

# SOFTWARE LICENSE AGREEMENT

## SERVICE AGREEMENT TERMS AND CONDITIONS ActivityHD® and ActivReporter® (all versions)

This Software Licensing Agreement (the “Agreement”) is between **AccountingWare®**, LLC (“**AccountingWare®**”) and “**Customer**”. The Agreement applies to the software named above, which includes the media on which **Customer** receives it, if any. The Agreement also applies to any **AccountingWare®** updates, supplements, and support services associated with the software. This agreement includes any attached addenda and are incorporated herein by reference.

ANY CHANGES TO THE LICENSE AGREEMENT WILL BE EMBEDDED WITHIN THE SOFTWARE UPDATES AND WILL SUPERSEDE THE LICENSE AGREEMENT YOU MAY HAVE SIGNED WHEN YOU INITIALLY PURCHASED THE SOFTWARE. YOU SHOULD PERIODICALLY REVIEW THE EMBEDDED LICENSE AGREEMENT SO THAT YOU ARE FULLY AWARE OF YOUR RIGHTS AND OBLIGATIONS. BY USING THE SOFTWARE, YOU ARE AGREEING TO ABIDE BY THE TERMS OF THE LICENSE.

### 1. Overview

By entering into this Agreement, **Customer** has certain rights with respect to the software and are as follows:

#### 1.1 Software

The software may include the following:

- server and management software;
- client software that can be installed on devices and used with the server software;
- additional components that may be separately licensed; and
- right to purchase support which includes any fixes, patches, or updates for the software.

#### 1.2 License Model

The software is licensed based on the following:

- number of ActivityHD® and ActivReporter® Company databases;
- number of concurrent users; and
- number of installed ActivityHD® and ActivReporter® packages.

### 2. Definitions

- “**Customer**” means the legal entity that has agreed to these license terms and **Customer** affiliates.
- “**Affiliate**” means any legal entity that owns, is owned by, or that is under common ownership with a party.
- “**Ownership**” means more than 50% ownership.
- “**Client Software**” means the software that allows a single personal computer, workstation, terminal, handheld computer, personal digital assistant, or other electronic device (“**device** or **devices**”) to access or use the server software or to use certain aspects of the server software when disconnected from the server.
- “**Server Software**” means the software that provides services or functionality on **Customer’s** server (computers capable of running the server software are “**servers**”).

- “System Database” means the underlying database that controls **Customer’s** users and financial reporting units.
- “Partner” means the Partner that has signed a Partner agreement with **AccountingWare®** authorizing the Partner to market and distribute the software.

### 3. Installation and Use Rights

#### 3.1 Server Software

- **Server Software.** **Customer** may install one copy of the server software to access **Customer’s** system database. However, **Customer** may only use the number of ActivityHD® and ActivReporter® Company databases that **Customer’s** license key permits. **Customer** may not duplicate license keys without **AccountingWare®’s** prior written consent.
- **Client Software.** **Customer** may install an unlimited number of copies of the client software. However, **Customer** may use the client software only with the server software and with only the number of users **Customer’s** license key permits.
- **Third-Party Software Requirements.** **Customer** is solely responsible for obtaining, licensing, and installing SQL, MS Office, Crystal Reports, and any additional third-party applications required by ActivityHD® and ActivReporter®. For additional information regarding third-party requirements, contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).

### 4. Additional Licensing Requirement and/or Use Rights

**User Licenses.** In addition to the server software license, **Customer** must acquire user licenses for the total number of users that access the system database directly or indirectly. User licenses are specific to a system database and may not be used with or shared among different system databases. **Customer** must license users for any and all access to the ActivityHD® and ActivReporter® databases.

The types of User Licenses are as follows:

- **On-Premises Concurrent Users.** Licenses that allow individuals at on-premises installations concurrent access to the system database. The number of concurrent users licensed refers to the maximum number of individuals that may access the system database simultaneously. For additional information about the types of user licenses and the license restrictions regarding user licenses, contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).
- **On-Premises Limited Access Users.** Licenses that allow individuals at on-premises installations concurrent access to one particular operational package (Purchasing, Contracts Processing, etc.). The number of users licensed refers to the maximum number of individuals that may access the specified package simultaneously. For additional information about the types of user licenses and the license restrictions regarding limited access user licenses, contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).
- **On-Premises Read-Only License.** Allows a user at an on-premises installation to view the output of the accounting system but restricts the user from making changes to the system. Note: There is no special license category for IT administrative users. The normal usage for IT admin is for backup and database management which does not require an ActivityHD® and ActivReporter® license.
- **Aspire Users.** Licenses that allow access to the system database hosted in our datacenter. The number of users licensed refers to specific named individuals that may access the system database.

Generic logins used by multiple users are not allowed. For additional information about the types of user licenses and the license restrictions regarding user licenses, contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).

- **Aspire Limited Access Users.** Licenses that allow individuals access to one particular operational package (Purchasing, Contract Processing, etc.) hosted in our datacenter. The number of users licensed refers to named individuals that may access the specified package. Generic logins used by multiple users are not allowed. For additional information about the types of user licenses and the license restrictions regarding limited access user licenses, contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).
- **Aspire Read-Only License.** Allows a user to view the output of the accounting system hosted in our datacenter but restricts the user from making changes to the system. Generic logins used by multiple users are not allowed.

**Aspire License.** Aspire is a separate license by which **AccountingWare®** will host the software on an **AccountingWare®** server and allow users access through a VPN connection established over the Internet. For more information contact **AccountingWare®** at [info@accountingware.com](mailto:info@accountingware.com).

**Company Database License.** In addition to the server and user licenses, **Customer** must have a license for each installed ActivityHD® and ActivReporter® Company, regardless of whether it is activated or deactivated. Company licenses are specific to each company with a separate database. **Customer** must license all ActivityHD® and ActivReporter® company databases.

**ActivityHD® and ActivReporter® Package Licenses.** Different combinations of ActivityHD® and ActivReporter® packages may be installed and used in conjunction with each installed company database, but **Customer** must license each ActivityHD® and ActivReporter® software package installed on **Customer's** server.

**Time Sharing and Third-Party Hosting.** **Customer** may not host the software for a Third-Party or have a Third-Party host the software for **Customer**, unless **Customer** has express written permission from **AccountingWare®**. Any company needing the software hosted may enter into an agreement with **AccountingWare®** for an Aspire hosting license.

**Restrictions Related to the Use of Crystal Reports.** If Crystal Reports Runtime Server (a SAP product) is included in the software, **Customer** may not distribute the Crystal Reports Runtime Server component of the software (the "Runtime Component") with any general-purpose report writing, data analysis or report delivery product, or any other product that performs the same or similar functions as the Runtime Component. **Customer** may not use the Runtime Component to create for distribution a product that is generally competitive with SAP product offerings. **Customer** may not use the Runtime Component to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of SAP.

**Modification Disclaimer.** Any modification by **Customer** to the source code of the software will nullify this and all other license agreements. **Customer** will be required to cease usage of the software, delete it from **Customer's** server, and return any and all copies to **AccountingWare®**. **Customer** agrees that **AccountingWare®** is not responsible for any problems that result from modifications made by **Customer**, a Partner, or any other third party acting on **Customer's** behalf, or any problems that are caused by third party hardware or software. **AccountingWare®** does not and will not have any obligation to provide technical or other support for any modifications made by **Customer**, a Partner, or any other third party.

**Additional Functionality.** AccountingWare® may provide additional functionality for the software. Other license terms and fees may apply.

**Complex Software.** Because AccountingWare® software is complex computer software, its performance will vary depending on Customer's hardware platform, software interactions, the configuration of the software, and other factors. The software is neither fault tolerant nor free from errors, conflicts, or interruptions.

**Bots and third-party interfaces** are considered open source software for ActivityHD licensed companies and users. Customer may freely access, modify, and distribute the code that has been created for them, so long as AccountingWare® has not explicitly identified the code as intellectual property belonging to AccountingWare®.

## 5. Benchmark Testing

Customer must obtain AccountingWare® prior written approval to disclose to a third party the results of any benchmark test of the software.

## 6. Scope of License

The software is licensed — not sold. This agreement only gives Customer certain rights to use the software. AccountingWare® reserves all other rights. Unless applicable law or a separate written contract with AccountingWare® gives Customer more rights despite this limitation, Customer may use the software only as expressly permitted in this agreement. In doing so, Customer must comply with any technical limitations in the software that only allow Customer to use it in certain ways. Customer may only use the software for Customer's internal business purposes.

Customer may not:

- reverse engineer, decompile, or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy;
- rent, lease, or lend the software; or
- use the software for commercial software hosting services.

Customer's rights to use the software are perpetual but may be revoked if Customer (or its affiliates) do not comply with the terms of this agreement. Rights to access the server software do not give Customer any right to implement AccountingWare® patents or other AccountingWare® intellectual property in software or devices that access the server.

## 7. Backup Copy

Customer may make multiple copies of the software for backup, development, and testing purposes, so long as such copies are not used in production and the development is for Customer's internal use only. Customer's backup copies may be hosted by a third party on Customer's behalf.

## 8. Fail-Over Rights

**Customer** may run a single passive, fail-over instance of the **AccountingWare®** system database(s) for temporary fail-over, disaster recovery support.

## 9. License Transfer

**Customer** may not transfer the software to a third party without **AccountingWare®**'s prior written consent. If permitted, there may be additional charges for transferring the software to a third party.

## 10. Documentation

Any person that has valid access to **Customer's** computer or internal network may copy and use the documentation for **Customer's** internal, reference purposes.

## 11. Export Restrictions

The software is subject to United States export laws and regulations. **Customer** must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end-users, and end-use.

## 12. Support Services

**AccountingWare®** requires support services for the software. For additional information, contact **AccountingWare®** at <mailto:support@accountingware.com>. See also Addendum 1 – *Service Agreement Terms and Conditions*.

## 13. Entire Agreement

With respect to Software Licensing, this Agreement sets forth the entire agreement between **AccountingWare®** and **Customer**, and supersedes any and all previous contracts, proposals, understandings, representations, warranties, or agreements, whether oral, written, or implied. This Agreement may only be amended by a change as set forth in Section 21, below.

## 14. Applicable Law

### 14.1 Texas

The laws of the State of Texas shall exclusively apply to any legal and/or equitable dispute which may arise between **AccountingWare®** and **Customer** without regard to conflict of law principles. Moreover, **Customer** agrees that the exclusive forum for initiating any potential claim against **AccountingWare®** and/or its supplier(s) shall be in Lubbock County, Texas.

### 14.2 Attorneys' Fees and Costs

If either party hereto files a lawsuit, brings an action, or otherwise pursues a claim whether at law, arbitration, or equity, against the other party hereto in connection with or arising from the Agreement or the software, the prevailing party will be entitled to the recovery of its reasonable attorneys' fees, costs, and other expenses (including any appeal).

## 15. Legal Effect

This Agreement describes certain legal rights. As set forth in Section 14, the laws of the State of Texas shall exclusively apply to any legal and/or equitable dispute which may arise between **AccountingWare®** and **Customer** without regard to conflict of law principles. Moreover, **Customer** agrees that the exclusive forum for initiating any potential claim against **AccountingWare®** and/or its supplier(s) shall be in Lubbock County, Texas.

## 16. Dispute Resolution

**AccountingWare®** and **Customer** agree that any dispute which cannot be resolved by negotiations between the parties will be referred to the American Arbitration Association for arbitration in accordance with its applicable rules. The forum for initiating and conducting such arbitration shall be in Lubbock County, Texas. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration.

In the event a party hereto fails to proceed with arbitration, unsuccessfully challenges the enforceability of this arbitration clause, the arbitrator's award, or fails to comply with the arbitrator's award, the other party hereto is entitled to recover the costs of suit, including reasonable attorneys' fees for having to compel arbitration, or defend or enforce award.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH AFFECTS **CUSTOMER'S** LEGAL RIGHTS AND MAY BE ENFORCED BY THE PARTIES.

## 17. Defense of Infringement and Misappropriate Claims

**AccountingWare®** will defend **Customer** against any claims made by an unaffiliated third party that the software infringes its patent, copyright or trademark, or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment or settlement to which **AccountingWare®** consents.

**Customer** must notify **AccountingWare®** promptly in writing of the claim and give **AccountingWare®** sole control over its defense or settlement. **Customer** agrees to provide **AccountingWare®** with reasonable assistance in defending the claim, and **AccountingWare®** will reimburse **Customer** for reasonable out of pocket expenses that **Customer** incurs in providing that assistance.

The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act, except in the case of claims arising outside the United States, in which case "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement.

**AccountingWare®'s** obligations will not apply to the extent that the claim or adverse final judgment is based upon:

- **Customer's** use of the software after **AccountingWare®** notifies **Customer** to discontinue use due to such a claim;
- **Customer's** combining the software with a non-**AccountingWare®** product, data, or business process including third party add-ons or programs;
- damages attributable to the value of the use of a non-**AccountingWare®** product, data, or business process;
- **Customer's** altering or modifying the software, including any modifications by third parties;

- **Customer's** distribution of the software to, or its use for the benefit of, any third party;
- **Customer's** use of **AccountingWare®** trademark(s) without express written consent to do so; or
- for any trade secret claim, **Customer's** acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than **AccountingWare®** or its affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. **Customer** will reimburse **AccountingWare®** for any costs or damages that result from these actions.

If **AccountingWare®** receives information concerning an infringement or misappropriation claim related to the software, **AccountingWare®** may, at its expense and without obligation to do so, either (a) procure for **Customer** the right to continue to run the software, or (b) modify the software or replace it with a functional equivalent, to make it non-infringing, in which case **Customer** will stop running the software immediately.

If, as a result of an infringement or misappropriation claim, **Customer's** use of the software is enjoined by a court of competent jurisdiction, **AccountingWare®** will, at its option, either:

- procure the right to continue its use;
- replace it with a functional equivalent;
- modify it to make it non-infringing, or
- refund the amount paid and terminate this license.

If any other type of third-party claim is brought against **Customer** regarding **AccountingWare®** intellectual property, **Customer** must notify **AccountingWare®** promptly in writing. **AccountingWare®** may, at its option, choose to treat these claims as being covered by this section. This Section 17 provides **Customer's** exclusive remedy for third party infringement and trade secret misappropriation claims.

## 18. Limitation of Liability

**AccountingWare®** shall not under any circumstances, whether as a result of breach of contract, breach of warranty, tort, or otherwise be liable for consequential, incidental, special, or exemplary damages, including, but not limited to loss of profits and down time costs. **AccountingWare®'s** liability, if any, shall be exclusively limited to the amount **Customer** paid for the software pursuant to this Agreement.

This Section 18 applies, without limitation, to:

- anything related to the software, services, content (including code) on any third-party internet sites, or third-party programs; and
- claims asserted whether at law or in equity including but not limited to breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, loss of data, damage to records or data, loss of goodwill, loss as a consequence of business interruption, or any other tort to the extent permitted by applicable law, quantum meruit, promissory estoppel, unjust enrichments, rescission, reformation, declaratory judgment, and injunction.

Section 18 applies even if repair, replacement, or refund for the software does not fully compensate **Customer** for any of the losses, or **AccountingWare®** knew or should have known about the possibility of damages.

## 19. Force Majeure

Except for the obligation to pay monies owed, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquake, labor disputes, telecommunication failure, shortages of supplies, riots, war, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay. The party affected by such an occurrence shall notify the other party as soon as possible, but in no event less than ten days from the beginning of the event.

## 20. Indemnification

**Customer** agrees to indemnify, defend and hold harmless **AccountingWare®** and its parent, subsidiary and affiliated companies, third party service providers and each of their respective officers, directors, employees, shareholders and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorneys' fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to:

- **Customer's** use of the Services;
- any violation by **Customer** of any of **AccountingWare®**'s policies;
- any breach of any of **Customer's** representations, warranties, or covenants contained in this Agreement; and/or
- any acts or omissions by **Customer**.

If **AccountingWare®** is directed by **Customer** to implement a procedure (e.g. tax calculations, Labor law, financial statements, bank reconciliations, etc.) or **Customer** uses the software in a manner that is in violation of applicable laws (Federal, State, or Local), **Customer** will indemnify and absolve **AccountingWare®** of any and all responsibility and consequences for such decisions.

For the purpose of this paragraph only, the terms used to designate **Customer** includes **Customer**, **Customer's** customers, visitors to **Customer's** website, and users of **Customer's** products or services, the use of which is facilitated by **AccountingWare®**. The terms of this section shall survive any termination of this Agreement.

**AccountingWare®** shall indemnify and hold **Customer** harmless from, and at its own expense agrees to defend, or at its option to settle, any claim, suit or proceeding brought or threatened against **Customer** so far as it is based on a claim that a product or service provided by **AccountingWare®** hereunder infringes any patent issued by the U.S. This indemnification provision is expressly limited to products or services which are fully owned by **AccountingWare®**. It does not extend to products or services provided by third parties. This paragraph will be conditioned on **Customer's** notifying **AccountingWare®** promptly in writing of the claim and giving **AccountingWare®** full authority, information, and assistance for the defense and settlement thereof.

**Customer** shall have the right to participate in the defense of the claim at **Customer's** expense. If such claim has occurred, or in **AccountingWare®**'s opinion is likely to occur, **Customer** agrees to permit **AccountingWare®**, at its option and expense, to either:

- procure for **Customer** the right to continue using the product or service;

- replace with a product or service regardless of manufacturer, performing the same or similar function as the infringing product or service, or modify the same so that it becomes non-infringing; or
- if neither of the foregoing alternatives is reasonably available, immediately terminate **AccountingWare®**'s obligations (and **Customer's** rights) under this Agreement with regard to such product or service, and, if **Customer** returns such product or service to **AccountingWare®**, refund to **Customer** the price originally paid by **Customer** to **AccountingWare®** for such product or service, or the fee actually received by **AccountingWare®** from **Customer** for the three month period immediately preceding the occurrence of the event on which the indemnification claim is based, whichever is less.

During the Term, and for two years thereafter, neither party shall disclose any terms or pricing contained in the Agreement or any confidential or proprietary information disclosed by the other party ("Confidential Information"). Confidential Information shall remain the property of the disclosing party and shall be labeled as either "Confidential" or "Proprietary".

Notwithstanding the foregoing, all information concerning either party's traffic volume or distribution, pricing, Client Data, and financial information is hereby deemed to be confidential and proprietary regardless of whether it is so marked. Confidential Information may not be disclosed to any person or entity except for the recipient's employees, contractors, consultants, lenders, and/or legal advisors who have a need to know and who are bound in writing to protect the information from unauthorized use or disclosure.

The term "Confidential Information" does not include any information which:

- was already known by the receiving party free of any obligation to keep it confidential at the time of its disclosure;
- becomes publicly known through no wrongful act of the receiving party;
- is rightfully received from a third person without knowledge of any obligation of confidentiality;
- is independently acquired or developed without violating any of the obligations under this Agreement; or
- is approved for release by written authorization of the disclosing party.

Further, the recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement, or order. The recipient, however, shall take all reasonable steps to give the disclosing party sufficient prior notice to contest such request, requirement, or order. Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party upon request.

Physical documents containing confidential information will be returned or destroyed and electronic documents containing confidential information will be deleted from the other party's system as per policy or by agreement upon request from the disclosing party. The recipient shall use the Confidential Information only for the purposes of this Agreement and shall protect it from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care.

## 21. Amendments to Agreement

Amendments to this Agreement may be made in future electronic revisions but will always be made visible to the end user. This document in its entirety shall be provided in written form to **Customer** at **Customer's** request.

## 22. Limited Warranty

- A. **Limited Warranty.** AccountingWare® warrants that the software will perform substantially as described in the electronic documentation that is part of the software. However, AccountingWare® does not, under any circumstances, warrant the suitability of the software for **Customer's** specific purpose. The decision regarding the suitability of the software for **Customer's** specific purpose is a decision that rests solely with **Customer**. The warranty expressed herein supersedes any and all previous statements, understandings, representations, warranties, contracts, proposals, or agreements, whether oral, written, or implied.
- B. **Term of Warranty; Warranty Recipient; Length of Implied Warranties.** The limited warranty covers the software for one year after acquired by **Customer**. If **Customer** receives supplements, updates, or replacement software during that year, they will be covered for the remainder of the warranty or 30 days, whichever is longer. To the extent permitted by law, any implied warranties, guarantees, or conditions last only during the term of the limited warranty. Some jurisdictions do not allow limitations on how long an implied warranty, guarantee, or condition lasts, so these limitations may not apply to **Customer**.
- C. **Exclusions from Warranty.** This warranty does not cover problems caused by **Customer's** acts (or failures to act), the acts (or failures to act) of others, including but not limited to, modifications or implementations made by **Customer**, a Partner, or any other third party acting on **Customer's** behalf, or events beyond AccountingWare®'s reasonable control.
- D. **Remedy for Breach of Warranty.** AccountingWare® will repair or replace the software at no charge. If AccountingWare® cannot repair or replace it, AccountingWare® will provide a refund not to exceed the amount **Customer** paid to AccountingWare® for the software. It will also repair or replace supplements, updates, and replacement software at no charge. If AccountingWare® cannot repair or replace them, it will refund up to the amount AccountingWare® charged for them, if any. **Customer** must uninstall the software and return any media and other associated materials to AccountingWare® with proof of purchase to obtain a refund. These are **Customer's** only remedies for breach of the limited warranty.
- E. **Consumer Rights Not Affected.** **Customer** may have additional consumer rights under **Customer's** local laws, which this agreement cannot change.
- F. **Warranty Procedures.** **Customer** must have proof of purchase for warranty service if the licenses that **Customer** claims are covered under warranty are not reflected in AccountingWare®'s internal records. To make a claim under this warranty, contact AccountingWare® at <mailto:info@accountingware.com>.
- G. **No Other Warranties.** The limited warranty is the only direct warranty from AccountingWare®, and gives no other express warranties, guarantees, or conditions. Where allowed by **Customer's** local laws, AccountingWare® excludes implied warranties of merchantability, fitness for a particular purpose, and non-infringement. If **Customer's** local laws provide for any implied warranties, guarantees, or

conditions, despite this exclusion, **Customer's** remedies are described in the Remedy for Breach of Warranty clause above, to the extent permitted by **Customer's** local laws.

H. **Limitation on and Exclusion of Damages for Breach of Warranty.** Limitation of Damages (Section 18) applies to any and all potential actions for breach of warranty or any other claims at law or in equity asserted under any warranty theory.

This warranty gives **Customer** specific legal rights, and **Customer** may also have other rights which vary from state-to-state or country-to-country.

### 23. Invoicing, Payment and Taxes

**AccountingWare®** will submit invoices for payment by **Customer** for Goods and Services. Payment is due and payable in United States currency at **AccountingWare®'s** office in Lubbock, Lubbock County, Texas. Payment is due based on the terms specified on the invoice. If **Customer** has any valid reason for disputing any portion of an invoice, **Customer** will so notify **AccountingWare®**, with written notice, within thirty (30) calendar days of receipt of invoice by **Customer**, and if no such notification is given, the invoice will be deemed valid. The undisputed portion of the invoice shall be paid in accordance with the procedures set forth herein. **AccountingWare®'s** obligation to provide goods and services is contingent on your payment of these invoices by the due date.

**Customer** shall pay any attorney fees, court costs, or other costs incurred in collection of delinquent accounts. If payment of invoices is not current, **AccountingWare®** may suspend the provision of Goods and/or Services.

#### Taxes

Some amounts payable by **Customer** under this Agreement are subject to tax. Accordingly, there will be added to any such amount the monetary sum equal to any and all current and future applicable taxes, however designated, incurred as a result goods and services in connection with this Agreement, including without limitation state and local privilege, excise, sales, services, withholding, and use taxes payable by **Customer** or **AccountingWare®** for included goods and services (other than taxes based on **AccountingWare®'s** net income).

### 24. Non-Solicitation of Employees

During and for one year after the term of this Agreement, **Customer** or its affiliates shall not, directly or indirectly, interfere with the employer-employee, contractual (or other relationship) between **AccountingWare®** and its personnel, including, but not limited to, hiring, retaining, contracting with, employing, soliciting away, or engaging in similar activities, without **AccountingWare®'s** prior written consent.

If **Customer**, its affiliates, or agent solicits and subsequently hires one of **AccountingWare®'s** employees or employee's services, then **Customer** agrees to pay a fee to **AccountingWare®** equal to one year of that employee's current annual total compensation package within one week of the hire.

*[Addendums Follow]*

**ADDENDUM 1**  
**SERVICE AGREEMENT TERMS AND CONDITIONS**  
**ActivityHD® only**

This addendum is subject to all terms and conditions of the Software Licensing Agreement executed by **AccountingWare®**, LLC and **Customer** and is incorporated herein by reference.

This addendum describes the rights and responsibilities of **AccountingWare®** software support. It is not effective until the **AccountingWare®** Software License Agreement is signed by an authorized representative from **AccountingWare®** and **Customer**. **Customer** may not assign or transfer interest in their **AccountingWare®** software support without written consent from **AccountingWare®**. Please read the following definitions for support services.

**Software Support Services**

Software Support is defined as any assistance directly related to the performance or use of **AccountingWare®** licensed software. What is, and is not, covered is as follows:

**A. Provisions Covered Under Service Agreement**

- Software updates and new releases
- Bug fixes for malfunctioning software features
- General questions related to the use of the software
- Design work within **AccountingWare®** licensed software to include but not limited to:
  - PR Code calculation expressions (limited)
  - Export controls (only to satisfy tax law changes)
- **AccountingWare®** licensed software under a Field Test Agreement

**B. Provisions Not Covered Under Service Agreement**

- System support (hardware, operating system, etc.)
- Custom coding that may be required for 3rd party software applications, including but not limited to SQL, Crystal, Excel, etc.
- Report designs
- Check designs
- Financial Designs
- Excel worksheets
- Excel macros
- Automation bots
- Seniority and Leave Plans
- Element Design and Implementation
- Training beyond what was included in the Core Implementation
- Development and maintenance of custom programming including ActivityHD® Automation and APIs (Application Programming Interface). An API specifies how some software components should interact with each other.
- At **AccountingWare®**'s discretion, any implementation support perceived as regular support for **Customers** who are self-implementing a new module or a new company
- Assistance for any non-licensed **AccountingWare®** product

- System and database backup
- Disaster recovery, including offsite storage and restoration
- Extensive configuration changes that will be evaluated on a case-by-case basis

### C. Special Considerations for Support and Training

- If training is required beyond what was included in the Core Implementation, it will be charged at the hourly rate in effect at that time. Support services are not an alternative to formal training.
- The ability of **AccountingWare®** to provide effective and efficient Support services is predicated on an end-user's ability to productively interact with **AccountingWare®** Support professionals. If it becomes apparent that an end-user is not sufficiently experienced with the ActivityHD® software to effectively interact with the Support professional, then one of the following courses of action will be proposed:
  - **AccountingWare®** Support professional will request to interact with a more experienced user who can subsequently communicate the information to the inexperienced user, or
  - **AccountingWare®** Support professional will advise the inexperienced user that additional training is required and that arrangements should be made for that training. Additional training is chargeable at the hourly rate in effect at that time.

### D. Special Technical Considerations for Support and Implementation

- **Customer** must provide remote access (using VPN technology) to all machines used by the ActivityHD® system, including the SQL Server machine and company server machine.
- Because of the stability and compatibility with the **AccountingWare®** company infrastructure, the use of *Cisco™ VPN AnyConnect* technology is strongly recommended. If **Customer** decides to use a different VPN technology, it must first be approved by **AccountingWare®**. If approved, **Customer** will be responsible for the cost of the required licenses and internal infrastructure requirements of the alternative VPN technology.
- If **Customer** makes any subsequent changes to their system infrastructure that adversely affects the performance of any of the ActivityHD® System components, **Customer** will be responsible for the cost of **AccountingWare®** having to adapt our systems to accommodate those changes.
- General ActivityHD® System Requirements can be found on the **AccountingWare®** website using the following: <https://accountingware.com/help/#System-requirements.htm>.

### E. Removal of Companies, Software Packages and Users

Removal of any item on the service agreement is not permitted. The items on the service agreement must directly correspond to the ActivityHD license. Under extenuating circumstances, the only exception allowed is user support. Support can be suspended temporarily on a user without changing the license. **AccountingWare®** and the customer will agree on the length of time allowed for the suspension. Note: Suspension of user support does not include the license subscription or hosting cost.

### F. Support Hours of Operation

Regular **AccountingWare®** support hours are 8:00 am – 5:00 pm Central Time, Monday through Friday. After-hours support (which includes holidays) is intended for emergency situations only. We will respond to those types of requests as soon as possible. All other support requests will be handled

during our normal business hours. E-mail **AccountingWare®**'s Support Group at [support@accountingware.com](mailto:support@accountingware.com).

**ADDENDUM 2**  
**TESSITURA BRAND USAGE TERMS**

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The Tessitura Network, the licensor and developer of Tessitura Software, does not support or verify the effectiveness of the integration or the capabilities of this product. Any and all support and questions regarding this application should be directed solely to **AccountingWare®**.