Reseller Flow Down Terms & Conditions

1. Definitions

The following definitions apply in this Agreement:

1.1. "**Affiliate**" or "**Affiliates**" means, with respect to a Party, any entity controlling, controlled by or under common control;

1.2. "**Agreement**" means these terms and conditions which governs the Software and Services;

1.3. "**Authorized Reseller**" means the entity appointed by the Supplier to resell the Software and Services to the Customer, as identified in Order Form;

1.4. "**Customer**" means the entity licensing the Software and Services from the Supplier, as set out in the Order Form ;

1.5. "**Customer Administrator**" the individual appointed by the Customer who is responsible for the administration of the Customer Tenant, as set out in the Order Form;

1.6. **"Customer Data"** means the data uploaded by the Customer into the Customer Tenant;

1.7. **"Customer Tenant"** means the dedicated instance of the Software provided by the Supplier;

1.8. "**Content**" means all content generated by the Software using Customer Data, including graphs, charts, images, reports and other visual representations of the Customer Data;

1.9. **"Documentation"** means the documentation made available at Orgvue user documentation | Orgvue User Documents (as amended from time to time);

1.10. **"DPA"** means the Data Processing Agreement made available at https://www.orgvue.com/legal/terms-and-conditions/data-processing-agreement;

1.11. "**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 Customer of similar standing;

1.12. "**Hosting Provider**" means Amazon Web Services ("AWS") of 1200 12th Ave S, Ste 1200, Seattle, WA 98144 United States or one of AWS' subsidiaries;

1.13. **"Hosting Services"** means the services to allow Users to access and use the Customer Tenant, including hosting set-up and ongoing services;

1.14. **"Intellectual Property Right(s)"** means rights of ownership of any kind of intellectual property, including copyrights, patents, trademarks, service marks, trade secrets, rule sets, and all other intellectual property and all rights therein, and the right to apply for, register, obtain, hold, extend and renew any of the foregoing;

1.15. **"Order Form"** means the order form between the Supplier and the Authorized Reseller;

1.16. **"Personal Data"** has the meaning set out in the DPA;

1.17. **"Party"** means either the Customer or the Supplier and "Parties" shall be construed accordingly;

1.18. "**Professional Services**" means implementation services, consulting and/or training services and/or other professional services as specified in a Work Order;

1.19. **"Security Provisions"** means the security provisions relating to the Services available at https://www.orgvue.com/terms-and-conditions/orgvue-security-provisions/;

1.20. **“Supplier”** means the applicable Orgvue entity providing the Software and Services as set out in the Order Form;

1.21. “**Limitations**” means the aggregate number of unique records (i.e. people and roles, sometimes referred to as “nodes”) that the Customer is permitted to analyse during the Term within the Customer Tenant as set out in the Order Form;

1.22. **“Services**” means Hosting Services and the provision of and access to the Customer Tenant;

1.23. “**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 Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion;

1.24. **“Software”** means the proprietary modules of Supplier’s Orgvue software application;

1.25. **“Term”** the duration of the term as set out on the applicable Order Form;

1.26. “**Usage Data”** means all data and content (other than Content) generated by the Software including insights, anonymised data (including anonymised data created from Customer Data), statistics, bug reports, and/or any system behavioural information**;**

1.27. **“User**” means those persons employed by the Customer authorized by the Customer Administrator to access the Customer Tenant;

1.28. “**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.

1.29. “**Work Order**” means the applicable order form or statement of work agreed between the Supplier and the Customer for the provision of Professional Services.

2. Term and Termination

2.1. This Agreement shall apply to the Customer's access to, and use of the Software and Services procured through the Authorized Reseller. By accessing or using the Customer Tenant, the Customer accepts and agrees to be bound by the Agreement. The Supplier is not a party to, and shall have no liability or obligation under, any agreement between the Customer and the Authorized Reseller.

2.2. The Order Form shall detail the Supplier, the Customer, the Customer Administrator, the Limitations and the Term (the "Commercial Aspects"). The Agreement hereby incorporates the Commercial Aspects. In the event of any conflict or inconsistency between the Commercial Aspects detailed in the Order Form and any matters agreed between the Customer and the Authorized Reseller, the Commercial Aspects shall prevail to the full exclusion of any other agreement between the Customer and Authorized Reseller.

2.3. The Term shall commence on the effective date set out in the Order Form and shall continue for the Term unless terminated earlier in accordance with the Agreement.

2.4. If either Party materially breaches a term of the Agreement, the non-breaching Party may terminate the 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.

2.5. Each Party shall have the right to terminate the Agreement on written notice if the other Party breaches a material term of the Agreement and such breach is incapable of being remedied.

2.6. The Supplier may suspend or terminate the Customer's access to the Customer Tenant with immediate effect on written notice if the Authorized Reseller fails to pay the Supplier any amounts due in respect of the Customer's access to the Software and Services.

2.7. The Customer hereby agrees that the Supplier shall bill the Customer directly for any outstanding years of the Term (if any), in accordance with the Supplier's normal billing frequency (i.e. annually in advance) if the Authorized Reseller is no longer authorized to resell the Software during the Term.

2.8. Unless otherwise agreed between the Parties, Supplier shall, within three (3) months of termination of the Agreement, delete all Customer Data from its IT systems.

3. Services

3.1. Throughout the Term of the Agreement:

3.1.1. Supplier shall provide the Services to the Customer;

3.1.2. Supplier shall use commercially reasonable efforts to ensure the Software is free of all Viruses;

3.1.3. Supplier shall make the Services available in accordance with the time periods outlined in the SLA; and

3.1.4. Supplier shall perform the Services in accordance with and subject to:

a) the Agreement;

b) the Security Provisions;

c) the DPA;

d) the Documentation ;

e) the Commercial Aspects; and

f) Good Industry Practice.

3.2. In the event the Customer has access to Henshaw, the Henshaw Addendum located at: Henshaw Addendum: Legal Insights | Orgvue shall apply.

3.3. To the extent required, Supplier shall provide Professional Services pursuant to a Work Order agreed between the Supplier and the Customer, which Work Order shall be subject to Schedule 2 of Orgvue's Master Service Agreement available at: Master services agreement | Orgvue.

4. Customer Responsibilities

4.1. The Customer shall:

4.1.1. follow Supplier's instructions and in accordance with the Documentation for access to the Customer Tenant and use of the Software;

4.1.2. ensure that the Customer Tenant is accessed and the Services are used properly by Users in accordance with Supplier's instructions and the Documentation;

4.1.3. make available to Supplier such information as is required to enable Supplier to perform the Services;

4.1.4. provide Supplier with all necessary co-operation in relation to the Agreement; and

4.1.5. Comply with the Limitations.

4.2. The Customer 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 Customer, to disable the Customer's access to the Customer Tenant if the Customer breaches the provisions of this Section 4.2;

4.3. The Customer shall not access, store, distribute or transmit any material that:

4.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.3.2. facilitates illegal activity;

4.3.3. depicts sexually explicit images;

4.3.4. promotes unlawful violence;

4.3.5. is discriminatory based on race, gender, religious belief, sexual orientation, disability; or

4.3.6. is otherwise illegal or causes damage or injury to any person or property;

and Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Customer Tenant if the Customer breaches the provisions of this Section 4.3.

4.4. The Customer shall not:

4.4.1. 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:

4.4.1.1. 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;

4.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

4.4.2. access all or any part of the Services, Software, Customer Tenant and Documentation in order to build a product, software or service which competes with the Services and/or the Software;

4.4.3. use the Services, Software, Tenant and/or Documentation to provide a service bureau or to provide services to third parties other than an Affiliate;

4.4.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software, Customer Tenant and/or Documentation available to any third party except the Users; or

4.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Customer Tenant and/or Documentation, other than Users;

4.5. The Customer shall use all reasonable endeavours to prevent any unauthorized access to, or use of, the Services, Software, Customer Tenant and/or the Documentation and, in the event of any such unauthorized access or use, shall promptly notify Supplier.

4.6. Supplier shall not be liable for any breach of the Agreement that is caused by the Customer's failure to comply with this Section 4.

5. Proprietary Rights

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

5.2. Subject to the Customer complying (and ensuring that its Users and other staff comply) with the Customer Responsibilities in Section 4 of the Agreement, Supplier hereby grants to the Customer a non-exclusive, non-transferable, and non-sublicensable right to permit the Users to access the Customer Tenant for the purposes of using the Software and the Documentation during the Term whilst the Customer has access to the Customer Tenant solely for the Customer's and Customer's Affiliates' internal business operations.

5.3. The Customer 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 Customer Data and the Content as necessary or useful

5.4. The Customer acknowledges and agrees that Supplier collects email addresses of all 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 Customer Tenant.

6. Warranties and Representations

6.1. 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 the Services and Software will perform materially in accordance with the applicable Documentation.

6.2. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER REPRESENTATION, WARRANTY, CONDITION OR PROMISE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, CUSTOMARY, A COURSE OF DEALING OR TRADE PRACTICE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF THE SOFTWARE, TENANT, THE SERVICES OR WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT AS A WHOLE, WHETHER MADE IN WRITING OR ORALLY. EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED TERMS, WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN PARTICULAR, SUPPLIER DOES NOT WARRANT THAT THE SOFTWARE, TENANT OR SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR FREE.

7. Limitation of Liability

7.1. The limitations in Sections 7.2 and 7.3 shall not apply in respect of any liability arising out of (a) death or personal injury; (b) fraud or fraudulent misrepresentation; (c) gross negligence or wilful misconduct of the Party to be charged or any person for whom it is responsible;

7.2. SUBJECT TO SECTION 7.1, 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.

7.3. SUBJECT TO SECTION 7.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY TO THE OTHER PARTY CUSTOMER SHALL BE LIMITED TO FIFTY THOUSAND US DOLLARS (US$50,000).

8. Indemnification

8.1. Supplier's IP Indemnification. Subject to Sections 8.2 and 8.4 below, Supplier will indemnify and defend the Customer and its Affiliates and its and their agents, directors, officers, representatives, attorneys and employees from any damages, legal fees and costs finally awarded against the Customer arising out of any claim, demand, suit or proceeding made or brought by a third party (a "Claim") against the Customer alleging that the Services or the Documentation infringe(s) or misappropriate(s) such third party's Intellectual Property Rights. If the Customer receives such a Claim, Supplier may, in its sole discretion and at no cost to the Customer: (a) modify the infringing item so that it no longer infringes or misappropriates; and/or (b) obtain a licence for the Customer's continued use of the Services in accordance with the Agreement.

8.2. The indemnification obligations contained within Section 8.1 above do not apply if: (a) the Services are not the basis of the Claim; (b) a Claim arises from the use or combination of the Services or any part thereof with software, hardware, data or processes not provided or recommended by Supplier, where the Services or the use thereof would not infringe without such combination; or (c) the Customer fails to take all commercially reasonable steps to mitigate losses which would otherwise be indemnified under the Agreement.

8.3. Customer Indemnification. Subject to Section 8.4 below, the Customer will indemnify and defend Supplier and its Affiliates and its and their agents, directors, officers, representatives, attorneys and employees from any damages, legal fees and costs finally awarded against the Supplier arising out of a Claim made or brought against Supplier alleging that: (a) any of the Customer Data, the Customer's use of the Customer Data with the Services or the Supplier's use of the Customer Data with the Services, infringes or misappropriates such third party's Intellectual Property Rights; (b) data, a database, software or an application provided by the Customer, or the Customer's use of such software or application in combination with the Services, infringes or misappropriates such third party's Intellectual Property Rights; and/or (c) the Customer's use of the Services is unlawful or in breach of the Agreement.

8.4. Conditions. The indemnification obligations contained in this Section 8 will only apply where, and shall be conditional upon, the indemnified Party: (a) promptly giving the indemnifying Party written notice of the Claim; (b) giving the indemnifying Party sole control of the defence and settlement of the Claim (except that the indemnifying Party may not settle any Claim unless it unconditionally releases the indemnified Party of all liability); and (c) giving the indemnifying Party all reasonable assistance, at the indemnified Party's expense.

8.5. This Section 8 is the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any Claim.

9. General

9.1. Confidentiality

"Confidential Information" means all information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with the Agreement which is marked as confidential or which ought reasonably to be considered confidential given its nature or the circumstances of its disclosure and includes the Customer Data. Other than Customer Data or Personal Data, "Confidential Information" does not include any particular information of the Disclosing Party that the Receiving Party can demonstrate: (i) was in the possession of, or was rightfully known by, the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Disclosing Party; (ii) was or has become generally available to the public other than as a result of disclosure by the Receiving Party or its agents; (iii) after disclosure to the Receiving Party, was received from a third party who, to the Receiving Party's knowledge, had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further use or disclosure; or (iv) was independently developed by the Receiving Party without use of or reference to any of the Disclosing Party's Confidential Information.

With effect from the date of the Agreement each Party shall keep confidential and shall not make available or disclose the Confidential Information of the other Party to any person, or make or permit any use of such Confidential Information without the prior written consent of the other Party, except that such Confidential Information may be made available or disclosed to and used by those, and only those, of the staff of the Receiving Party and/or third party suppliers to either Party who are under the same or similar obligations of confidentiality as are consistent with or required for the purpose of fulfilling the Receiving Party's rights and obligations under the Agreement.

Each Party shall take all reasonable steps to ensure that any such Confidential Information disclosed to any person in accordance with this confidentiality provision 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 Information than those imposed under the Agreement. The Receiving Party shall protect the confidentiality and integrity of the Disclosing Party's Confidential Information using the same degree of care that it uses to protect its own similar information, but in no event less than reasonable care.

Nothing in this confidentiality provision shall prevent either Party from disclosing Confidential Information 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.

Without prejudice to any other rights or remedies that a Party may have, both Parties acknowledge and agree that the other Party may not have an adequate remedy at law for any breach of this confidentiality provision, and that therefore the other Party shall be entitled to equitable relief including injunctive relief.

The obligations contained in this confidentiality provision shall remain in force for a period of two (2) years after the end of the Agreement unless otherwise agreed by the Parties in writing.

9.2. **Notices**

All notices under the Agreement shall be in writing and sent via email.

9.3. **Governing Law and Jurisdiction**

9.3.1. The governing law of this Agreement and exclusive forum for resolution of any claim in relation to its subject matter or formation (including non-contractual disputes or claims) is determined by reference to the Orgvue entity identified in the Order Form, as follows:

Supplier entity	Governing Law	Exclusive forum for resolution of disputes
Orgvue Limited	England and Wales	Courts of England and Wales
Orgvue, Inc.	New York	Courts of New York
Orgvue (Canada) Ltd	Ontario	Courts of Ontario
Orgvue Europe B.V.	Netherlands	Courts of Netherlands
Orgvue Pty Ltd	New South Wales	Courts of New South Wales