

UPUNCH
END USER LICENSE AGREEMENT

IMPORTANT: READ THIS END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE CONTINUING REGISTRATION. BY CLICKING THE “I ACCEPT” BUTTON YOU SIGNIFY THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO FOLLOW THE TERMS AND CONDITIONS OF THIS EULA, INCLUDING, WITHOUT LIMITATION, THE TERMS AND CONDITIONS OF DOCUMENTS WHICH ARE INCORPORATED BY REFERENCE HEREIN. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS EULA, YOU MUST SELECT THE “I DECLINE” BUTTON AND MAY NOT USE UPUNCH PLATFORM.

A. Definitions.

“Order” refers to your agreement to license the uPunch through our website.

“Workwell Technologies” refers to “Workwell Technologies, Inc.”

“uPunch” refers to the uPunch and associated software as a service platform provided by Workwell Technologies.

“You” or “your” refer to any individual or entity ordering or using uPunch.

“Your Data” refers to any data that you input or import into uPunch or is derived from uPunch, including, but not limited to, information regarding employees, time cards, hours worked, users, departments, or other data.

B. Rights Granted.

Upon Workwell Technologies’ acceptance of your Order and until your Order is canceled or is otherwise terminated, you have the nonexclusive, non-assignable limited right to use uPunch for your internal business operations subject to the terms of this EULA. You are responsible for your compliance with this EULA. Your rights to use uPunch are subject to this EULA.

You acknowledge that Workwell Technologies has no delivery obligation and will not ship copies of uPunch to you as part of the services. You agree that you do not acquire under the EULA any license to use uPunch in excess of the scope and/or duration of the services, as specified in the Order. Upon the cancelation or termination of your Order, your right to access or use uPunch and the services provided therein shall terminate, subject to the right, for a limited period of time, to obtain a copy of Your Data, as specified herein in Section I.

C. Ownership and Restrictions.

You retain all ownership and intellectual property rights in and to Your Data. Workwell Technologies retains all ownership and intellectual property rights to uPunch and its services. You may not remove or modify any program markings or any notice of Workwell Technologies' proprietary rights from uPunch. You may also not make uPunch or any materials associated with uPunch available in any manner to any third party for use in the third party's business operations. You may also not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of uPunch or access or use uPunch or associated services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Workwell Technologies.

You may also not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make uPunch or associated materials available to any third party other than as expressly permitted under the terms of the EULA. No part of uPunch may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means. You also agree to make every reasonable effort to prevent unauthorized third parties from accessing uPunch.

D. Updates.

Workwell Technologies may update or enhance uPunch from time to time. You should review any notice of any update and conform to the instructions provided by Workwell Technologies regarding any update.

E. Your Data.

In conjunction with your use of uPunch, Your Data may be input, imported or derived from uPunch, among other things, to manage employees, track salaries, time, vacations, overtime, attendance, performance or other goals, provide feedback, integrate with other systems maintained by you, establish forecasts, manage employees or workforce, or for other purposes. You are solely responsible for the content of Your Data in whatever forms it is imported, exported or derived from uPunch. By agreement to this EULA, you attest that you have rights to Your Data and have permission to use Your Data in conjunction with uPunch.

You should not include any "personal information" regarding any individuals in Your Data. "Personal information" includes, but is not limited to, the following information (as defined in Section 1798.81.5 of the California Civil Code): an individual's first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: (A) Social security number; (B) Driver's license number or California identification card number; (C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; and (D) "Medical information," which means any individually identifiable information, in electronic or

physical form, regarding the individual's medical history or medical treatment or diagnosis by a health care professional.

Workwell Technologies treats Your Data as confidential and will not provide access to Your Data to any third party. Workwell Technologies may access Your Data to perform services for support, consulting or other services to confirm your compliance with this EULA. This may include testing and applying new product or system versions, patches, updates and upgrades, monitoring and testing system use and performance, and resolving bugs and other issues you have reported to Workwell Technologies. Any copies of Your Data created for these purposes are only maintained for time periods relevant to those purposes.

Workwell Technologies may be required to retain or provide access to Your Data to comply with legally mandated reporting, disclosure or any other legal process requirements.

Workwell Technologies does not use Your Data except as stated above. Through the systems provided, Workwell Technologies may process Your Data, but does not control your collection or use practices for Your Data. You control access to Your Data and any requests or questions related to this data should be directed to you and not Workwell Technologies. You are responsible for providing any notices and/or obtaining any consents necessary for you to input Your Data into uPunch and for Workwell Technologies to access, use, retain and transfer Your Data as specified in this EULA.

F. Security and Breach Notification.

Workwell Technologies is committed to maintaining the security of the services that it provides, including uPunch, and has in place commercially reasonable physical, administrative and technical measures designed to prevent unauthorized access to those services. However, we cannot and do not guarantee the complete security of information you provide to us through your use of uPunch, including Your Data.

You are solely responsible for proper back-up of Your Data and you shall take appropriate measures to protect such data. You are also responsible for any data that is input, derived from, imported to, or exported from uPunch, including to or from any third party applications. Workwell Technologies assumes no liability or responsibility whatsoever if Your Data is lost or corrupted.

If Workwell Technologies determines that Your Data has been misappropriated or wrongly acquired by a third party, Workwell Technologies will promptly report to you such misappropriation or acquisition.

G. Warranties, Disclaimers and Exclusive Remedies

Workwell Technologies warrants that the services it will perform are in all material respect in accordance with the EULA and the Order. If the services provided to you for any given month during the services term were not performed as warranted, you must provide written notice to Workwell Technologies at the address listed below no later than five business days after the last day of that particular month detailing the nature of the alleged breach of warranty.

WORKWELL TECHNOLOGIES DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT WORKWELL TECHNOLOGIES WILL CORRECT ALL SERVICE ERRORS. YOU ACKNOWLEDGE THAT WORKWELL TECHNOLOGIES DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WORKWELL TECHNOLOGIES IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS AND SUCH INTERRUPTIONS DO NOT CONSIST OF A BREACH OF WARRANTY.

WORKWELL TECHNOLOGIES DOES NOT GUARANTEE THE PERFORMANCE OR RELIABILITY OF ANY PROGRAMS OR APPLICATIONS THAT ARE RUN BY THIRD PARTIES THAT CONNECT WITH AND/OR LINK TO UPUNCH. YOUR USE OF THESE THIRD PARTY APPLICATIONS OR PROGRAMS IS SUBJECT TO THE TERMS OF USE OF SUCH PROGRAMS AND WORKWELL TECHNOLOGIES IS NOT LIABLE FOR YOUR VIOLATION OF SUCH TERMS OF USE. WORKWELL TECHNOLOGIES IS ALSO NOT LIABLE FOR ANY EXPORT OF YOUR DATA TO ANY THIRD PARTY PROGRAM OR APPLICATION.

FOR ANY BREACH OF THE ABOVE WARRANTY, WORKWELL TECHNOLOGIES WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT FIVE PERCENT (5%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO WORKWELL TECHNOLOGIES, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND WORKWELL TECHNOLOGIES' SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

H. End of Agreement.

Services provided under this EULA shall be provided for the period defined in the Order, as renewed by your making ongoing monthly payments specified in the Order, unless early terminated in accordance with the EULA or by your failure to pay such monthly payments. The term of the services and any renewals are collectively defined as the "services term." At the end of the services term, all rights to access or use the services, including uPunch, shall end. In addition, Workwell Technologies may immediately suspend your password, account, and access to or use of the services (i) if you fail to pay Workwell Technologies, or (ii) if you violate any provision of this EULA and do not cure such violation within 30 days of Workwell Technologies' initial notice thereof. Any suspension by Workwell Technologies of the services

for violation of any provision of the EULA shall not excuse you from your obligation to make payment(s) as agreed in the Order.

Provisions that survive termination or expiration of the EULA are those relating to limitation of liability, payment and others which by their nature are intended to survive.

I. Retrieval of Your Data

In the event of the termination of the EULA under Paragraph H, Workwell Technologies may permit you to access the services solely to the extent necessary for you to retrieve Your Data then in the services environment. You agree and acknowledge that Workwell Technologies has no obligation to retain Your Data and that Your Data may be irretrievably deleted after 30 days following the termination of the EULA.

J. Fees.

You agree to pay for all services as set forth in the Order. All fees due under this agreement are non-cancelable and the sums paid nonrefundable.

K. Nondisclosure.

By virtue of this EULA and uPunch, the parties may have access to information that is confidential to one another. We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall include Your Data and all information clearly identified as confidential at the time of disclosure.

L. Entire Agreement.

You agree that the information which is in this EULA and is incorporated into this agreement, including the Order, is the complete agreement for the services ordered by you, and that the agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this EULA or the Order is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purposes and intent of the agreement. The EULA and the Order may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of you and Workwell Technologies.

M. Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. WORKWELL TECHNOLOGIES' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS EULA, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO WORKWELL TECHNOLOGIES FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12)

MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST WORKWELL TECHNOLOGIES SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

N. Choice of Law and Dispute Resolution.

Choice of Law. This EULA is governed by the substantive and procedural laws of California without regard to its conflict of laws principles. You and Workwell Technologies agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Diego County in California in any dispute arising out of or relating to the agreement.

Dispute Resolution. Any controversy or claim arising out of or relating to this this EULA or relating to the services provided by Workwell Technologies, the parties' relationship, the enforcement or interpretation of this EULA, or because of an alleged breach, default or misrepresentation in connection with this EULA, shall be determined by final, binding and confidential arbitration. The arbitration proceedings shall be held and conducted by a single arbitrator in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (the "JAMS Rules"), as modified by this Agreement. Such arbitration shall take place in San Diego, California, and be initiated by any party in accordance with the JAMS Rules. The demand for arbitration shall be made by any party hereto within a reasonable time after the claim, dispute or other matter in question has arisen, and in any event shall not be made after the date when institution of legal proceeding, based on such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. California Code of Civil Procedure Section 1283.05, which provides for certain discovery rights, shall apply to any such arbitration, and such Code Section is incorporated herein by reference. Discovery issues shall be decided by the arbitrator. Post-hearing briefs shall be permitted. The arbitrator shall render a decision within twenty (20) days after the conclusion of the hearing(s). In reaching a decision, the arbitrator shall have no authority to change, extend, modify or suspend any of the terms of this Agreement, or to grant an award or remedy any greater than that which would be available from a court under the statutory or common law theory asserted. The arbitrator shall issue a written opinion that includes the factual and legal basis for any decision and award. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of California or federal law, or any of them, as applicable to the claim(s) asserted. Judgment on the award may be entered in any court of competent jurisdiction. In addition, either party may seek, from a court of competent jurisdiction in Los Angeles County, provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving any right to arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall allocate all costs and expenses of the arbitration (including legal and accounting fees and expenses of the respective parties) to the parties in the proportions that reflect their relative success on the merits (including the successful assertion of any defenses).

O. Other.

· Workwell Technologies is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us.

- You shall obtain at your sole expense any rights and consents from third parties necessary for Workwell Technologies to perform the services under the agreement and for Your Data.

- If you have a dispute with Workwell Technologies or wish to provide other notice, please provide notice to Workwell Technologies, 2777 Loker Avenue West, Suite A, Carlsbad, California 92010.

- You may not assign the EULA or give or transfer the services described therein or an interest in them to another individual or entity.

- Except for actions for nonpayment or breach of Workwell Technologies' proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two years after the cause of action has accrued.

P. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party.

Q. Restrictions on Use of the Services.

You agree not to use or permit use of uPunch that violates applicable laws, ordinances or regulations. In addition to any other rights afforded to Workwell Technologies under the agreement, Workwell Technologies reserves the right to remove or disable access to any material that violates the foregoing restrictions. Workwell Technologies shall have no liability to you in the event that Workwell Technologies takes such action. You agree to defend and indemnify Workwell Technologies against any claim arising out of a violation of your obligations under this section.

R. Statistical Information.

Workwell Technologies may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate Your Data and/or identify your confidential information or include your company's name. Workwell Technologies retains all intellectual property rights in such information.

S. Third Party Web Sites.

UPunch may enable you to add links to web sites and access to content, references to products and services of third parties, including vendors, users, customers, and other third parties. Workwell Technologies is not responsible for any third party web sites or the content related to third parties provided on or through the services and you bear all risks associated with the access to the web sites and input of data into uPunch.

T. Customer Reference.

You agree that Workwell Technologies may identify you as a recipient of services and use your logo in sales presentations, marketing materials and press releases.

I ACCEPT THIS END USER LICENSE AGREEMENT

I DO NOT ACCEPT THIS END USER LICENSE AGREEMENT