

# Partner Agreement

This Partner Agreement describes the terms and conditions pursuant to which Partner will join the Supplier's partner programme and the Supplier will make the Services (as defined below) available for use by the Partner and Clients in Projects.

## 1. Definitions and Interpretation

In the Agreement, the following words have these meanings unless the contrary intention appears:

<b>Affiliate</b>	means any Subsidiary and Associated Company
<b>Applicable Laws</b>	mean all applicable federal, state, local and foreign laws, statutes, ordinances, rules, regulations and directives of the applicable jurisdiction to Supplier;
<b>Associated Company</b>	means any associated company of either party from time to time within the meaning of Section 449 of the Corporation Tax Act 2010 or any subordinate legislation;
<b>Client(s)</b>	means entities to whom Partner provides a Client Project, utilising the Services;
<b>Client Data</b>	means the data uploaded by the Partner and / or the Client into the Client Tenant;
<b>Client Tenant</b>	means the dedicated instance of the Software utilised by the Partner and/or, if applicable, the Client for a Client Project;
<b>Commercial Schedule</b>	means the schedule appended to this Agreement detailing the commercial terms found at Appendix 1;
<b>Supplier Training</b>	means the training requirements as more particularly detailed in the Commercial Schedule;
<b>Confidential Material</b>	<p>of either party means all information and material relating to the business, Client information, systems or affairs of that party, its representatives or its Clients that is or has been:</p> <p>(i) disclosed by that party to the other party under or in connection with this Agreement, whether orally, electronically, in writing or otherwise, including copies; or</p> <p>(ii) learnt, acquired or generated by the other party in connection with this Agreement;</p> <p>including, without limitation, the terms of this Agreement;</p>

<b>Demo Tenant</b>	means the tenant made available by Supplier to the Partner for the purposes of self-led training, generation of proposals and providing short demonstrations for Clients;
<b>End User Subscription Agreement (EUSA)</b>	means the end user subscription agreement pursuant to which Supplier will provide the Services to the Client (if applicable), as more particularly detailed in Appendix 2;
<b>Fees</b>	means the fees (as specified in each Tenant Order Form) payable by Partner to Supplier for the use of the Services for Client Projects as calculated in accordance with Commercial Schedule;
<b>Insolvency Event</b>	means an event in which a Party ceases doing business as a going concern or makes an assignment for the benefit of creditors or is unable to pay its debts as they become due or files a voluntary petition in bankruptcy or is adjudicated a bankrupt or files a petition seeking for itself any reorganization, arrangement, readjustment, liquidation or dissolution under any present or future statute or regulation or is the subject of an involuntary petition in bankruptcy or files an answer admitting the material allegations of a petition filed against it in any such proceeding or consents to or acquiesces in the appointment of a receiver or liquidator with respect to all or any substantial portion of its assets or properties;
<b>Intellectual Property Rights</b>	means patents, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>Working Hours</b>	means 8.00 am to 6.00 pm local UK time, each Working Day;
<b>Project</b>	means each project provided by the Partner to a Client as detailed in the Tenant Order Form;
<b>Renewal Term(s)</b>	means the subsequent annual period(s) following the end of the Initial Term;
<b>Partnership Fee</b>	means, where applicable, the partnership fee payable by Partner on execution of the Agreement as outlined in the Partner Order Form;

**Services** means the services provided by Supplier to the Partner in relation to the Software as more particularly set out in the End User Terms Schedule 1 and if applicable, by the Supplier to the Client, directly, as more particularly set out in the EUSA;

**Subsidiary** means any subsidiary of either party from time to time within the meaning of Section 1159 of the Companies Act 2006 or in any subordinate legislation made under the Companies Act 2006;

**Tenant Order Form** means the online documents for placing orders pursuant to this Agreement that are entered into between Supplier and Partner detailing the Client and particulars of the Client Tenant, including, but not limited to, the name of the Client and the Limitations;

**Trademarks** means the trademarks which Supplier permit the Partner to use in respect of the Services;

- 1.1 Clause, schedule, and paragraph headings shall not affect the interpretation of this agreement.
- 1.2 A person includes an individual, corporate, or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.10 The Partner and Supplier are each a "Party" and together shall be referred to as the "Parties" within the Agreement.

## **2. Appointment**

- 2.1 Supplier hereby appoints the Partner as a non-exclusive partner of Supplier for the Term.
- 2.2 The Partner and its Affiliates shall be entitled to procure the Services for Client Projects and the Supplier and its Affiliates shall, subject to the acceptance of a Tenant Order Form, provide the Services for Client Projects. In the event that an Affiliate of the Partner procures the

Services for Client Projects and/or an Affiliate of the Supplier provides the Services, the terms and conditions contained in this Partner Agreement shall govern the provision of Services to the Partner Affiliate by the Supplier Affiliate and each respective Affiliate agrees to be bound by the terms of this Agreement.

- 2.3 During the Term, the Partner undertakes not to:
- (i) purchase the Software from any person other than Supplier; or
  - (ii) create any products which compete with the Software.
- 2.4 The Partner shall not represent itself as an agent of Supplier for any purpose, nor pledge Supplier's credit or give any condition or warranty or make any representation on Supplier's behalf or commit Supplier to any contracts. Further, the Partner shall not without Supplier's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Services which are inconsistent with those contained in the promotional material supplied by Supplier (including, without limitation, the Documentation) or otherwise incur any liability on behalf of Supplier howsoever arising.
- 2.5 The Partner shall not sell any Services through a sales agent or to a sub-distributor or Partner without the prior express written permission of Supplier. Where Supplier agrees to any such appointment, the Partner shall ensure that it enters into a written contract with such sales agent, sub-distributor or Partner on terms which provide at least the same level of protection to Supplier as set out in this agreement.
- 2.5 The Partner's appointment under this Clause 2 only grants to the Partner a licence to utilise the Services for Client Projects, and does not transfer any right, title or interest to any such Services to the Partner or its Clients. Use of the terms "sell", "license", "purchase", "licence fees" and "price" will be interpreted in accordance with this Clause.

### **3. Partner Undertakings**

- 3.1 The Partner undertakes and agrees with Supplier to:
- (i) comply with the terms of Schedule 1 in its use of the Services;
  - (ii) use its best endeavours to promote and use the Services in a manner that reflect favourably on Supplier;
  - (iii) ensure that its personnel are suitably qualified to ensure the proper fulfilment of the Partner's obligations under this Agreement;
  - (iv) ensure that its personnel complete, at the cost of the Partner, the Supplier Training, within the timeframe agreed between the parties;
  - (v) submit for approval, such approval not to be unreasonably withheld or delayed, a Tenant Order Form for each Client;
  - (vi) before permitting a Client to utilise the Services directly, ensure that it is aware of and agree to be bound by the EUSA;
  - (vii) maintain the Client relationship and provide first line support on the Software for the duration of the Project;
  - (viii) use the Demo Tenant for the sole purposes of demonstrating, marketing and selling the Services to Clients;
  - (ix) not to utilise the Demo Tenant for Projects or utilise Client Data within the Demo Tenant;
  - (x) keep records clearly demonstrating all enquiries, quotations, transactions and proceedings relating to the Software;

- (xi) inform Supplier immediately of any changes in ownership or control of the Partner and of any change in its organisation or method of doing business which might affect the performance of the Partner's duties in this Agreement.
- (xii) not disclose to Client any Fees, pricing or commercially sensitive information with Clients, unless otherwise agreed in writing between Supplier and Partner;
- (xiii) meet with Supplier a minimum of four times per year to discuss:
  - a. the partner relationship and client introductions;
  - b. projects where Supplier and Partner can look at joint plans to drive multi-year licence opportunities; and
  - c. ongoing joint partnership planning and review sessions.

#### **4. Supplier Undertakings**

- 4.1 Supplier undertakes:
  - (i) to approve or reject a Tenant Order Form within 5 Working Days of receipt;
  - (ii) following approval of a Tenant Order Form, to provide the Services;
  - (iii) to provide such reasonable information and support as may be reasonably requested by the Partner to enable it properly and efficiently to discharge its duties under this Agreement;
- 4.2 Supplier grants to the Partner a non-exclusive, revocable, personal licence to utilise the Services (subject to the terms and conditions of this Agreement and during the Term and solely for the purposes of performing the Partner's obligations under this Agreement) to:
  - (i) use the Trademarks in relation to the Services for the purpose of the promotion, advertisement and sale of the Services.
- 4.3 Supplier shall provide the Supplier Training, as more particularly detailed in Commercial Schedule.

#### **5. Prices and Payment**

- 5.1 The Fees to be paid by the Partner to Supplier for the Services for each Project are detailed in a Tenant Order Form as calculated in accordance with Commercial Schedule.
- 5.2 Supplier shall give the Partner 30 Working Days' notice of any changes in the prices of the Services.
- 5.3 Any and all expenses, costs and charges incurred by the Partner in the performance of its obligations under this agreement shall be paid by the Partner.
- 5.4 Supplier will invoice the Partner for the full price of the Services for Project on approval of a Tenant Order Form.
- 5.5 The Partner shall pay the full amount invoiced to it by Supplier within 30 days of the date of invoice.
- 5.6 All amounts due under this agreement shall be paid by the Partner to Supplier in full without any set-off, counterclaim, deduction or withholding. If any such withholding or deduction is required at law, the Partner shall pay to Supplier such additional amount as will ensure that Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.
- 5.7 The Partner shall be responsible for the collection, remittance, and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Services.

- 5.8 Without prejudice to any of its other rights, if the Partner fails to make any payment when due Supplier shall be entitled to:
- (i) suspend provision of the Services for so long as any payment due hereunder remains outstanding; and/or
  - (ii) charge interest on the overdue amount at the greater of 4% above the Bank of England's base rate or the maximum rate allowable per Applicable Law on all such past due amounts.

## **6. Use of Trademarks and Publicity**

- 6.1 All Intellectual Property Rights in and to the Services and any developments to the Services belong, and shall belong, to Supplier.
- 6.2 The Partner shall, at the expense of Supplier, take all such steps as Supplier may reasonably require to assist Supplier in maintaining the validity and enforceability of the Intellectual Property Rights of Supplier during the term of this agreement.
- 6.3 Without prejudice to the right of the Partner or any third party to challenge the validity of any Intellectual Property Rights of Supplier, the Partner shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Supplier and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 6.4 The Partner shall not:
- (i) copy the Services or any part of any of them except to the extent and for the purposes expressly permitted by this Agreement;
  - (ii) modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Services. The Partner is granted no rights under this Agreement except as expressly stated and Supplier expressly reserves all Intellectual Property Rights and its other rights in and to Services.
- 6.5 The Partner shall ensure that each reference to, and use of, any of the Trademarks by the Partner is in a manner approved from time to time by Supplier.
- 6.6 The Partner shall not:
- (i) use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of Supplier therein;
  - (ii) use in relation to the Services any trade marks other than the Trade Marks without obtaining the prior written consent of Supplier; or
  - (iii) use any trade marks or trade names so resembling any TradeMark or trade names of the Supplier as to be likely to cause confusion or deception.
- 6.7 Other than the licences expressly granted under this agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in this agreement, the Partner shall have no rights in respect of any trade names or Trade Marks used by Supplier in relation to the Services or their associated goodwill, and the Partner hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, Supplier.
- 6.8 At the request of Supplier, the Partner shall do or procure to be done (at Supplier's reasonable cost) all such further acts and things (including the execution of documents) as Supplier shall reasonably require to give Supplier the full benefit of this Agreement.

## **7. Warranty**

- 7.1 Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 7.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE DEMO TENANT IS PROVIDED FREE OF CHARGE AND IS PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **8. Confidentiality**

- 8.1 Each Party shall keep confidential and shall not make available or disclose the Confidential Material of the other party to any person, or make or permit any use of such Confidential Material without the prior written consent of the other Party, except that such Confidential Material may be made available or disclosed to and used by those, and only those, of the Staff of the receiving party as are required for the purpose of fulfilling the receiving party's obligations under this Agreement. Each party shall take all reasonable steps to ensure that any such Confidential Material disclosed to any person in accordance with this Clause is treated as confidential by the person to whom it is disclosed and shall require its subcontractors to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Material than those imposed upon under this Agreement.
- 8.2 Nothing in this Clause shall prevent either party from disclosing Confidential Material where it is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceeding or claim or otherwise by applicable law; provided, however, that a party shall, if legally permitted, give the other party prior reasonable notice as soon as possible, of such required disclosure so as to enable the other party to seek relief from such disclosure requirement or measures to protect the confidentiality of the disclosure.
- 8.3 Without prejudice to any other rights or remedies that a party may have, both parties acknowledge that the other party may not have an adequate remedy at law for any breach of the provisions of this Clause, and that therefore the other party shall be entitled to equitable relief including injunctive relief.
- 8.4 The provisions of this Clause shall not apply to any Confidential Material which:
- (i) Is or becomes commonly known within the public domain other than by breach of this Agreement; or
  - (ii) is independently developed without reference to any Confidential Material.

## **9. Indemnity**

- 9.1 Subject to Clause 9.2, Supplier undertakes to be responsible, at its cost, for handling (including but not limited to conducting the defence of) any claim, demand, suit or proceeding ("Claim") made or brought against the Partner by a third party alleging that the Services infringe or misappropriate such third party's Intellectual Property Rights and will indemnify the Partner from any damages, attorney fees and costs finally awarded against the Partner as a result of the same. If Supplier receives information about an infringement or misappropriation claim related to the Services, Supplier may, in its sole discretion and at no cost to the Partner modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Supplier's warranties.
- 9.2 The defence and indemnification obligations contained within Clause 9.1 above do not apply if:

- (i) the allegation does not state that the Services are the basis of the Claim;
  - (ii) a Claim arises from the use or combination of the Services or any part thereof with software, hardware, data or processes not provided by Supplier, if the Services or use thereof would not infringe without such combination.
- 9.3 Partner shall defend and/or settle at its expense, any claims, actions or proceedings against Supplier and its Affiliates and its and their officers, directors, employees and contractors (the "Supplier Indemnified Parties") to the extent arising out of or relating to any infringement or misappropriation of any Intellectual Property Rights or other rights by Partner or any Client ("Supplier Claims"), and Partner shall pay all damages awarded by a court of competent jurisdiction to such third party against Supplier, or any settlement amounts agreed by Partner in writing.
- 9.4 The defence and indemnifications obligations contained in this Clause 9 will only apply where, and shall be conditional upon, the indemnified Party:
- (i) promptly gives the indemnifying Party written notice of the Claim (or Supplier Claim, as applicable);
  - (ii) gives the indemnifying Party sole control of the defence and settlement of the Claim (or Supplier Claim, as applicable) (except that the indemnifying Party may not settle any Claim (or Supplier Claim, as applicable) unless it unconditionally releases the indemnified Party of all liability); and
  - (iii) gives the indemnifying Party all reasonable assistance, at the indemnified Party's expense.
- 9.5 This Clause 9 is the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any Claim or Supplier Claim.

## **10. Limitation of Liability**

- 10.1 The limitations in Sections 10.2 and 10.3 shall not apply in respect of any liability arising out of: (a) the Parties' indemnity obligations, (b) death or personal injury resulting from any negligence of either Party, its employees or agents; and (c) for fraud or fraudulent misrepresentation; and (d) gross negligence or wilful misconduct of the Party to be charged or any person for whom it is responsible.
- 10.2 SUBJECT TO SECTION 10.1, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY PARTY CLAIMING THROUGH OR UNDER THE OTHER PARTY FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, CONTRACTS AND ANTICIPATED SAVINGS, OR SOFTWARE, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSSES, COSTS, CHARGES, EXPENSES OR DAMAGES, HOWEVER ARISING, RESULTING FROM THE AGREEMENT OR THE PERFORMANCE OR USE OF THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3 SUBJECT TO SECTIONS 10.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY TO THE OTHER SHALL BE LIMITED TO THE FEES PAID BY THE CUSTOMER TO SUPPLIER UNDER THE AGREEMENT DURING THE TWELVE MONTH PERIOD PRECEDING THE CAUSE OF ACTION AT ISSUE (OR, IF THE RELEVANT LIABILITY ARISES WITHIN THE PERIOD OF 12 MONTHS AFTER THE DATE OF THE AGREEMENT, AN AMOUNT EQUAL TO THE FEES LIKELY TO BE PAYABLE BY THE CUSTOMER TO SUPPLIER IN THE FIRST 12 MONTHS OF THE DATE OF THE AGREEMENT).

## **11. Term and Termination**

- 11.1 Agreement Term. This Agreement will remain in effect until terminated in accordance with this Section 11.
- 11.2 Tenant Order Form. Each Tenant Order Form will commence on the effective date of that Tenant Order Form and will continue for the term as set out in the applicable Tenant Order



Form or such longer period as agreed between the Parties, subject to earlier termination as provided in this Agreement.

- 11.3 Termination for Breach. If either Party breaches a material term of a Tenant Order Form, or a material term of this Agreement, the non-breaching party may terminate the applicable Tenant Order Form, or, if applicable this Agreement, in the event that the breach is not cured within thirty (30) days after receipt by the breaching Party of written notice with a detailed description of the breach.
- 11.4 Termination For Bankruptcy of Insolvency. Notwithstanding anything herein to the contrary, this Agreement shall terminate immediately in the event that the other Party suffers an Insolvency Event.
- 11.5 Termination For Force Majeure. If any Force Majeure event relied upon by either Party shall have been continually relied upon for more than sixty (60) consecutive days by such Party, and is continuing, the other Party shall be entitled to terminate the affected Tenant Order Form immediately upon written notice to the other Party.
- 11.6 Effect of Termination of Agreement. Upon and after the termination or expiration of the Agreement:
- (i) the Partner's rights granted under the Agreement, as applicable, will immediately terminate and the Parties shall cease all activities hereunder;
  - (ii) all Tenant Order Forms will automatically terminate; and
  - (iii) Supplier shall, within three (3) months of termination of the Agreement, delete all Partner and Client Data from its IT systems.
- 11.7 Effect of Termination of Tenant Order Form. Upon and after the termination or expiration of a Tenant Order Form:
- (i) the Partner's rights granted under the Tenant Order Form, , will immediately terminate and the Parties shall cease all activities thereunder;
  - (ii) Supplier shall, on the Partner's written request and, at the Partner's reasonable cost, provide reasonable assistance with the migration of any Client Data related to the Tenant Order Form, as applicable, to the Partner's IT systems; and
  - (iii) Supplier shall, within three (3) months of termination of the Agreement, delete all Client Data from its IT systems related to the Tenant Order Form being terminated.
- 11.8 Survival. Notwithstanding anything to the contrary herein, Sections , 5, 6, , 8, 9, 10, 11, 13 and Schedule 1: Section 4, shall survive termination or expiration of the Agreement or any applicable Tenant Order Form.

## **12. General**

- 12.1 The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a party to this Agreement.
- 12.2 This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings or statements of any nature made by the parties, whether oral or written, with respect to such subject matter.
- 12.3 Each party acknowledges that it has not relied on any statements, warranties or representations given or made by any other party under or in relation to this Agreement, save those expressly set out in this Agreement. Each party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under this Agreement. Each party acknowledges and agrees that nothing in this Clause 12 is intended to limit or exclude any party's liability for fraudulent misrepresentation.

- 12.4 No variation of this Agreement shall be effective unless made in writing and signed by the parties hereto or their duly authorised representatives.
- 12.5 The rights, powers and remedies provided in this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights, powers and remedies provided by law or otherwise.
- 12.6 No relaxation, forbearance or indulgence by either party in enforcing any of the terms or conditions of this Agreement against the other or the granting of time by either party to the other shall be deemed to be a waiver or shall prejudice, affect or restrict the rights and powers of that party against the other, nor shall any waiver by either party of any breach by the other operate as a waiver of or in relation to any other, subsequent or continuing breach of this Agreement.
- 12.7 If any provision of this Agreement is found by any court, regulatory or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, such provision shall be severed and the legality, validity and enforceability of the remainder of the Agreement (including the remainder of the provision which contains the relevant provision) shall not be affected. If, as a consequence of the foregoing, the accomplishment of the purpose of this Agreement is prevented, the parties shall immediately commence good faith negotiations to agree upon any lawful and reasonable changes to this Agreement that may be necessary to effect, as close as possible, the commercial intent of this Agreement.
- 12.8 Except as otherwise expressly provided herein, neither party may transfer, assign, mortgage, encumber this Agreement or any of its rights or interests hereunder, nor declare a trust of such interests or delegate or sub-contract any obligation to be performed hereunder, without the prior written consent of the other party. Any attempted assignment, delegation or sub-contracting in contravention of this provision shall be null and void, and of no force or effect.
- 12.9 Each party shall bear its own costs and expenses in connection with the negotiation, preparation and signature of this Agreement.
- 12.10 This Agreement may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

### **13. Governing Law**

- 13.1 This Agreement and any non-contractual disputes or claims arising out of it shall be governed by and construed in all respects in accordance with English law.
- 13.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales and agree that, in respect of proceedings in England and Wales.

## Schedule 1: End User Terms

### 1. Definitions

In this End User Terms Schedule, terms with initial capital letters shall have the meanings ascribed to such terms in this Section 1 or elsewhere in this Schedule, other Schedules and/or the Partner Agreement:

- a) “**Content**” means all content generated by the Software using Client Data, including graphs, charts, images, reports and other visual representations of the Client Data;
- b) “**Documentation**” means the documentation made available at [www.docs.orgvue.com](http://www.docs.orgvue.com) (as amended from time to time) to the Partner by Supplier;
- c) “**Good Industry Practice**” means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector offering the same services to a Partner of similar standing;
- d) “**Hosting Provider**” means Amazon Web Services (“AWS”) of 1200 12th Ave S, Ste 1200, Seattle, WA 98144 United States through one of AWS’ Subsidiaries;
- e) “**Limitations**” means the aggregate number of unique records (i.e. people and roles) that a Partner is permitted to analyse within the Tenant as set out in the Tenant Order Form;
- f) “**Partner Administrator**” means the individual appointed by the Partner, as detailed on the Tenant Order Form, who is responsible for the administration of the Client Tenant;
- g) “**Personal Data**” has the meaning set forth in the Personal Data Processing Provisions.
- h) “**Personal Data Processing Provisions**” means the provisions relating to the Parties’ responsibilities in respect of the processing of personal data under the Agreement, including under the European General Data Protection Regulation and the California Consumer Privacy Act, available at <https://www.orgvue.com/terms-and-conditions> or such other website address as may be notified to the Partner from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- i) “**Security Provisions**” means the security provisions relating to the Services available at <https://www.orgvue.com/terms-and-conditions> or such other website address as may be notified to the Partner from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- j) “**SLA**” means the service level agreement available at <https://www.orgvue.com/legal/terms-and-conditions/service-level-agreement/> or such other website address as may be notified to the Partner from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- k) “**Software**” means the proprietary modules of Supplier’s Orgvue software application identified on the Tenant Order Form;

- l) **“User Management”** means the administration of User access to the Client Tenant;
- m) **“User”** means those persons authorized and who are employees of the Partner by the Partner Administrator to access the Client Tenant;
- n) **“Virus”** means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. Supplier Obligations

- 2.1 Upon a Tenant Order Form being fully executed by both Parties, Supplier shall, during the term of the Tenant Order Form, provide to the Partner the Services ordered within such Tenant Order Form.
- 2.2 Supplier shall use commercially reasonable efforts to ensure the Software is free of all Viruses throughout the term of each Tenant Order Form.
- 2.3 Supplier shall make the Services available in accordance with the time periods outlined in SLA.
- 2.4 Supplier shall perform the Services in accordance with and subject to:
  - a) these End User Terms;
  - b) the SLA;
  - c) the Security Provisions;
  - d) the Personal Data Processing Provisions;
  - e) the Documentation;
  - f) the applicable fully executed Tenant Order Form; and
  - g) Good Industry Practice.
- 2.5 The Partner acknowledges and agrees that the Solutions (as defined within the SLA) shall be, and contain, Supplier’s sole liability and the Partner’s exclusive remedies in respect of any failure to provide the Services in accordance with the Agreement.

## 3. Partner Responsibilities

- 3.1 The Partner shall:

- a) follow Supplier's instructions and in accordance with the Documentation for access to the Client Tenant and use of the Software;
  - b) ensure that the Client Tenant is accessed and the Services are used properly by Users in accordance with Supplier's instructions and the Documentation;
  - c) train its Users to use the Services;
  - d) make available to Supplier such information as is required to enable Supplier to perform the Services; and
  - e) provide Supplier with all necessary co-operation in relation to the Agreement.
- 3.2 The Partner shall appoint a Partner Administrator who shall be responsible for User Management, including the setting up of Users and removing Users when they cease to be authorised to use the Services. The Partner shall ensure that the Partner Administrator and each User is an employee of the Partner with sufficient skills, training and seniority to undertake the roles and responsibilities referred to in this Section 3.2.
- 3.3 In relation to the Users and Limitations, the Partner undertakes that:
- a) it shall comply with the Limitations;
  - b) the Supplier or the Supplier's designee may, upon reasonable prior notice to the Partner, the Partner will grant temporary access to Supplier or Supplier's designee to inspect and audit the Partner's compliance with the Limitations and the Agreement at any point during the Term; and
  - c) if any of the requests referred to in Section 3.3(b) above reveal that the Partner has exceeded the Limitations and therefore underpaid Fees to Supplier, then without prejudice to its other rights, Supplier may request that the Partner shall pay to Supplier an amount equal to such underpayment, as well as paying all reasonable costs incurred by Supplier in analyzing the information provided to it by the Partner to demonstrate its compliance.
- 3.4 The Partner shall not access, store, distribute or transmit any Viruses during the course of its use of the Services and Supplier reserves the right, without liability or prejudice to its other rights to the Partner, to disable the Partner's access to the Client Tenant if the Partner breaches the provisions of this Section 3.4;
- 3.5 The Partner shall not access, store, distribute or transmit any material that:
- a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - b) facilitates illegal activity;
  - c) depicts sexually explicit images;
  - d) promotes unlawful violence;

- e) is discriminatory based on race, gender, religious belief, sexual orientation, disability; or
- f) is otherwise illegal or causes damage or injury to any person or property;

Supplier reserves the right, without liability or prejudice to its other rights to the Partner, to disable the Partner's access to the Client Tenant if the Partner breaches the provisions of this Section 3.5.

3.6 The Partner shall not:

- a) except as may be allowed by any Applicable Laws which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
  - I. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
  - II. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- b) access all or any part of the Services, Software, Client Tenant and Documentation in order to build a product, software or service which competes with the Services and/or the Software;
- c) use the Services, Software, Client Tenant and/or Documentation to provide a service bureau or to provide services to third parties not detailed in the Tenant Order Form;
- d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software, Client Tenant and/or Documentation available to any third party except the Users or the Client (subject always to the provisions of Clause 3.1 (vi) of the Partner Agreement); or
- e) attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Client Tenant and/or Documentation, other than Users or the Client (subject always to the provisions of Clause 3.1 (vi) of the Partner Agreement).

3.7 The Partner shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software, Client Tenant and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Supplier.

3.8 Supplier shall not be liable for any breach of the Agreement that is caused by the Partner's failure to comply with this Section 3.

#### 4. Proprietary Rights

##### 4.1 Services.

- a) Supplier and its Affiliates reserve all of their right, title and interest in and to the Software including any new features, developments and enhancements to the Software, and all of their related Intellectual Property Rights. No rights are granted to Partner hereunder other than as expressly set forth herein.

- b) Subject to the Partner making payment in accordance with Section 5 of the Partner Agreement, and complying (and ensuring that its Users and other staff comply) with the Partner Responsibilities in Section 3 of this Schedule, Supplier hereby grants to the Partner a non-exclusive, non-transferable, and non-sublicensable right to permit the Users to access the Client Tenant for the purposes of using the Software and the Documentation during the Initial Order Term (and any subsequent Renewal Order Terms) of the Tenant Order Form solely for the Partner's delivery of a Project.
- c) Supplier acknowledges and agrees that the Partner shall own all rights (including Intellectual Property Rights), title and interest in and to all of the Client Data and Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the same.
- d) The Partner hereby grants to Supplier and its Hosting Provider a limited, revocable, royalty-free, fully-paid up, worldwide, non-exclusive, non-transferable and non-sublicensable right to host, display and use the Client Data and the Content as necessary or useful in order to provide the Services for Partner's benefit as provided in the Agreement and/or to enforce the Agreement.
- e) The Partner acknowledges and agrees that Supplier collects email addresses of Users and shall utilise these details solely for the purposes of contacting the Users in order to provide support or information in regards to the Software or Client Tenant.
- f) Notwithstanding anything in this Agreement to the contrary, each Party shall be entitled to use any know-how, techniques, methodologies, programming methods, industry knowledge, or improvements thereupon, which may be retained in the minds of employees, agents, subcontractors, representatives and service providers of the party seeking to use the foregoing who have had access to Confidential Information of the other party.

## 5. Warranties and Representations

- 5.1 Supplier warrants that (a) it has all rights and permissions required to grant the licenses contained in the Agreement and to provide the licenses; and (b) during the Term:
  - a) the Services will perform materially in accordance with the applicable Documentation; and
  - b) it will not materially decrease the overall functionality of the Services.

