



Essence WorkBench™ Terms of Service

IMPORTANT - READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING ESSENCE WORKBENCH: These Terms of Service (the "**Agreement**") are a legal agreement between you ("**You**" or "**Your**") and Ivar Jacobson International SA ("**IJI**") for Essence WorkBench which is software provided as a service that allows You access to and use of:

- (i) Essence WorkBench (the "**Service**"), along with,
- (ii) the Service's associated media, practices, printed materials, and "online" or electronic documentation otherwise made accessible on or through the Service (the "**Content**").

Two types of Content are distinguished: (a) "**IJI Content**", which is content loaded on the Service by IJI; and (b) "**User Content**", which is all other content, other than IJI Content, uploaded by You to the Service, including third party content.

YOU EXPRESSLY AND UNCONDITIONALLY AGREE TO BE BOUND BY THESE TERMS OF SERVICE BY ACCESSING, DOWNLOADING, COPYING, OR OTHERWISE USING THE SERVICE AND ITS CONTENT. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, DO NOT ACCESS, DOWNLOAD OR USE THE SERVICE OR ITS CONTENT.

The terms of IJI's [Privacy Policy](#) are incorporated into this Agreement by reference. In the event of any conflict between any provisions of this Agreement and the Privacy Policy, the provisions of this Agreement shall be determinative.

1 Use of the Service

1.1 Use of the Service and Your Account

An "**Account**" referred to herein means an account provided by IJI through the Service, where You may use the Service to access its Content and upload Your own User Content. In order to use the Service, You must have a valid Account. You are responsible for maintaining the confidentiality of the access data for Your Account and are fully responsible for all activities that occur under Your Account. Subject to the terms and conditions of this Agreement, IJI hereby grants to You a limited, non-exclusive and non-transferable license to Use at Your own risk, the Service in accordance with this Agreement. For the purposes of this Section, "**Use**" means to access, install or otherwise benefit from using the Service's Content and functionality.

1.2 Use of IJI Content

You acknowledge and agree that the Essence practice content included in the IJI Content is subject to its own separate license agreement(s) which can be found within such practice content. Under no circumstances will IJI be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Service. You agree that You must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content, including IJI Content.

1.3 Unauthorized Use of Your Account

You agree to (a) immediately notify IJI of any unauthorized use of Your Account or any other breach of security, and (b) not allow anyone other than You to Use and access Your Account. IJI cannot and will not be liable for any loss or damage arising from Your failure to comply with this section.

1.4 User Content

IJI does not claim ownership over any User Content submitted by You on or through the Service. Your User Content either belongs to You or was licenced from a third party. However, by uploading any User Content to the Service, You agree that IJI may store and display Your User Content solely as necessary in connection with the Service. To the extent You choose to

share any of Your User Content with other users of the Service, You agree to allow these users to view Your User Content and, to the extent applicable, collaborate with You and Your User Content.

You understand that all User Content is the sole responsibility of the person from which such User Content originated. This means that You, and not IJI, are entirely responsible for all User Content that You upload, post, transmit or otherwise make available via Your Account. IJI does not control the User Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such User Content.

You acknowledge that IJI does not pre-screen any User Content, but that IJI and its designees shall have the right (but not the obligation) in their sole discretion to refuse, modify or move any User Content that is available via the Service. Without limiting the foregoing, IJI and its designees shall have the right to remove any User Content that violates the Agreement or is otherwise objectionable.

You acknowledge and agree that IJI may preserve User Content and may also disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the Agreement; (c) respond to claims that any User Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of IJI, its users and the public.

If IJI discloses User Content to comply with legal process or respond to claims that any User Content violates the rights of third-parties, to the extent permitted by law, regulation or legal process, IJI agrees to provide You with prompt notice of any such legal or governmental demand and reasonably cooperate with You in any effort to seek a protective order or otherwise to contest such required disclosure.

You understand that the technical processing and transmission of the Service, including Your User Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

1.5 Use and Storage

You agree that IJI has no responsibility or liability for the deletion of, or the failure to store or to transmit, any User Content and other communications maintained by the Service. You acknowledge that IJI may establish general practices and limits concerning use of the Service and may modify such practices and limits from time to time. IJI retains the right to create limits on use and storage at our sole discretion at any time with or without notice. You acknowledge that IJI reserves the right to log off users who are inactive for an extended period of time.

IJI will use reasonable efforts to ensure that the Service is available 24 hours a day, 7 days a week. However, there may be occasions when the Service will be interrupted for maintenance, upgrades and repairs or due to failure of telecommunications links and equipment. IJI will take reasonable steps to minimize such disruption where it is within IJI's control. IJI may change, suspend or discontinue the Service at any time, including the availability of any feature, database or user interface. IJI may also impose limits on certain features and services or restrict Your access to parts or all of the Service without notice or liability. You agree that IJI will not be liable in any event to You or any other party for any suspension, modification, discontinuance or lack of availability of the Service.

1.6 Restrictions

You agree that You will not:

- (a) upload, post, transmit or otherwise make available any User Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy (up to, but not excluding any address, email, phone number, or any other contact information without the written consent of the owner of such information), hateful, or racially, ethnically or otherwise objectionable;
- (b) harm minors in any way;
- (c) impersonate any person or entity, including, but not limited to, a IJI official, forum leader, guide or host, or falsely state or otherwise misrepresent Your affiliation with a person or entity;
- (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content or User Content transmitted through the Service;
- (e) upload, post or otherwise transmit any User Content that You do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- (f) upload, post or otherwise transmit any User Content that infringes any patent, trademark, trade secret, copyright, rights of privacy or publicity, or other proprietary rights of any party;
- (g) upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

- (h) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
- (i) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to any rules of any national or other securities exchange;
- (j) exceed the scope of the Service that You have signed up for; for example, accessing and using the tools that You do not have a right to use, or having humans or bots share user logins, or deleting, adding to, or otherwise changing other people's comments or User Content as an Account holder. If any user is reported to be in violation with the letter or spirit of these terms, IJI retains the right to terminate such account at any time without further warning;
- (k) share Your Account details with any other individual or party;
- (l) take any action that imposes an unreasonable or disproportionately large load on the Service's infrastructure;
- (m) reverse engineer the Service in whole or in part; and
- (n) export or re-export the Service, or any part thereof, to any country, person or entity, directly or indirectly, that would be considered in violation of any applicable export law or regulation.

1.7 Trademarks & Copyright

This Agreement does not grant You any rights in connection with any trademarks or service marks of the Service, its Content or IJI, its subsidiaries or affiliates. You may not modify or delete any proprietary notices or marks contained within the Service and its Content.

2 Term and Termination

2.1 Term

Unless terminated earlier in accordance with Section 2.2, the term of this Agreement shall be effective upon the date set out in the accompanying Commercial Terms document IJI provides to You for Your Use of the Service and shall continue for the term set out in the same Commercial Terms document ("**Term**").

2.2 Termination

This Agreement will be terminated on the earlier of: (i) expiration of the Term; (ii) immediately upon written notice if You violate any material term or condition of this Agreement; or (iii) written notice of termination by IJI if You fail to pay any fees or other amounts due hereunder, if any, within ten (10) days of receipt of such notice.

2.3 Effect of Termination

Upon termination or expiration of this Agreement: (i) You must make all payments due and payable within ten (10) days of termination; (ii) IJI will disable Your access to the features provided by the Service and suspend or terminate Your Account; (iii) You may not be granted access to Your Account or any files or other Content (including Your User Content) contained in Your Account; and (iv) the Support Services will no longer be available to You. IJI may delete Your User Content, although residual copies of information may remain in IJI's system for some time for back-up purposes.

3 Fees

3.1 Fees and Payments

You agree to pay the fees specified in the accompanying Commercial Terms document IJI provides to You for Your Use of the Service ("**Fees**"). Where applicable, Fees are invoiced in advance of the Term and are due and payable within thirty (30) days of the date of IJI's invoice. The Fees may be increased annually by providing You with notice of not less than thirty (30) days prior to the end of the Term.

3.2 Taxes

If applicable, You shall, in addition to the other amounts payable under this Agreement, pay all sales, use, excise, import or export, value added, withholding or other taxes, duties or fees, federal, provincial, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, exclusive only of taxes on the net income, net worth or capital of IJI. You shall gross up any payments to be made to IJI to ensure the full amount of fees hereunder is received by IJI.

3.3 Interest

All amounts due hereunder that are not paid within thirty (30) days of the due date shall bear interest at the rate of one point five percent (1.5%) per month (18% per annum), or at the highest rate allowed by law, whichever is less, from the date due until paid.

3.4 Suspension

IJI reserves the right to suspend the performance of any or all of its obligations hereunder upon ten (10) days' prior written notice if amounts are unpaid when due and remain unpaid at the end of such notice period.

4 Support

Subject to Sections 2 and 3, support will be available to You as specified in the accompanying Commercial Terms document IJI provides to You for Your Use of the Service. When Support Services are available to You, IJI agrees to provide to You the maintenance and support as described in Schedule A attached hereto (collectively, the “**Support Services**”).

5 Consent to Use of Data

You agree that IJI and its affiliates or subsidiaries may collect and use technical information gathered relating to Your download and/or use of the Service and its Content. IJI may use this information to improve its products or to provide customized services or technologies to You and will not disclose this information in a form that personally identifies You.

6 No Warranty

THE SERVICE IS PROVIDED “AS IS”. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SERVICE IS ASSUMED BY YOU. You are responsible for selecting the software and/or hardware to achieve its intended results. IJI makes no warranty of the Service’s function or quality for any specific purpose. IJI makes no warranty or condition that the Service will be error-free or free from other failures.

You will be solely responsible for any damage to You resulting from the use of the Service and its Content. The entire risk arising out of use, security or performance of the Service remains with You. No oral or written information or advice given by IJI or its authorized representatives shall create a warranty or in any way increase the scope of IJI’s obligation.

IJI warrants that the Support Services to be provided hereunder will be performed with reasonable skill and in a professional manner. IJI’s sole responsibility and Your sole remedy with respect to deficient or non-conforming Support Services is to use commercially reasonable efforts to re-perform such services in accordance with the terms and conditions of this Agreement. IJI does not warrant that the Support Services will meet all of Your needs or that the Support Services will be error free.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY.

7 Limitation of Liability & Indemnity

7.1 Exclusion of Incidental, Consequential and Certain Other Damages

Under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall IJI or its suppliers be liable to You or to any other person for any special, incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the Service, links to third party products, the provision of or failure to provide support or other services, information, software, and related content through the Service or otherwise arising out of the use of the Service or the Support Services, or otherwise under or in connection with any provision of this Agreement, even in the event of the fault, tort (including negligence), strict liability, breach of contract or breach of warranty of IJI or any supplier, and even if IJI or any supplier has been advised of the possibility of such damages.

7.2 Limitation of Liability and Remedies

You agree that it is a specific requirement of this Agreement that You have accepted that IJI is not liable for any form of damages whatsoever.

7.3 Indemnity

You agree to indemnify, defend and hold harmless IJI, its affiliates, officers, directors, employees, consultants, agents and suppliers from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys’ fees as and when incurred) arising from Your use of the Service, the Content, Your Account, Your violation of this Agreement or the infringement or violation by You or any other User of Your Account, of any intellectual property relating to the Service (including without limitation Your User Content) or other right of any person or entity.

8 Links to Third Party Products

You may link the Service to third party products. The third party products are not under the control of IJI and IJI is not responsible for the contents or performance of any third party products or for the function of the Service together with any third party products. IJI is providing these links to third party products to You only as a convenience, and the inclusion of any link does not imply an endorsement by IJI of the third party product. IJI does not accept any liability regarding links to third party products.

9 Entire Agreement

This Agreement constitutes the entire agreement between You and IJI relating to the Service and the Support Services and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Service and the Support Services. This Agreement shall not be modified except by a written agreement executed by an authorized representative of IJI and You.

10 Copyright

The Service is protected by copyright and other intellectual property laws and treaties. IJI or its suppliers own the title, copyright, and other intellectual property rights in the Service. The Service and IJI Content is licensed, not sold. No right, title or interest in or to any trademark, service mark, logo or trade name of IJI or its suppliers is granted under this Agreement. You agree to take all reasonable steps to safeguard IJI or its suppliers by ensuring that no unauthorized person shall have access to the Service and IJI Content and that no unauthorized use is made of the Service, the Content or IJI's and its suppliers' trademarks or other intellectual property rights.

11 Severability

If a provision of this Agreement is rendered invalid, the remaining provision shall remain in full force and effect.

12 Notices

Notices shall be in writing and shall be deemed delivered in person when delivered by courier, email with proof of delivery or mailed postage prepaid by certified or registered mail – return receipt requested – to the current business address of the addressee.

13 Further Assurances

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

14 Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

15 Amendment

No modification, amendment or variation hereof shall be of effect or binding upon the parties hereto unless agreed to in writing by them.

16 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Sion, Switzerland. The Swiss Court shall have exclusive jurisdiction over matters arising out of or in connection with this Agreement. This Agreement is written in the English language, which language shall be controlling in all respects.

Schedule A
Maintenance & Support

- i) New Versions. During the Term, IJI will provide You with any new versions of the Service (“**New Versions**”) made generally available by IJI. All New Versions will be provided to You in electronic or other suitable form as determined by IJI in its discretion. Nothing herein shall require IJI to furnish to You as part of the support services any New Versions which IJI does not generally make available to its other customers as part of its support services or for which You are not licensed to use.
- ii) Updates. You acknowledge that IJI may, but is under no obligation to, from time to time provide You with additional features, functions, plug-ins, add-ons, service packs, upgrades, updates or other similar files related to the Service (“**Updates**”). Any Updates You obtain or receive may only be used in conjunction with the Service for which it was designed.
- iii) Patches. During the Term, IJI shall provide bug fixes to You for Service faults and documentation problems (“**Patches**”) which are generally made available by IJI.
- iv) Service. All New Versions, Updates and Patches shall be deemed to be part of the Service and Your use of the New Versions, Updates and/or Patches shall be subject to the same terms and conditions that apply to Your Use of the Service under the Agreement.
- v) Customization & Training. Advanced customization of the Service and Content and training related to the Service is not covered by this Agreement and would be subject to a separate agreement outlining the details of such arrangement.