

ORCHARD HOUSE Terms and Conditions

A. General Terms & Conditions

A1. Definitions.

- a) **"Affiliate"** means any entity that is 51% controlled by or under common control with Licensee.
- b) **"Agreement"** means these General Terms and Conditions and any outstanding SOW, Work Order and/or Subscription Order.
- c) **"Correction"** means, without limitation, workarounds, quarterly updates, component replacements, patches and/or documentation changes, as Orchard House Solutions and its Software Partners deems appropriate.
- d) **"Defect"** means a material failure of the Software to operate substantially in accordance with the Documentation.
- e) **"Documentation"** means all implementation, user and system manuals for the Software, including all replacements, updates, additions and changes to such written materials from time to time made by Orchard House Solutions and delivered to Licensee pursuant to this Agreement.
- f) **"Effective Date"** means the date on which this Agreement takes effect, being specified in the Subscription Order Form and Work Orders.
- g) **"Employee"** means any full-time, part-time, or seasonal employee (including independent contractors) who is accounted for in the employee master file contained in the Software.
- h) **"Fixed Term"** the duration of time as specified in the Subscription Order Form and Work Orders.
- i) **"Feedback"** means comments, suggestions or other feedback provided to Orchard House Solutions by Licensee regarding Orchard House Solutions software or business.
- j) **"IPR"** means any patents and rights in inventions, business processes and systems, trademarks, service marks, business or trade names (including internet domain names and email address names), goodwill (including the right to sue for passing off or unfair competition) or the style of presentation of goods or services, rights in get up or trade dress, design rights, registered designs, utility models, copyrights (including copyrights in computer software), moral rights, database rights, semi-conductor topography rights, and rights in trade secrets and other confidential information, know-how, and all other intellectual and industrial property rights of any kind in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and claim priority from and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights and the right to retain any financial or other relief.
- k) **"Licensee"** means company or person who is the holder of a license of the software.
- l) **"Licence"** is defined in Section B1.
- m) **"Misuse"** means any use of the Software in disregard of (i) any known or reasonably anticipated adverse consequences, (ii) and warning messages
- n) **"Named User"** means anyone who is licenced and authorised to use the Software / Service.
- o) **"Partner"** means the supplier of third-party software sold, licensed and/or configured by Orchard House Solutions.
- p) **"Partner Software"** means the Software supplied by the Partner, as set out in Subscription Order Form, which Orchard House Solutions licenses to the Licensee.
- q) **"Services"** means, collectively, any consulting or training services provided by Orchard House Solutions pursuant to an SOW.
- r) **"Software"** is a general term used to describe computer programs, applications and scripts. Orchard House Solutions develops and licenses software and from time to time creates customisations, modifications, improvements, replacements, enhancements, additions, corrections, upgrades and other changes to such software. For the avoidance of doubt, Software includes Partner Software
- s) **"SOW" or "Work Order"**, means statement of work, work order or any other document authorising Services for a specific engagement, and including a description of and specifications for Services for that engagement.
- t) **"Subscription Order"** means an order for Software (including Partner Software) and associated Services.
- u) **"Go live ready"**, means the date on which the system is ready to be used
- v) **"Year"** means the period of 12 consecutive months from the Effective Date and any successive 12-month period during the term of this Agreement.

A2. Invoicing & Taxes.

- a) **Electronic Documentation.** The Client agrees to accept electronic, statements, vouchers, receipts and expenses records from Orchard House Solutions with respect to all fees arising.
- b) **Subscription Fees.** Orchard House Solutions will invoice Licensee for the subscription fees as specified in the

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Subscription Order, plus applicable taxes. Subscription fees are final, and licences are deemed accepted on the delivery of the tenant.

- c) **Success Assurance.** Orchard House Solutions Success Assurance Service provides additional support features in addition to the standard support provided by Orchard House Solutions Software Partners and covered within the subscription. Success Assurance ensures that the operational function of Orchard House Solutions Partner solutions deliver a stress-free experience that dramatically increases both adoption and data quality. Orchard House Solutions Success Assurance Service is solely and exclusively directed to provide on-site and off-site support to ensure operational excellence and a solid foundation from which to deliver consistent growth ensuring operational and accounting functions are delivered at the desired efficiency. Orchard House Solutions will invoice Licensee for the Success Assurance, if ordered and as specified in Subscription Order Form and will invoice Licensee for subsequent support payments at the start of each period.
- d) **Services.** Orchard House Solutions will submit monthly invoices to Licensee for mutually agreed Services furnished. Each invoice will provide a breakdown and distribution of charges by name of the Consultant(s) who provided the Services, the hours charged, and any expenses incurred. Upon request, Orchard House Solutions will provide reasonable back-up documentation for expenses. Any additional details required by Licensee concerning the invoice or backup information will be specified in the SOW or other writing by Licensee before Services commence. Licensee will notify Orchard House Solutions within fifteen (15) days after receipt of any Services invoice if there is a dispute about the Services or the invoice. Orchard House Solutions will work in good faith with Licensee to promptly resolve any disputes. Within thirty (30) days after receipt of each invoice for Services, Licensee shall pay the undisputed portion of the invoice in full and notify Orchard House Solutions in writing as to the nature and substance of any dispute.
- e) **Taxes.** Fees described in this Agreement do not include any sales value added and goods/services taxes. Orchard House Solutions will include applicable taxes as separate items on Licensee's invoice, and Licensee shall be responsible for all taxes (other than taxes based on Orchard House Solutions income). All payments made under this Agreement are refundable where specifically provided in the Agreement. Withholding taxes imposed by any foreign government will be grossed up and invoiced to Licensee, if applicable. Orchard House Solutions will invoice taxes unless Licensee has provided certificate of exemption upon execution of this Agreement. (Note: a resale certificate does not qualify as a tax exemption certificate for the purposes of this Agreement.)
- f) **Late Payments.** Orchard House Solutions may charge interest on late payments at a rate equivalent to two percent (2%) per annum until paid. Orchard House Solutions may suspend Success Assurance, Services or other performance if Licensee fails to make full payment of any undisputed amount owed under this Agreement within sixty (60) days after written notice from Orchard House Solutions.

A3 Confidential Information

"**Confidential Information**" means any information, which one party (the "Discloser") provides, either directly or indirectly, to the other ("Recipient") in connection with this Agreement or related to the business of the Discloser that

- a) if in tangible form, is clearly marked at the time of disclosure as being confidential or
- b) if disclosed orally or visually, is designated at the time of disclosure as confidential, or
- c) is reasonably understood to be confidential or proprietary information, whether or not marked. Confidential Information will be protected and held in confidence by the recipient and will be used only for the purposes of this Agreement and related internal administrative purposes. Disclosure of the Confidential Information will be restricted to the Recipient's employees, contractors or alliance partners on a "need to know" basis, provided that they are bound by written confidentiality obligations no less stringent than these prior to any disclosure. Confidential Information does not include information which:
 - i. is already known to Recipient at the time of disclosure;
 - ii. is or becomes publicly known through no wrongful act or failure of the Recipient;
 - iii. is independently developed by Recipient without benefit of Discloser's Confidential Information; or
 - iv. is received from a third party which is not under and does not thereby breach an obligation of confidentiality.

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Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care.

A Recipient may disclose Confidential Information to the extent required by law, but that disclosure does not relieve Recipient of its confidentiality obligations with respect to any other party. Except as to the confidentiality of trade secrets, these confidentiality restrictions and obligations will terminate three (3) years after the expiration or termination of the Agreement, unless the law requires a longer period.

A4. Excusable Delays.

In no event shall either party be liable to the other for any delay or failure to perform hereunder due to causes beyond the control of that party, including, but not limited to, acts of God, acts of the public enemy, acts or threats of terrorism, war, civil disturbance, acts of any government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather conditions.

A5. Publicity.

Neither party will issue any press release, advertising or other publicly disseminated materials that refer to the other party, the existence of this Agreement, or the Software Licensed, without the other party's prior written consent. However, Orchard House Solutions may identify Licensee on its client list and may use a mutually agreed general description of the nature of the relationship in promotional materials, presentations, and proposals to current and prospective clients. Either party may identify the other party or disclose the existence of this Agreement to its attorneys, auditors and in connection with regulatory filings, notwithstanding anything to the contrary herein.

A6. Limitation of Liability.

- a) In no event shall either party or Orchard House Solutions' Partner be liable for indirect, special, incidental or consequential damages, including without limitation business interruption, loss of profits, lost management time, savings, revenue or goodwill, or any penalties, fines or expenses, arising from any cause of action whatsoever, including without limitation contract, warranty, strict liability, or negligence, even if such party has been advised of the possibility or likelihood of such damages.
- b) Except for the intellectual property compensation set forth in section C2, Orchard House Solutions and its licensors' total liability on any claim of any kind for any loss or damage arising out of, resulting from or in connection with the use or performance of the Software shall not exceed the amount of the subscription fee paid for that Software giving rise to the liability, where "subscription fee" does not include support or services fees.
- c) Notwithstanding anything to the contrary, the Licensee's total aggregate liability arising out of or in connection with this Agreement whether by virtue of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise (but excluding its liability to pay fees specified in a SOW or Subscription Order) will not exceed 100% of the fees payable by the Licensee to Orchard House Solutions under the SOW or the Subscription Order giving rise to liability.
- d) The terms of this Agreement will not be enforceable by or create any right or cause of action for or on behalf of any person or entity other than Licensee or Orchard House Solutions, except as explicitly provided herein.

A7. Binding Effect.

This Agreement shall be binding upon the parties and their respective legal successors and permitted assigns.

A8. Assignment.

Neither party may assign or transfer this Agreement or any right or obligation under it without the other party's prior written consent, and any assignment made in violation of this provision shall be invalid. However, Licensee may assign or transfer this Agreement, without Orchard House Solutions' written consent, to any successor in interest by way of merger or consolidation or the acquisition of substantially all of Licensee's assets; provided that the assignor provides written notice and the assignee pays Orchard House Solutions then-current fees to convert, true up, expand, relocate and/or transfer the assigned licences as applicable and agrees in writing to be bound by the terms and conditions of this Agreement.

A9. Severability.

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If any provision of the Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the remainder of this Agreement will remain valid and enforceable.

A10. Notices.

All notices or other written communications required or permitted under this Agreement will be deemed to have been delivered upon personal delivery, five (5) days after being mailed by registered or certified mail (return receipt requested), or one (1) business day after being sent by nationally recognised overnight courier. Notices will also be deemed to have been served if sent by email to an appropriate email address of the recipient, and will be deemed received upon the sender receiving a delivery receipt. Notices will be sent to the addresses set out in Subscription Order Form unless a party provides written notice of a change of address.

A11. Governing Law.

The Agreement shall be governed by the laws of England. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

A12. Dispute Resolution.

Either party may, without waiving any remedy under this Agreement, seek interim or provisional equitable relief from any court of competent jurisdiction to protect its confidential information, non-solicitation, and property rights.

Any dispute arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the English courts.

A13. Waiver.

A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any provision of this Agreement. No waiver will be effective unless made in writing and signed by an authorised representative of the waiving party.

A14. Survival.

Provisions anywhere in the Agreement regarding payment, termination, ownership, warranties, limitations of liability, governing law, dispute resolution, confidentiality, severability, export regulations, and waivers will survive the expiration or termination of this Agreement.

A15. Independent Contractor.

Orchard House Solutions is at all times acting as an independent contractor under this Agreement and not as an agent, employee, joint venture or partner of Licensee.

A16. E-mail Communications.

Licensee consents to receiving email messages from Orchard House Solutions. Licensee may at any time "opt out" of receiving future emails from Orchard House Solutions.

A17. Limited Warranties

- a) **Software Warranty.** Orchard House Solutions warrants that the Software will operate in substantial accordance with the applicable Documentation, as it exists at the date of delivery, for a period of one (1) year from the date of delivery ("Software Warranty Period"), when the Software is used in accordance with that Documentation. This Software Warranty Period begins upon the initial delivery of the Software set out in Subscription Order. Orchard House Solutions further warrants that it has not introduced into the Software any "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other routine, device or undisclosed feature designed to (i) disable, damage, or erase the Software or data, or (ii) perform any other similar actions that would preclude full use of the Software as licensed by Licensee.
- b) **Services Warranty.** Orchard House Solutions warrants that all Services shall be performed by qualified personnel in accordance with good practices prevalent in the information technology industry. Any other Services warranty will be mutually agreed in a SOW depending on the Services provided.
- c) **Warranty Exceptions.** These warranties do not apply to errors or malfunctions caused by:
 - I. Licensee's equipment,
 - II. Software not licensed from or approved in writing by Orchard House Solutions,
 - III. Licensee's failure to use or implement corrections or enhancements to the Software or

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- Documentation made available by Orchard House Solutions,
- IV. use of the Software in combination with materials not provided, specified or approved in writing by email Orchard House Solutions,
 - V. Orchard House Solutions does not warrant that the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. These limited warranties shall be void if Licensee or any third party modifies or changes the Software in any way beyond the scope of the customisation options contained in the Software. In order to receive and maintain these warranties, Licensee must use the Software in accordance with the Documentation.
- d) **Warranty Exclusion.** Orchard House Solutions will not be required to maintain compatibility between the Orchard House Solutions Software and any other software (except Partner Software), including, but not limited to, versions of third-party Software except as specified in this Agreement.
 - e) **Software Warranty Remedy.** If, during the Software Warranty Period, Licensee believes that the Software has Defects, Licensee will immediately notify Orchard House Solutions in writing and describe with specificity any such Defect and will provide a listing of output and such other data as may be required by Orchard House Solutions to reproduce the operating conditions as existed when the Defect occurred. Licensee's remedy and Orchard House Solutions' sole liability for Software performance under the Software Warranty will be (i) to use reasonable efforts to correct any such Defects and supply Licensee with a corrected version of the Software as soon as reasonably practicable after Orchard House Solutions has been notified of such Defects; or (ii) if correction or replacement is not reasonably achievable by Orchard House Solutions, to refund the total licence fee paid upon return of the Software.

All warranties described above are personal to and intended solely for the benefit of the Licensee and do not extend to any third party.

Disclaimer of warranties. Except as set forth in this section A17, all express or implied conditions, representations and warranties including, but not limited to, warranties of merchantability or fitness for a particular purpose, are hereby excluded to the extent permitted by law.

A18. Feedback.

All Feedback is provided voluntarily, and Orchard House Solutions may use any Feedback as it sees fit without obligation or restriction of any kind, other than its Confidential Information obligations.

A19. Data Security and Data Ownership

As the Client's data is stored and processed by using their Partner Software; Orchard House Solutions shall not be responsible for the loss or corruption of any of the Client's data, howsoever caused. The Client's data is and shall remain the property of the Client. No rights in or under such property shall pass to Orchard House Solutions. The foregoing will not relieve Orchard House Solutions of its obligations under Appendix 1 and Annex 1 of this Agreement.

A20. Ownership.

Orchard House Solutions licenses the use of Partner Software to the Licensee, and the Partner owns all proprietary rights including patent, copyright, trade secret, trademark and other proprietary rights in and to the Partner Software and Partner Documentation.

Orchard House Solutions represents and warrants on an on-going basis that it has the right to license the Partner Software to the Licensee in the manner specified in this Agreement.

A21. Termination for Breach.

Subject to clause B2, either party may terminate this Agreement or an SOW or Subscription Order on thirty (30) days written notice of a material breach, which remains uncured at the end of that thirty (30) day period.

A22. Non-solicitation of Employees.

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During the term of an SOW and for one (1) year after termination of that SOW, neither party will employ or solicit for hire any of the other party's personnel, contractors or partners who have had direct involvement with the Services provided in that SOW, without the other party's express written consent. Neither party will be precluded from hiring any employee of the other party responds to a public notice or advertisement of an employment opportunity where the employment with the other party was terminated six months previously, provided that the hiring party did not solicit the termination.

B. SUBSCRIPTION LICENCE TERMS AND CONDITIONS

B1. Licence.

- a) Subject to the terms and conditions of this Agreement, Orchard House Solutions grants to Licensee a non-exclusive, non transferable, Licence to use, for the duration of the appropriate Subscription Order, Orchard House's Partner Software, together with the Documentation, solely for Licensee's internal business purposes set out in Subscription Order Form.
- b) The Licence shall commence upon the Effective Date and shall continue during the Initial Term (as defined in the Subscription Order), and thereafter in accordance with this Agreement.
- c) Licensee may use or permit use of the Software and Documentation for no more than the number of employees or users set out in Subscription Order, as may be amended from time to time, (where "number of employees" includes employees of Licensee and any other party authorised under this Licence) and may permit use of the Software by
 - I. a Contractor
 - II. Licensee's disaster recovery vendor, or
 - III. an Affiliate. Licensee may incorporate portions of the Documentation or "screen shots" of the Software in training materials for Licensee's internal use only.
- d) Licensee shall not, and shall not permit any third party to,
 - I. use the Software in the operation of a service bureau for any third party that is not an Affiliate,
 - II. make copies of the Software or Documentation except as permitted in this Agreement,
 - III. reverse engineer, disassemble or reverse compile the Software,
 - IV. sell, let for hire, sublicense, distribute, give away or otherwise supply to a third party any of the Software or Documentation,
 - V. use the Software or Documentation to create any computer software program or user documentation that is substantially similar to the Software or Documentation,
 - VI. make derivative works of the Software or Documentation, or
- e) Subject to clause A6(c), the Licensee shall be liable to Orchard House Solutions for any direct damages resulting from any violation of the terms of this Agreement by any party that Licensee permits to use the Software.
- f) Licensee may modify the Documentation to the extent necessary to reflect more closely Licensee's operations, provided, however, that Orchard House Solutions shall retain all rights in any modified Documentation. Modified Documentation shall be considered Documentation with respect to Licensee's Licence rights and each party shall retain its confidentiality obligations with respect to any Confidential Information in the modified Documentation.

B2. Subscription Term, Termination & Termination Support

- a) This Agreement commences on the Effective Date and continues for the Fixed Term unless terminated earlier by the parties in accordance with the following termination rights. The Client may terminate for its convenience:
 - I. by providing written notice at least thirty (30) days prior to the last day of the Initial Term or a Renewal Term (as defined in the applicable SOW or Subscription Order);
 - II. unless otherwise terminated in accordance with the provisions of this Agreement. Any renewal shall be on the same terms and conditions contained in this Agreement.
- b) This Agreement may be terminated by Orchard House Solutions at any time on giving written notice to the Client in the event of any of the following:
 - I. any transfer or assignment of this Agreement or any licence granted herein by the Client without the

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- prior written consent of Orchard House Solutions (except as provided in clause A8), or
- II. the Client becoming insolvent or bankrupt, or
 - III. failure by the Client to make any payment due hereunder or to perform any of the other terms and conditions herein, provided any such failure is not cured within sixty (60) days of the written notice of being sent by Orchard House Solutions.
 - IV. In the event of a termination, the Client shall pay to Orchard House Solutions any fees and other amounts due and/or owing to Orchard House Solutions at the point of termination provided fees for such services have been performed by Orchard House Solutions.
- c) In the event terminating, Orchard House Solutions shall return all fees that remain unpaid to Software Partners.
 - d) In the event of the parties wishing to terminate this Agreement by their mutual consent, such a termination will only be effective when both parties have recorded their consent in writing.
 - e) Termination support in the event of any expiration or termination of this Agreement (other than termination pursuant to C2) upon the written request of the Client Orchard House Solutions will offer Client services so as to assist the Client in the Client's removal of the Client's data from the Orchard House Solutions Partner Software service and such services of Orchard House Solutions shall be chargeable in accordance with Orchard House Solutions then current rates and terms or upon such other terms as the Client and Orchard House Solutions may then agree.
 - f) This Agreement may be terminated by the Client at any time on giving written notice to Orchard House Solutions in the event of any of the following:
 - I. any transfer or assignment of this Agreement or any licence granted herein by Orchard House Solutions without the prior written consent of the Client, or
 - II. Orchard House Solutions becoming insolvent or bankrupt, or
 - III. Failure by Orchard House Solutions to provide agreed services in the agreed timeframe or to perform any of the other terms and conditions herein, provided any such failure is not cured within thirty (30) days of the written notice being sent to Orchard House Solutions.
 - IV. In the event that Orchard House no longer has the right to license the Partner Software to the Licensee.
 - V. In the event of a termination, the Client will not be liable for any fees relating to work not performed or subscription period not yet lapsed.
 - VI. In any circumstance above, the client has the right to claim against Orchard House Solutions, or its Professional Indemnity insurance to a maximum sum equivalent to the total fee paid to implement the solution to recover any costs to complete unfinished implementation. Orchard House Solution warrants to keep its insurance paid and current throughout the fixed term of this Agreement.
 - g) Orchard House Solutions shall have no claim against the Client for loss of profit or expenditure in connection with Orchard House Solutions loss of its rights in the event of any termination in relation to this Agreement.

B3. Infringement.

- a) Orchard House Solutions agrees to defend Licensee from and against any action based on a claim alleging that the Software infringes the IPR of any third party, and Orchard House Solutions shall pay all costs, expenses and damages finally awarded against Licensee, arising from any such action; provided, however, that
 - I. Licensee gives Orchard House Solutions prompt written notice of such action,
 - II. Licensee fully cooperates with Orchard House Solutions in the defence and settlement thereof,
 - III. Orchard House Solutions is given full control of the defence of such action and any settlement or compromise thereof but shall not agree to any settlement or compromise without the Licensee's consent (which will not be unreasonably withheld or delayed); and
 - IV. Licensee complies with Orchard House Solutions direction to cease using any Software that, in Orchard House Solutions judgment, is likely to be ruled an infringement of a third party's intellectual property rights.
- b) If a temporary or a final injunction is obtained against Licensee's use of the Software by reason of an infringement of an IPR, Orchard House Solutions will, at its option and expense, either (i) procure for

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Licensee the right to continue using the Software; (ii) replace or modify the Software so that it no longer infringes such IPR, so long as the utility or performance of the Software is not materially adversely affected by such replacement or modification; or (iii) terminate this Agreement and all Licences granted hereunder and return the unused portion of the Licence fees paid (determined by depreciating the Licence fees paid on a straight-line basis over three years) by Licensee for the Software.

- c) Orchard House Solutions shall have no liability to Licensee to the extent that any infringement action or claim is based upon or arises out of
 - I. the use of the Partner Supported Software nor
 - II. the modification of the Software by Licensee or any third party or
 - III. the use of the Software or any portion thereof in combination with any other equipment or software.
- d) Notwithstanding clause B3(c), in the event that a third party claims the Client's use of Partner Software infringes the IPR of a third party, Orchard House Solutions will use its best efforts to procure that the Partner fully indemnifies the Client for any loss or damage (including reasonable costs and expenses) that the Client incurs as a result of such claim.
- e) this section states licensee's sole remedy and Orchard House Solutions sole liability with respect to any claim of infringement.

B4. Export Regulations.

The Software, including technical data relating thereto, is subject to export control laws, and may be subject to export or import regulations in other countries. Licensee will be solely liable for strictly complying with all applicable export regulations and will be solely responsible for obtaining licenses to export, re-export or import the Software if permitted under the Licence terms.

B5. Copyright Notice.

The Software and the accompanying Documentation are protected, with all rights reserved, under applicable copyright laws.

B6. Audit Rights.

Licensee will keep accurate records of the number and type of users of the Software. Audits will be at Orchard House Solutions expense, unless the audit reveals that Licensee has materially breached the Agreement, in which case the audit will be at Licensee's expense. For the purposes of this Section, a material breach shall include the client materially exceeding the number of then-currently licensed users of any item of the Software.

The Client specifically represents to Orchard House Solutions that since the Client shall be using Orchard House Solutions Partners Software being the principal subject-matter of this agreement; the Client accepts the commercial interest of the Partner in this Agreement and the performance thereof; the Client agrees that:

- a) it may be necessary for the Client to enter into an agreement with the partner (independent of and separate to this Agreement in which Orchard House Solutions has no interest) for the provision of the environment;
- b) Orchard House Solutions Partners may audit and review copies of this Agreement;
- c) that any claim that the Client may have arising out of or relating to this Agreement not be brought against;
- d) it shall be bound by the terms of Orchard House Solutions Software Partner licensors as notified by Orchard House Solutions Partners from time to time; and
- e) Orchard House Solutions Partners may use maintenance windows for planned downtimes of access to the Software in its sole and exclusive discretion.

C. DEVELOPMENT, CONSULTING AND TRAINING SERVICES

C1. Services.

Orchard House Solutions shall provide Services when mutually agreed in SOW signed by an authorised representative of each party. Unless otherwise agreed in writing by Orchard House Solutions, the terms and conditions of this Agreement will apply to any Services provided to Licensee by Orchard House Solutions after the Effective Date, whether or not this Agreement is referenced and whether or not a SOW is executed. Unless otherwise agreed in a SOW, the total cost or completion dates for any Services in a SOW are estimates. Any staff or personnel provided by Orchard House Solutions to provide the Services under a SOW are referred to as "Consultants."

C2. Intellectual property

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The intellectual property rights in the Software and Documentation are, and shall remain, the property of Orchard House. Notwithstanding the above, Licensee shall receive the limited rights granted in clause B1.

C3. Project Management.

Licensee shall appoint an individual to authorise SOWs, receive progress reports and address problems that may arise in connection with the Services (the "Project Manager") and shall provide Orchard House Solutions in writing with the identity and contact information for that Project Manager. The Project Manager and Consultants shall develop appropriate administrative procedures to review performance of work at Licensee's site.

C4. Work on Licensee's Premises.

Orchard House Solutions shall require its Orchard House Solutions Consultants at all times to observe the reasonable security, safety and other policies of the Licensee while such Consultants are on Licensee's premises, provided that Licensee provides Orchard House Solutions with reasonable advance notice of those policies.

C5. Licensee's Cooperation.

Orchard House Solutions performance depends upon Licensee's timely and effective cooperation in connection with the Services, including providing Orchard House Solutions with reasonable facilities, timely and sufficient access to appropriate data, information, and appropriately skilled Licensee personnel, and prompt responses to questions and requests. Orchard House Solutions will not be liable for any failure or delays in performing the Services, to the extent that the failure or delay is caused by Licensee's failure to cooperate. Unless otherwise specified in a SOW, Orchard House Solutions may rely upon the accuracy and completeness of data, material, and other information furnished by Licensee, without any independent investigation or verification.

C6. Statement of Work.

All work performed by Orchard House Solutions shall be documented in a SOW or a shorter "work order" form, depending on the engagement. Each SOW shall establish the general nature of the work to be performed, the number of Consultants to be assigned, the starting date and duration of the Services, the approximate number of hours, and the applicable hourly rate or fee. If there is a conflict between the Agreement and the SOW, the SOW shall control.

C7. Change Orders.

Either party may propose changes in the scope of the SOW, but neither party will be bound by any proposed change until both parties have agreed on that change in writing (a "Change Order").

C8. Scheduling.

Scheduling. Orchard House Solutions will try to accommodate work schedule requests of Licensee to the extent commercially practicable. Orchard House Solutions reserves the right to change such schedule for any SOW if the assigned Consultants are unable to perform scheduled Services because of illness, resignation, weather, or other causes beyond Orchard House Solutions reasonable control. Orchard House Solutions will make best efforts to replace any such Consultant within a reasonable time in order to limit any impact on the schedule.

C9. Cancellation of SOWs.

Licensee may cancel all or part of any SOW upon ten (10) business days advance written notice ("Cancellation Notice").

C10. Fees and Expenses.

Unless otherwise provided in the SOW, Licensee shall pay Orchard House Solutions on a time and materials basis. Hourly rates or fees for Services performed shall be set forth in the applicable SOW. Unless otherwise agreed in writing in the SOW, the minimum labour charge for any single day is eight (8) hours. Billable amounts incurred in excess of eight (8) hours per day will be billed at the standard, straight-time hourly rate. Licensee agrees to reimburse Orchard House Solutions for and will be invoiced for all out-of-pocket travel expenses and reimbursed on a pass-through basis based on the net cost paid or invoiced at the time of purchase, which includes airfare, ground transportation, meals lodging, and incidentals, provided all such details and estimates are detailed in the SOW. Any failure to disclose such details in the signed SOW will render Orchard House Solutions liable for such out of pocket expenses

C11. Training Support.

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If requested by Orchard House Solutions, Licensee will make available for use any required projection equipment for on-site training classes. Alternatively, and upon prior written request, Orchard House Solutions will provide such projection equipment for an additional charge.

Training Services for Mobile Classrooms. If Licensee elects to purchase Orchard House Solutions Mobile Classroom as part of the training services, Licensee shall take good care of the equipment provided by Orchard House Solutions as part of the classroom. "Orchard House Solutions Mobile Classroom" means the portable training classroom (which includes laptop computers loaded with demonstration software and training documentation) that Orchard House Solutions has available for Licensee to use at the site designated by Licensee.

Licensee agrees to assume all risks upon delivery of the equipment provided by Orchard House Solutions as part of Orchard House Solutions Mobile Classroom. Furthermore, Licensee shall return to Orchard House Solutions all equipment documentation and software on the specified date in the applicable SOW, in the same condition as when provided by Orchard House Solutions, less normal wear and tear.

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APPENDIX 1 - Data Processing Agreement

The Client hereinafter referred to as “**Data Controller**”; and Orchard House Solutions, hereinafter referred to as “**Data Processor**”: Data Controller and Data Processor are hereinafter jointly referred to as “**Parties**” and each separately as “**Party**”.

WHEREAS:

- a) Data Controller processes personal data and determines the purposes for and the means of the processing of the personal data and therefore qualifies as data controller;
- b) In the context of the execution of the Agreement, Data Controller shall disclose personal data to Data Processor and/or
- c) Data Processor shall gain access to personal data from Data Controller; Data Processor shall process personal data under the instruction of Data Controller in the context of the execution of the Agreement, without acting under its direct authority and therefore will qualify as a data processor.
- d) During the processing of the personal data, Data Processor takes into account that the personal data can contain special categories of personal data and personal data of a sensitive nature;
- e) In addition to the Agreement, Parties wish to set out the terms and conditions under which Data Processor will process personal data in this data processing agreement (“**Data Processing Agreement**”).

THE PARTIES HAVE AGREED AS FOLLOWS:

A1. Definitions

Unless explicitly stated otherwise in this Data Processing Agreement, the following terms will have the following meaning:

- a) “**Data Breach**” means a breach of security within the meaning of article 33-34 GDPR;
- b) “**Data Controller**” – The Client
- c) “**Data Processor**” – Orchard House Solutions
- d) “**Data Processing Agreement**” this data processing agreement, within the meaning of article 28 of the GDPR between Data Controller (data controller) on the one hand and Data Processor (data processor) on the other hand;
- e) “**Data Subjects**” the natural persons to whom the Personal Data relate;
- f) “**GDPR**” Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) which has been implemented into UK law by the UK General Data Protection Regulation;
- g) “**Personal Data**” all data relating to an identified or identifiable natural person within the meaning of article 4(1) GDPR;
- h) “**Security Measures**” the security measures which must be implemented by Data Processor as described in Annex 1;

A2. Purpose of processing the Personal Data

- i) Data Processor shall only process Personal Data on behalf of Data Controller in accordance with the instructions and under the authority of Data Controller. Data Processor has no control over the purposes for and means of the processing of the Personal Data.
- j) This Data Processing Agreement shall apply to:
- k) all Personal Data extracted by the Data Processor for processing.
- l) all Personal Data transmitted to the Data Processor for processing.
- m) all Personal Data accessed or otherwise received by the Data Processor on the authority of the Data Controller for processing; and
- n) all Personal Data otherwise received by the Data Processor for processing on the Data Controller's behalf.
- o) The Personal Data remain to be the possession of Data Controller and/or the Data Subject.

A3. Obligations Data Processor

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- a) At first request of Data Controller, Data Processor is obligated to cooperate with Data Controller, in the event Data Controller wants to inspect, modify and/or destroy the Personal Data.
- b) Data Processor is obligated to comply with the applicable law and regulations, including but not limited to the GDPR.
- c) Data Processor is obligated to maintain a record of all categories of processing activities carried out on behalf of Data Controller, containing:
 - i. the name and contact details of Data Processor or any (sub)processors and of Data Controller on behalf of which Data Processor is acting, and where applicable, the representative and Data Protection Officer of Data Controller and/or Data Processor.
 - ii. the categories of processing carried out on behalf of Data Controller.
 - iii. where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards;
 - iv. a general description of the technical and organizational security measures referred to in Annex 1 of this Agreement.
- d) At first request of Data Controller, Data Processor is obligated to inform Data Controller regarding the measures Data Processor has implemented in respect of the obligations under this Data Processing Agreement.
- e) Data Processor is obligated to impose its obligations under this Data Processing Agreement on all the parties and persons who act under the authority of Data Processor, including but not limited to employees of Data Processor and any (sub)processors appointed by Data Processor.
- f) Data Processor is obligated to inform Data Controller without undue delay if, in its opinion, an instruction infringes the GDPR and/or other applicable data protection provisions.

A4. Security Measures

- a) Data Processor shall take adequate technical and organisational measures to protect the Personal Data against loss or any form of unjustified processing, taking into account that the Personal Data can also contain special categories of personal data. Data Processor shall at least comply with the level of protection as set out in Annex 1 to this Data Processing Agreement. Each year or more often upon the request of Data Controller, Data Controller is authorized to propose changes to the security measures. Data Processor shall meet all reasonable requests from Data Controller.
- b) Data Processor is aware of the importance of information security and will annually, or more often at the request of Data Controller, inform Data Controller in a form and substance satisfactory to Data Controller, on the technical and organizational measures that Data Processor has taken with regard to the protection of Personal Data.

A5. Notification requirement Data Breaches

- a) Only Data Controller shall assess whether there is a Data Breach. Data Processor shall enable Data Controller to make such assessment in a timely and adequate manner. In the event of a suspected Data Breach, Data Processor shall immediately, but at least within 24 hours after becoming aware of the suspected Data Breach, inform Data Controller by phone and in writing thereof on the following email address: [email address], and shall provide to Data Controller all available information that Data Controller may need to assess whether there is a Data Breach. If Data Controller requests Data Processor to provide (additional) information in order to assess whether there is a Data Breach, Data Processor shall provide the requested information within 24 hours after the request.
- b) Data Processor shall as soon as reasonably possible, but at least within 24 hours after becoming aware of the suspected Data Breach, provide Data Controller with the information needed for making a notification as meant in article 33 GDPR which includes at least the following information:
 - i. the Personal Data involved;
 - ii. the nature of the Data Breach;
 - iii. the categories and approximate number of Data Subjects concerned;
 - iv. the categories and approximate number of Personal Data records concerned;
 - v. the period in which the Data Breach occurred;

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- vi. the likely consequences of the Data Breach;
 - vii. a description of the actual and suspected negative consequences of the Data Breach;
 - viii. the measures taken and/or proposed by Data Processor to address the Data Breach, including measures to mitigate the possible adverse effects of the Data Breach;
 - ix. the name and contact details of the Data Protection Officer or other contact point of Data Controller where more information can be obtained.
- c) Only Data Controller itself shall notify the relevant supervisory authority and, if necessary, the Data Subjects about a Data Breach. Without the prior written consent of Data Controller, Data Processor is not entitled to notify supervisory authorities and/or the Data Subjects in case of Data Breaches.
- d) On behalf of Data Controller, Data Processor shall keep an internal record of all Data Breaches, which will at least contain information regarding:
- i. the Personal Data involved.
 - ii. the nature of the Data Breach.
 - iii. the period in which the Data Breach occurred.
 - iv. the measures taken to mitigate the negative consequences of the Data Breach.
 - v. a description of the actual and suspected negative consequences of the Data Breach; and
 - vi. the (additional) measures that Data Processor has taken to terminate, prevent and/or mitigate these negative consequences of the Data Breach.
- e) Data Processor shall provide Data Controller with a record as mentioned in article 5.4 of this Data Processing Agreement at least once a month, or more often if Data Controller so requests.

A6. Transfer of Personal Data

- a) Without the prior written consent of Data Controller, Data Processor is not allowed to provide (access to) Personal Data to any third parties.
- b) Without the prior written consent of Data Controller, Data Processor is not allowed to transfer Personal Data to third parties established in countries outside the European Union and/or the European Economic Area. Data Controller shall not refuse such consent on unreasonable grounds but may impose conditions in relation to the consent.
- c) In the event that Data Processor transfers – only with the prior written consent of Data Controller – certain Personal Data to third parties established in countries outside the European Union and/or the European Economic Area, the EU model clauses (attached in Annex 2) shall apply, which form an integral part this Data Processing Agreement. The EU model clauses set out the terms and conditions under which Data Processor will be allowed to process Personal Data outside the European Union and/or the European Economic Area.

A7. Control and audit

- a) At least once a year, or promptly at first request of Data Controller, Data Controller is entitled to audit the compliance with the obligations of Data Processor under this Data Processing Agreement. Data Processor is obligated to provide all cooperation that Data Controller may reasonably expect. Data Controller is entitled to appoint a qualified professional for the execution of the audit.
- b) Parties shall mutually agree on the date of the audit. Data Controller will ensure that an audit will cause as little disturbance as possible to the business activities of Data Processor.
- c) In order to realize an audit in accordance with this article, Data Processor is obligated to establish and maintain an adequate administration, bookkeeping and archives for these purposes. Data Processor is obligated to organize and manage its bookkeeping and archives in accordance with the applicable market standards.

A8. Authorities

- a) Data Processor recognizes the competence of the relevant national (supervisory) authorities to:
 - i. obtain information from Data Processor and/or from parties that are engaged by Data Processor in relation to the processing of Personal Data; and/or
 - ii. conduct investigations relating to the business operations and processes in relation to the processing of Personal Data.
- b) Data Processor is obligated to fully cooperate with such requests. Data Processor shall ensure that third parties and its (external) accountant who are engaged by Data Processor also fully cooperate with such requests.

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- c) Data Processor shall immediately notify Data Controller, at least within twenty-four (24) hours, if any (supervisory) authority contacts Data Processor in order to obtain information and/or to conduct an investigation in relation to the processing of Personal Data.

A9. Rights of Data Subjects

- a) Data Processor is obligated to inform Data Controller immediately, and at least within twenty-four (24) hours, if a Data Subject has filed a request to exercise his or her rights under the GDPR or similar binding law.
- b) The Data Processor agrees to assist the Data Controller with all information requests which may be received from any Data Subject in relation to any Personal Data.
- c) Data Processor will only communicate with the Data Subjects and handle requests as referred to in article 9.1 above, after prior written consent of Data Controller.

A10. Confidentiality

- a) Data Processor is required to keep all Personal Data strictly confidential.
- b) Without the prior written consent of Data Controller, Data Processor is not allowed to communicate to third parties, including but not limited to the Data Subjects, supervisory authorities and/or the media, about any information that is related to this Data Processing Agreement and/or to a Data Breach.

A11. Liability and penalty

Data Processor is liable towards Data Controller for damages caused by an attributable failure in the performance of its obligations as a Data Processor pursuant to this Data Processing Agreement and the GDPR.

A12. Duration

- a) This Data Processing Agreement shall enter into force upon the date of signing thereof by the Parties and shall continue for the duration of the Agreement.
- b) Article 10 (Confidentiality), article 11 (Liability and penalty), article 12(b) (Duration), article 13 (Effects of termination) and article 17 (Applicable law and dispute resolution) shall survive for an indefinite period of time after the termination or dissolution of this Data Processing Agreement.

A13. Effect of termination

In the event Data Processor still retains Personal Data after the termination of this Data Processing Agreement, Data Processor will destroy these Personal Data as soon as possible, or – upon first request of Data Controller - return the Personal Data to Data Controller, unless Data Processor is required to retain the Personal Data based on applicable laws and/or regulations. In the latter case, Data Processor will fulfil all obligations under this Data Processing Agreement throughout the period in which Data Processor is obligated to retain the Personal Data under applicable law or regulation.

A14. Appointment of (sub) processors

Without the prior written consent of Data Controller, Data Processor is not allowed to appoint any (sub)processors for the processing of Personal Data.

A15. Costs

- a) Costs arising from (access) requests from Data Subjects, investigations and/or audits by the AP or any other (supervisory) authority in relation to Personal Data, will be borne by Parties jointly, unless in the event of material findings in the investigations and/or audits conducted at Data Processor, in which case the Data processor shall bear the costs.
- b) Costs arising from requests or seizures by judicial authorities at Data Processor, shall be borne by Data Processor.

A16. Change in laws and/or regulations

Data Processor is obligated to provide all reasonable assistance to Data Controller, including but not limited to any reasonable requests to amend this Data Processing Agreement, on the basis of changes in any applicable laws and/or regulations.

A17. Applicable law and dispute resolution

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The validity, construction and performance of this Data Processing Agreement shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English Courts, to which the parties to this Data Processing Agreement submit.

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Annex 1 - Security Measures

The technical and organizational security measures that should be implemented by Data Processor as described in article 4 of this Data Processing Agreement will consist of at least:

- a) The obligations regarding the notification requirement of Data Breaches and confidentiality, as stated in this data processing Agreement.
- b) Installing and keeping an up-to-date system that controls access to Personal Data protected by means of authentication, such as a password or similar means. Data Processor shall ensure that its employees are in compliance with best practices associated with the abovementioned authentication methods, including measures ensuring the confidentiality of passwords.
- c) Securing the system that Data Processor uses to process the Personal Data, logging and monitoring access to the information system (including the monitoring of unauthorized access to personal data, such as incorrect login attempts);
- d) Implementing appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including but not limited to the pseudonymization and/or encryption of Personal Data.
- e) Ensuring the ongoing confidentiality, integrity, availability, access and resilience of processing systems, software and/or services, by means of preventive and corrective measures (including but not limited to the implementation of up-to-date security patches and virus control) and protection from malware (including but not limited to viruses, spyware, ransomware and spam);
- f) Restoring the availability and access to Personal Data in a timely manner in the event of a physical or technical incident (e.g. Data Breach);
- g) Assigning authorizations for the access to information systems to employees and third parties based on role descriptions.
- h) Installing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- i) Keeping track of the parties to whom Personal Data has been transferred and ensuring (and keeping track of) the prior written permissions of Data Controller for such data transfers.
- j) Implementing adequate physical protection measures of the areas in which, and the equipment on which the personal data is stored (such as access security, temperature control, measures to prevent and fight fire and water damage).
- k) Describing the abovementioned measures in an information security plan ("Information Security plan").
- l) Periodically evaluate the Information Security Plan; and
- m) Implementing the abovementioned information security measures in the organization of Data Processor.