



## End User Subscription Agreement (EUSA)

This EUSA describes the terms and conditions pursuant to which Supplier will make the Services available for use by the Client and Client Users for the Project (all capitalised terms defined below).

The Client and each Client User automatically agrees to this EUSA by being granted access to the Client Tenant by the Partner Administrator and logging into the Client Tenant.

In this EUSA, a “Party” will refer to either the Supplier or Client, as applicable and the “Parties” will refer to both the Client and Supplier.

### 1. Definitions

Terms with initial capital letters shall have the meanings ascribed to such terms in this EUSA:

- a) **“Client”** means the client of the Partner to whom the Project is being delivered and whose Client Users have been granted access to the Client Tenant by the Partner Administrator;
- b) **“Client Data”** means the data uploaded by the Partner and / or the Client into the Client Tenant;
- c) **“Client Tenant”** means the dedicated instance of the Software utilised for a Project;
- d) **“Client User”** means those persons employed by the Client authorized by the Partner Administrator to access the Client Tenant;
- e) **“Content”** means all content generated by the Software using Client Data, including graphs, charts, images, reports and other visual representations of the Client Data;
- f) **“Data Processing Agreement (DPA)”** means the provisions relating to the Parties’ responsibilities in respect of the processing of personal data under this EUSA, including under the European General Data Protection Regulation and the California Consumer Privacy Act, available at <https://www.orgvue.com/legal/terms-and-conditions/data-processing-agreement/>. Client acknowledges that in the DPA, the Client is ‘the Customer’;
- g) **“Documentation”** means the documentation made available at <https://docs.orgvue.com/> (as amended from time to time) to the Client by Supplier;
- h) **“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 Client of similar standing;
- i) **“Hosting Provider”** means Amazon Web Services (“AWS”) of 1200 12th Ave S, Ste 1200, Seattle, WA 98144 United States through one of AWS’ Subsidiaries;
- j) **“Hosting Services”** means the services to allow Client Users to access and use the Client Tenant, including hosting set-up and ongoing services;
- k) **“Partner”** means the partner providing the Project to the Client;
- l) **“Partner Administrator”** means the individual appointed by the Partner who is responsible for the administration of the Client Tenant during the Project;
- m) **“Project”** means the project provided by the Partner to the Client;
- n) **“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;
- o) **“Services”** means Hosting Services, the provision of and access to the Client Tenant, and the services otherwise set out in the SLA;
- p) **“SLA”** means the service level agreement available at <https://www.orgvue.com/legal/terms-and-conditions/service-level-agreement/>, as such document may be amended from time to time by Supplier in its sole discretion;
- q) **“Software”** means the proprietary modules of Supplier’s Orgvue software application;

- r) **“Supplier”** means the applicable Orgvue entity providing the Services for the Project;
- s) **“User Management”** means the administration of User access to the Tenant;
- t) **“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. Application Services

- 2.1 Upon a Partner Administrator providing access to a Client User for a Project, Supplier shall, whilst the Client User has access to the Client Tenant, provide Services to the Client.
- 2.2 Supplier shall use commercially reasonable efforts to ensure the Software is free of all Viruses throughout the Project.
- 2.3 Supplier shall make the Services available in accordance with the time periods outlined in the SLA.
- 2.4 Supplier shall perform the Services in accordance with and subject to:
  - a) this EUSA;
  - b) the SLA;
  - c) the Security Provisions;
  - d) the Data Processing Agreement;
  - e) the Documentation; and
  - f) Good Industry Practice.

The Client acknowledges and agrees that the Solutions (as defined within the SLA) shall be, and contain, Supplier's sole liability to Client and the Client's exclusive remedies against Supplier in respect of any failure to provide the Services in accordance with this EUSA.

## 3. Client Responsibilities

- 3.1 The Client 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 Client Users in accordance with Supplier's instructions and the Documentation;
  - c) make available to Supplier such information as is required to enable Supplier to perform the Services; and
  - d) provide Supplier with all necessary co-operation in relation to this EUSA.
- 3.2 The Client 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 Client, to disable the Client's access to the Client Tenant if the Client breaches the provisions of this Section 3.2;
- 3.3 The Client 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;

and Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to the Client Tenant if the Client breaches the provisions of this Section 3.4.

### 3.4 The Client 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 EUSA:
  - 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, Tenant and/or Documentation to provide a service bureau or to provide services to third parties;
- 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 Client Users; or
- e) attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Client Tenant and/or Documentation, other than Client Users.

3.5 The Client 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.

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

## 4. Proprietary Rights

### 4.1 Application 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 Client hereunder other than as expressly set forth herein.
- b) Subject to the Client complying (and ensuring that its Client Users and other staff comply) with the Client Responsibilities in Section 3 of this EUSA, Supplier hereby grants to the Client a non-exclusive, non-transferable, and non-sublicensable right to permit the Client Users to access the Client Tenant for the purposes of using the Software and the Documentation during the Project whilst the Client has access to the Client Tenant solely for the Client's internal business operations.
- c) The Client 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 Client's benefit as provided in this EUSA and/or to enforce this EUSA.
- d) The Client acknowledges and agrees that Supplier collects email addresses of all Client Users and shall utilise these details solely for the purposes of contacting the Client Users in order to provide support or information in regards to the Software or Client Tenant.
- e) Notwithstanding anything in this EUSA 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 Each Party represents that it has validly entered into this EUSA and has the legal power to do so.
- 5.2 Supplier warrants that (a) it has all rights and permissions required to grant the licenses contained in this EUSA 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.

## 6 Termination

- 6.1 This EUSA and the Client's rights to access the Client Tenant shall immediately terminate on the earlier of (i) the Partner revoking the Client and its Client Users access to the Client Tenant; (ii) the termination of the Project, for whatever reason; or (iii) the Supplier instructing the Partner to revoke the Client and its Client Users access to the Client Tenant.

## 7 Indemnification

- 7.1 The 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 made or brought against the Partner by a third party alleging that the Services infringe or misappropriate such third party's Intellectual Property Rights ("Claim") and will be responsible for damages, attorney fees and costs finally awarded against the Client as a result of the same.
- 7.2 The Client will indemnify and defend Supplier and its Affiliates and its and their agents, directors, officers, representatives, attorneys, and employees from any damages, attorney fees and costs against the Supplier arising out of a claim made or brought against Supplier by a third Party alleging that:
- a) any of the Client Data, the Client use of the Client Data with the Services or the Supplier's hosting of the Client Data infringes or misappropriates such third party's Intellectual Property Rights;
  - b) data, a database, software or an application provided by the Client, or Client's use of such software or application in combination with the Services, infringes or misappropriates such third party's Intellectual Property Rights; and/or
- 7.3 The Client will indemnify and defend Supplier and its Affiliates and its and their agents, directors, officers, representatives, attorneys, and employees from any damages, attorney fees and costs against the Supplier arising out of a third Party claim that the Client's use of the Services or Software is unlawful or in violation of the EUSA or the Documentation.
- 7.4 The indemnifications obligations contained in this Section 7 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 defense 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.
- 7.5 This Section 7 is the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any Claim.

## 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 either Parties liability arising out of (a) death or personal injury; and (b) for fraud or fraudulent misrepresentation; and (c) any other liability that cannot be capped at law.
- 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 THIS EUSA 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 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER'S LIABILITY TO THE CLIENT FOR ALL CLAIMS UNDER THIS EUSA SHALL BE LIMITED TO £50,000.