portal.

Hardware Monitoring, Service Availability Monitoring and Diagnostics

Express Dynamics will monitor and diagnose hardware installations provided that a Managed Service agreement is in place and that Express Dynamics employees have remote access to the hardware. Hardware may be monitored for service availability, errors, impeded performance, usage and other variables deemed to be relevant at that time. Express Dynamics will limit its activities under this TOS to hardware monitoring and diagnostics for the purpose of managing a performing WorkXpress application environment.

Software Updates and Engine Enhancements:

Express Dynamics will provide core WorkXpress Engine corrections, updates, enhancements and new releases (including successor products that provide substantially the same functionality even if released under a different name) to the licensed software module(s) (“Updates”) as they may become commercially available at no additional charge. WorkXpress shall provide Client written notice of the time period in which Updates shall be applied. These Updates shall not include, if applicable, Client customizations, custom reports, and any other Client unique aspects that are not a part of the standard WorkXpress Platform (“Client Specifics”). In the event that the licensed software has been customized as per a request from Client, additional professional service charges may be required to apply any Updates.

Security Updates and Patches

Express Dynamics, as a part of a valid Maintenance or Hosted Service agreement, may regularly apply security updates and patches to the hardware and software systems required on a WorkXpress installation.

Additional FlexServices:

The Support Allowance provided by these Terms of Service does not include any FlexServices including, but not limited to assistance in application design and configuration, application consulting, software customization, deployment consulting services, writing of drivers and/or personnel training and implementation services of any Client Specifics relating to corrections, updates, major enhancements and/or new releases including but not limited to migration of Client’s data, content, customizations, custom reports and any other Client unique aspects.



WorkXpress reserves the right to charge additional fee(s) for providing patches, fixes or debugged source code as may be requested by Client in order to solve a unique problem or to support the upgrade, testing and validation of Client requested customizations of the application. All such FlexService may be provided by WorkXpress subject to availability and at WorkXpress' then current time and material policy and rates, and will be covered under a separate Purchase Agreement.

Documentation:

A copy of current documentation which may accompany future WorkXpress Platform corrections, updates, major enhancements and/or new releases, if any, will be made available as a part of this Support.

Uptime

Summary:

99.9% Uptime exclusive of fourteen (14) hours of scheduled downtime and four (4) hours of unscheduled downtime per month

Definitions:

Available	State of Hosted Services in which engine is accessible and fully functional for all End Users
Uptime	Any time during which the Hosted Services are Available
Downtime	Any time during which the Hosting Services are not Available to End Users
Permitted Downtime	Downtime allowed as per these TOS
Unpermitted Downtime	Downtime not allowed as per these TOS
End User	as defined in the master agreement
Hosted Service	The delivery by WorkXpress of the WorkXpress engine via the worldwide web.

Notes:

1. Notwithstanding the Permitted Downtime as set forth in Paragraph (b) herein, the Hosting Service shall be available to the Number of End Users set forth on the first page of the applicable Purchase Agreement less one (1) hour of Unpermitted Downtime as set forth in Paragraph (b) herein. WorkXpress will use a formula based on a thirty-one (31) day month, where (x) = site availability, (n) = number of hours per month.

The calculation is as follows:

$$x = [((n - 18 \text{ hours of Permitted Downtime} - 1 \text{ hour of Unpermitted Downtime}) / (n - 18 \text{ hours of Permitted Downtime})) * 100];$$

$$\text{or } x = [((744 - 18 - 1) / (744 - 18)) * 100]; \text{ or } x = 99.9\%.$$

The fees paid by Client to Express Dynamics pursuant to the applicable Purchase Agreement shall be reduced in proportion to the amount of "Unpermitted Downtime" greater than 99.9%, and said amount shall be credited toward Client's next Hosting Service Fee due under the applicable Purchase Agreement.

2. Permitted Downtime: Notwithstanding Section (a) hereto, Client agrees that the Hosting Service may be unavailable for: (i) up to four (4) hours per month of unscheduled downtime, (ii) four (4) hours of scheduled nightly resets, and (iii) not more than ten (10) hours of scheduled maintenance as set forth below in this Paragraph (b) ("Permitted Downtime"). Further, WorkXpress shall have one (1) additional hour of unscheduled downtime above the Permitted Downtime ("Unpermitted Downtime"). In such circumstances, there shall be no reduction in fees owed to WorkXpress from Client. Further, no reduction in fees due to Downtime shall be assessed if the unavailability of the Hosting Service is caused by circumstances beyond the control of WorkXpress or because of defects in materials or services located outside of WorkXpress' premises, including, but not limited to failure of



computer or telephone systems at Client's place of business or defects in the transmission of any information caused by the transmission. WorkXpress shall be permitted to conduct scheduled maintenance of not more than ten (10) hours per month and such scheduled maintenance within this limit shall not reduce the fees owed to WorkXpress from Client. WorkXpress will, when able, provide a minimum of five (5) days prior written notice to Client should WorkXpress schedule maintenance on a day and or time other than the first Sunday of each month during the hours of 8:00 a.m. to 6:00 p.m. Eastern Time. Exceptions will be those instances, if any, where WorkXpress itself has not been provided a five (5) day notice and WorkXpress has no control over the situation or circumstances are beyond its control. In all such case(s), WorkXpress shall provide written notice to Client as soon as possible following WorkXpress' receipt of such notice. Other Exceptions may result from Client initiated activities, including but not limited to FlexService.

3. In the event Express Dynamics is required to relocate the Hosting Service to a geographically different application hosting facility, Express Dynamics shall be permitted to do so without a Downtime penalty. Should this occur, WorkXpress shall provide written notice and use its commercially reasonable efforts to minimize any inconvenience to Client.
4. WorkXpress continuously monitors its systems for Uptime. In the event Express Dynamics becomes aware of Downtime prior to receiving notification from Client of such Downtime, then WorkXpress shall promptly take appropriate steps to restore the Hosting Service and notify Client of such Downtime event. The calculation of Downtime shall begin when WorkXpress becomes aware of such Downtime. Client shall notify WorkXpress promptly upon becoming aware of any Downtime and shall provide such notification by means of an email to down@workxpress.com or by telephone to 1-866-733-0687.
5. Access to Managed Servers. In the event Express Dynamics employees can't receive immediate access to hardware managed by the Client either directly or through "local hands", time spent waiting for this access will be counted as "permitted downtime"
6. As stated in "WorkXpress 24/7/365 Terms of Service" above, Express Dynamics expressly reserves the right to alter these TOS from time to time.



Terms of Service #4: Data Backup, Redundancy, Recovery

Summary:

WorkXpress includes basic backup services to aid the Client to recover from a disaster. Additional Backup, Redundancy and Disaster Recovery services, including live failover, may be purchased under a separate Purchase Agreement.

Usage Category	Allowance (per User)	Overage Cost
Backup Storage (Offline Storage)	1 GB / User	\$* / GB / Month
Increment Frequency	1 / day	\$* / user / month / increment
Increment Archive Schedule	Each of... Last 5 business days, Last 3 Weeks, Last 2 Months, Last 7 Years	(resulting Storage is calculated into Storage Allowance and Overage above)

Definitions:

Backup	The Client data, records and/or files that are copied and stored redundantly
Backup Allowance	The total in gigabytes of allowed backup storage
Backup Overage	Backup storage exceeding the Backup Allowance
Increment	A snapshot of Client data at particular point in time
Increment Frequency	The number of times an Increment is captured in a 24-hour cycle
Increment Archive Schedule	The kind and number of Increments stored on behalf of the Client

Recovery:

WorkXpress shall keep in a separate and safe place off-site ("Off-site"), additional copies of all records and Client data (The collection applicable of Increments ("Backups")) required to be maintained or additional tapes or disks necessary to reproduce all such records and Client data.

In the event of loss of data by WorkXpress, WorkXpress shall use its commercially reasonable efforts to regenerate the lost data, provided however there is no guarantee of success and the sole and exclusive remedy for such data loss is the efforts to regenerate. There is no guarantee that old data will immediately function as expected on a new version of the WorkXpress engine. WorkXpress will maintain and provide versions of the engine that correspond to past data backups.

Notes:

1. There is one type of Backup information stored by WorkXpress, referred to herein as "Backup Data".
2. Client shall have a Backup Allowance to store Backup Data. Any additional Backup storage beyond the Backup Allowance will be considered Backup Overage. The allowance is calculated per User but the Backup Overage is calculated across all Users.
3. Client may elect an Increment Frequency. That frequency may be increased or decreased with 48 hours notice.
4. WorkXpress will purge these increments from time to time, prior to any billing for Backup Storage, according to the Increment Archive Schedule associated with the applicable Purchase Agreement. Limited numbers of unique Backups and/or Increments will be stored at any given time
5. Client will be provided access to a Backup Storage report.
6. Client shall be responsible for the content of all data Backed up by WorkXpress on their behalf. Any content that is illegal, immoral or otherwise objectionable shall be the sole responsibility of the Client.
7. WorkXpress reserves the right to adjust its Backup Allowances and Backup Overage penalties from time to time. Client will, however, be provided written notice of any material changes to the current policy.

Data Redundancy:

WorkXpress deploys a multi-tier backup/recovery system in an effort to minimize system problems. The WorkXpress disaster recovery system may provide hardware support as well as software support. WorkXpress supports component level to server level redundancy in many cases.



1. Backup hardware/software. Client's application data is backed up to a secure, off-site location using secure communication channels.
2. Data redundancy. WorkXpress stores all application and database data utilizing Redundant Array of Inexpensive Disks ("RAID") technology. All RAID partitions are either RAID Level 1 or RAID Level 5.

Hardware redundancy:

WorkXpress deploys redundant systems when possible with each system built using redundant technology where possible. Spare hardware is on WorkXpress' premises for replacement of critical components. The redundant systems and parts include but are not limited to hard drives, power supplies, CPUs, RAM and full servers.



Terms of Service #5: Hosted Service Usage and Overage Penalties

Summary:

Usage Category	Allowance (per User)	Overage Cost
Online Data Storage	1 GB / User	\$* / GB / Month
Online Files Storage	n/a	n/a
Bandwidth	0.4 GB / User / Month	\$* / GB / Month

Definitions:

Data	Information stored on an online database server
Files	Information stored on an online file server (file servers are an optional service)
Bandwidth	Internet connection usage to the Hosted Service
Allowance	An amount of Data, Files or Bandwidth provided at no additional charge
Overage	Any usage of Data, Files or Bandwidth beyond the allowance

Notes:

1. There are two types of information stored within the WorkXpress Engine, referred to herein as "Data" and "Files". Although there will always be a Data component, there may or may not be a File component depending on the specific Hosted Service options chosen.
2. Client shall have an allowance to store Data and Files, and to use Bandwidth on the Hosted Services at no additional charge. Any additional Data and Files stored or Bandwidth used beyond the allowance will be considered "Overage". Although the allowance is calculated per User, the overage is based on a total that has been calculated across all Users.
3. Overage for Bandwidth, Data and Files are each charged at different rates
4. Client will be provided access to a disk space usage and bandwidth usage report.
5. Client shall be responsible for all content to be accessed using the Hosting Service ("Client Content").
6. If a Client's activity using their application causes interruptions in service for other Clients hosted on the same PowerPlant, WorkXpress reserves the right to take action to limit the impact of the offending Client's activities. This may include making recommendations for changes to the Client's hosting agreement (such as migrating to their own hosted or collocated server), or can be more drastic such as disabling the Client's application until a suitable fix can be created and agreed upon. Any and all remedies under this section do not count towards "Downtime" as defined in Terms of Service #3: Maintenance and Uptime.
7. As stated in "Service Guideline Changes" above, WorkXpress expressly reserves the right to alter this Guideline from time to time.