

Pilot Agreement

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 together with the Tenant Order Form which govern the Pilot;
- 1.3. **"Customer"** means the entity procuring the Pilot pursuant to and detailed on a Tenant Order Form;
- 1.4. **"Customer Administrator"**: the individual appointed by the Customer who is responsible for the administration of the Customer Tenant during the Pilot;
- 1.5. **"Customer Data"** means the data uploaded by the Customer into the Customer Tenant;
- 1.6. **"Customer Tenant"** means the dedicated instance of the Software provided by the Supplier to the Customer for the duration of the Pilot;
- 1.7. **"Content"** means all content generated by the Software using Customer Data, including graphs, charts, images, reports and other visual representations of the Customer Data;
- 1.8. **"Documentation"** means the documentation made available at <https://.docs.orgvue.com> (as amended from time to time);
- 1.9. **"Effective Date"** means the date on which the Pilot commences as set out in the applicable Tenant Order Form;
- 1.10. **"Fees"** means the fees for the Pilot set out in the applicable Tenant Order Form;
- 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. **"NDA"** means the Non-Disclosure Agreement entered into between the Parties on or about the date of signature of the Agreement;
- 1.16. **"Personal Data"** has the meaning set forth in the Personal Data Processing Provisions;
- 1.17. **"Personal Data Processing Provisions"** means the provisions relating to the Parties' responsibilities in respect of the processing of personal data under the agreement available at <https://www.orgvue.com/legal/terms-and-conditions/data-processing-agreement>;
- 1.18. **"Party"** means either the Customer or the Supplier and "Parties" shall be construed accordingly;
- 1.19. **"Pilot"** means the provision of the Services by the Supplier to the Customer for the purposes of Customer's evaluation of functionality and features, as more particularly described in the Tenant Order Form;
- 1.20. **"Professional Services"** shall mean implementation services, consulting and/or training services and/or other professional services as specified in a Work Order;
- 1.21. **"Security Provisions"** means the security provisions relating to the Services available at <https://www.orgvue.com/terms-and-conditions/orgvue-security-provisions/>;

- 1.22. **“Supplier”** means the Orgvue entity detailed on the relevant Tenant Order Form;
- 1.23. **“Limitations”** means the aggregate number of unique records (i.e. people and roles) that the Customer is permitted to analyse during the Pilot within the Customer Tenant as set out in the Tenant Order Form;
- 1.24. **“Services”** means Hosting Services and the provision of and access to the Customer Tenant;
- 1.25. **“Software”** means the proprietary modules of Supplier’s Orgvue software application;
- 1.26. **“Tenant Order Form”** means the order form agreed between the Parties detailing the commercial aspects of the Pilot;
- 1.27. **Term:** the duration of the Pilot as set out on the applicable Tenant Order Form;
- 1.28. **“User”** means those persons employed by the Customer authorized by the Customer Administrator to access the Customer Tenant;
- 1.29. **“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. Term and Termination

- 2.1. The Pilot shall be governed by the terms of the Agreement.
- 2.2. The Pilot shall commence on the Effective Date and shall continue throughout the Term unless terminated earlier in accordance with the Agreement.
- 2.3. If either Party breaches a material term of the Tenant Order Form or a material term of the Agreement, the non-breaching party may terminate the Tenant Order Form in the event that the breach is not cured within fifteen (15) days after receipt by the breaching Party of written notice with a detailed description of the breach.
- 2.4. Unless otherwise agreed between the Parties, Supplier shall, within one (1) month of termination of the Agreement, delete all Customer Data from its IT systems.

3. Fees

- 3.1. Customer shall pay Supplier the Fees as stated in the Tenant Order Form.
- 3.2. The Customer shall pay each undisputed invoice within thirty (30) days of its invoice date. The Customer shall not be permitted to make any deduction from the Fees whether in respect of set-off, counterclaim or otherwise.

4. Services

- 4.1. Throughout the Term of the Pilot:
 - 4.1.1. Supplier shall provide the Services to the Customer;
 - 4.1.2. Supplier shall use commercially reasonable efforts to ensure the Software is free of all Viruses;
 - 4.1.3. Supplier shall make the Services available in accordance with the time periods outlined in the SLA; and
 - 4.1.4. Supplier shall perform the Services in accordance with and subject to:
 - a) the Agreement;
 - b) the [Security Provisions](#);
 - c) the Personal Data Processing Provisions;
 - d) the [Documentation](#);
 - e) the applicable fully executed Tenant Order Form; and
 - f) Good Industry Practice.
- 4.2. To the extent required, Supplier shall provide Professional Services in accordance with Schedule 2 of Orgvue’s Master Service Agreement available at <https://www.orgvue.com/legal/terms-and-conditions/orgvue-subscription-agreement>.

5. Customer Responsibilities

- 5.1. The Customer shall:
 - 5.1.1. follow Supplier's instructions and in accordance with the Documentation for access to the Customer Tenant and use of the Software;
 - 5.1.2. ensure that the Customer Tenant is accessed and the Services are used properly by Users in accordance with Supplier's instructions and the Documentation;
 - 5.1.3. make available to Supplier such information as is required to enable Supplier to perform the Services;
 - 5.1.4. provide Supplier with all necessary co-operation in relation to the Agreement; and
 - 5.1.5. Comply with the Limitations.
- 5.2. 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 5.2;
- 5.3. The Customer shall not access, store, distribute or transmit any material that:
 - 5.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.3.2. facilitates illegal activity;
 - 5.3.3. depicts sexually explicit images;
 - 5.3.4. promotes unlawful violence;
 - 5.3.5. is discriminatory based on race, gender, religious belief, sexual orientation, disability; or
 - 5.3.6. 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 5.3.
- 5.4. The Customer shall not:
 - 5.4.1. 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:
 - 5.4.1.1. 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;
 - 5.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - 5.4.2. 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;
 - 5.4.3. use the Services, Software, Tenant and/or Documentation to provide a service bureau or to provide services to third parties other than an Affiliate;
 - 5.4.4. 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
 - 5.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Customer Tenant and/or Documentation, other than Users;
- 5.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software, Customer Tenant and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Supplier.
- 5.6. Supplier shall not be liable for any breach of the Agreement that is caused by the Customer's failure to comply with this Section 5.

6. Proprietary Rights

- 6.1. 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 Customer hereunder other than as expressly set forth herein.

- 6.2. Subject to the Customer complying (and ensuring that its Users and other staff comply) with the Customer Responsibilities in Section 5 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 Pilot whilst the Customer has access to the Customer Tenant solely for the Customer's and Customer's Affiliates' internal business operations.
- 6.3. 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 in order to provide the Services for Customer's benefit as provided in the Agreement and/or to enforce the Agreement.
- 6.4. 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.

7. Warranties and Representations

- 7.1. 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.
- 7.2. 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.

8. Limitation of Liability

- 8.1. The limitations in Sections 8.2 and 8.3 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; and (d) breach of the confidentiality provisions.
- 8.2. SUBJECT TO SECTION 8.1, 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.
- 8.3. SUBJECT TO SECTIONS 8.1 AND 8.4, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY TO THE OTHER PARTY CUSTOMER SHALL BE LIMITED TO THE FEES PAYABLE UNDER THIS AGREEMENT.
- 8.4. NOTWITHSTANDING SECTION 8.3, THE SUPPLIER'S TOTAL LIABILITY FOR BREACH OF THE SECURITY PROVISIONS SHALL BE LIMITED TO TWICE THE FEES PAYABLE UNDER THIS AGREEMENT.

9. General

9.1. Confidentiality

The Parties continue to be bound by and shall comply with the terms of the NDA.

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 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 |