

LOT2B: SOFTWARE AS A SERVICE (SAAS)

Terms and Conditions Document

Service: CurbIQ

Submitted by Arcadis Gen UK Ltd.

TERMS AND CONDITIONS & END USER LICENSE AGREEMENT

THIS AGREEMENT is in effect the later of the signing of this Agreement or date of Arcadis's acceptance of a purchase order for the Service (the "**Effective Date**"). This Agreement is comprised of the sales quote, this End User License Agreement and attached customer terms and conditions if applicable in this order of precedence.

BACKGROUND:

A. Licensor is the owner of certain proprietary software as set out in the sales quote attached to this Agreement, that it makes available as a cloud-based hosted software as a service offering (the "**Service**"); and

B. Licensee wishes to obtain a license to use the Service, as specified in the sales quote, including for the use of its end users, and Licensor wishes to allow Licensee and its end users to use the Service, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the rights and obligations hereunder and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. **Term**. The term of this Agreement begins on the Effective Date and ends as set out in the sales quote, which forms an integral part hereof and is hereby incorporated by reference, unless earlier terminated in accordance with the provisions hereof.

2. **License**. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee and its authorized end users ("**End Users**") a personal, non-exclusive, non-transferable, non-sublicensable, revocable, limited license during the term of this Agreement (the "**License**") to access and use the Service.

3. **Restrictions**. Licensee shall not (and shall not allow End Users or any third party to): (a) possess, download or copy the Service or any part of the Service, including but not limited any component which comprises the Service, but not including any output from the Service; (b) knowingly interfere with service to any of Licensor's users, host or network, including by means of intentionally submitting a virus, overloading, flooding, spamming, mail bombing or crashing the Service; (c) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Service, except to the extent that enforcement is prohibited by Applicable Laws (as defined herein); (d) circumvent any timing restrictions that are built into the Service; (e) sell, rent, lend, transfer, distribute, license, or grant any rights in the Service in any form to any person without the written consent of Licensor; (f) remove any proprietary notices, labels, or marks from the Service or (g) use the Service to create, collect, transmit, store, use or process any Licensee Data that: (i) Licensee does not have the lawful right to create, collect, transmit, store, use or process, or (ii) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity).

4. **Upgrades and Enhancements**. Unless otherwise agreed in writing in a separate agreement,

(a) Licensee agrees that its purchase of a License hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Licensor regarding future functionality or features,

(b) notwithstanding the foregoing, Licensor may, from time to time, update the Service or otherwise offer Enhancements or Upgrades, which Licensor will deliver to Licensee as agreed in writing from time to time, where

(i) "**Enhancements**" means any release, version, upgrade, update, modification, addition, module, improvement or patch of or to the Service made available by Licensor from time to time that (1) Licensor makes generally available to its customers who are licensees of the Service and (2) is not an Upgrade, and

(ii) "**Upgrade**" means any update, revision, new version or upgrade of the Service made available by Licensor from time to time where (1) functionality and features of the Service have been materially improved or added, and (2) Licensor generally or specifically charges a fee to its other customers in order for them to obtain the Upgrade,

(c) each Enhancement delivered to Licensee will form part of the Service being licensed and provided hereunder,

(d) if, during the term of this Agreement, Licensor develops or offers Upgrades, such Upgrades will not form part of the Service and may be provided and licensed separately to Licensee for an additional fee or under an additional agreement, and

(e) in no event will Licensor be obligated to provide any Upgrades or Enhancements.

5. **Fees**. The fees to be paid by Licensee to Licensor for access and use of the Service are set out in the Customer Terms and, except as otherwise expressly indicated therein:

(a) all fees are non-cancellable and non-refundable,

(b) Licensor will calculate and invoice Licensee for the fees in accordance with Schedule "A",

(c) except as otherwise indicated herein, Licensee will pay all invoices within thirty (30) days of the date of invoice, and Licensee will pay interest on any late payments, which shall accrue at the rate of 1% per month (12% per annum) on amounts that are overdue more than fifteen (15) days, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid,

(d) unless otherwise stated on invoices, Licensor's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Licensee is responsible for paying all Taxes associated with Licensee purchases of Service licenses hereunder. If Licensor has the legal obligation to pay or collect Taxes for which Licensee is responsible under this paragraph, the appropriate amount will be invoiced by Licensor to Licensee and paid by Licensee, unless Licensee provide Licensor with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Licensor is solely responsible for Taxes assessable against Licensor based on Licensor's income, property and employees,

(e) Licensor shall have the right to adjust the fees and rates at the time of renewal by providing an updated sales quote.

6. **Acceptable Use**. In using the Service, Licensee will:

(a) be responsible for its and its End Users' compliance with this Agreement;

(b) use commercially reasonable efforts to prevent unauthorized access to or use of the Service;

(c) use the Service only in accordance with all applicable laws, legislation and regulations, including all applicable local, provincial, state, federal and foreign laws, treaties and regulations as well as orders of courts or laws, regulations, by-laws or ordinances of applicable governmental agencies (collectively, "**Applicable Laws**"), and

(d) will immediately notify Licensor any time Licensee becomes aware of any violation, by any person, of this Agreement and provide Licensor with assistance, as requested, to stop or remedy such violation.

7. **Proprietary Rights**.

(a) **Reservation of Rights**—Licensor owns and shall retain all right, title and interest (including without limitation all Intellectual Property Rights (as defined below)) in and to the Service and any copies, corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Service and subject to the provisions of this Agreement, and Licensee further agrees that this Agreement does not convey to Licensee, any End User or any other third party, any ownership right, interest or title in or to any Service, or to any Intellectual Property Rights therein, other than those expressly set out in this Agreement. Licensee shall keep the Service free and clear of all liens, encumbrances and/or security interests. Subject to the limited rights expressly granted in this Agreement, Licensor reserves all rights, title and interest in and to the Service. Licensor owns and shall retain all right, title, interest and Intellectual property rights to all customizations of the Service and to all work products, deliverables, and results from the services provided by Licensor to Licensee under a statement of work, Licensor's proposal or other similar document. In this Agreement, "**Intellectual Property Rights**" means any and all (i) proprietary rights provided under patent law, copyright law (including moral rights), trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law, or any other applicable statutory provision or otherwise arising at law or in equity anywhere in the world, including, without limitation, trade secret law, that may provide a right in works, software, source code, object code, marks, ideas, formulae, algorithms, concepts, methodologies, techniques, inventions, or know-how, or the expression or use thereof, (ii) applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in any of the foregoing, and (iii) past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief relating, referring, or pertaining to any of the foregoing.

(b) **Feedback**—From time to time during the term of this Agreement, Licensee or its End Users may provide Licensor with comments, suggestions, ideas and impressions of the Service, its functionality or its design (collectively, "**Feedback**"). Licensee acknowledges and agrees that, by disclosing such Feedback to Licensor, Licensee will be deemed to have assigned same to Licensor and waived any moral rights in or to same, and Licensee will require its End Users to do the same. Licensee acknowledges and agrees that the opportunity to use the Service is good and sufficient consideration for any contributions, through the Feedback or otherwise, to the design, improvement, or functionality of the Service.

(c) **Licensee Data**—Licensor does not claim ownership of, and assumes no responsibility with respect to, any information, materials, data entered or inputted into the Service by or on behalf of Licensee or its End Users (collectively, "**Licensee Data**"). All right, title and interest (including Intellectual Property Rights) in and to Licensee Data will at all times be fully vested in Licensee.

(d) **Privacy**—Licensee acknowledges and agrees that Licensee Data may contain personal information protected by Applicable Laws, and, in connection therewith, Licensor will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Service and Licensee Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Licensee Data by Licensor personnel except (i) to provide the Service and prevent or address service or technical problems, (ii) as compelled by law and upon identification of lawful authority, (iii) as expressly permitted

in writing by Licensee, or (iv) as allowed under Applicable Laws. Licensor shall, in connection with the provision of the Service, comply with Applicable Laws as they pertain to data protection.

(e) **Processing of Personal Information**— Licensor shall secure Personal Information (as defined in this subsection (e)) with all necessary safeguards appropriate to the level of sensitivity of the Personal Information. Licensor shall only process Personal Information on behalf of and in accordance with Applicable Laws for the following purposes: (i) processing in accordance with this Agreement; (ii) processing initiated by Licensee's End Users or customers in their use of the Service; and (iii) processing to comply with other documented reasonable instructions provided by Licensee where such instructions are consistent with the terms of the Agreement and Applicable Laws. Licensor shall ensure that its personnel engaged in the processing of Personal Information: (i) are informed of the confidential nature of the Personal Information, (ii) have received appropriate training on their responsibilities, and (iii) are under contractual or statutory obligations to maintain the confidentiality of Licensee Data. "**Personal Information**" means any information relating to an identified or identifiable natural person as defined under Applicable Laws.

8. **Confidentiality**

(a) During the term, either party may disclose or make available to the other Party information about its business affairs, products, intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party.

(b) The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

9. **Warranties**.

(a) Licensor represents and warrants to Licensee as follows:

(i) during the term of this Agreement, the Service will perform materially in accordance with its documentation and in accordance with any written specifications, if any;

(ii) the Service does not infringe any third-party Intellectual Property Rights enforceable in the United States or Canada;

(iii) as of the Effective Date, there are no demands, suits, claims, actions or proceedings pending or, to the best of Licensor's knowledge, threatened against Licensor which allege the infringement or misappropriation of any third-party Intellectual Property Rights based on the use of the Service, and

(iv) Licensor has used commercially reasonable efforts to ensure that the Service does not contain any malicious code.

(b) **No Other Warranties**—Other than as specifically provided for in this Agreement, or in a separate, written agreement, or in any other agreement executed concurrently with this Agreement or after the date of this Agreement,

(i) the Service is provided on an "as-is" and "as-available" basis, and

(ii) the conditions, representations and warranties expressly set out herein are in lieu of, and Licensor expressly disclaims, all conditions, warranties and representations, express, implied or statutory, including implied conditions, warranties or representations in respect of quality, conduct, performance, reliability, availability, merchantability or fitness for a particular purpose, whether arising by usage of trade, by course of dealing, by course of performance, at law, in equity, by statute or otherwise howsoever, to the maximum extent permitted by Applicable Law.

10. **Liability**.

(a) **Exclusion and Limit of Liability**

(i) Neither party will be liable to the other for any indirect, incidental, special or consequential Claims of any kind whatsoever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of business, loss of management or operation time and loss of goodwill or anticipated savings, even if the party has been notified of the possibility thereof or could have foreseen such Claims, and

(ii) The Licensor's aggregate liability for direct damages in respect of this Agreement will be limited to the amount of fees paid by Licensee to the Licensor in the twelve (12) months preceding the incident giving rise to the Claim. The term "**Claim**" means any and all liabilities, actions, proceedings, claims, demands, losses, damages and costs, including reasonable legal fees and expenses on a solicitor and own client basis.

11. **Termination**.

(a) This Agreement, and the License granted under this Agreement, may be terminated as follows:

(i) by either party if the other is in material breach of this Agreement that is not remedied within the 30 day period following notice from the non-defaulting party to the breaching party setting out the reasonable particulars of such breach; or

(ii) by either party if the other party (in this provision, the "**Insolvent Party**") is dissolved, has its existence terminated, has a receiver appointed over all or any material part of its property, has an assignment made for the benefit of its creditors, has a petition in bankruptcy made by it or against it, has commenced by or against it any proceedings under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness or composition or extension of indebtedness, in each case where same is not being contested in good faith by such Insolvent Party.

(b) **Effect of Termination**. Upon termination of this Agreement for any reason,

(i) Licensee must immediately cease any use of the Service and Licensee's License, including that of its End Users, will immediately terminate, and any provisions that, by their meaning or nature, are intended to survive termination of this Agreement shall survive termination or expiration of this Agreement for any reason, and

(ii) on and after the effective date of termination of this Agreement and the License hereunder, Licensee will remove and destroy (using commercially reasonable means) and cease any and all use of, all copies of the Service in Licensee's and its End Users' possession.

12. **Internet Connectivity**.

(a) Licensor makes the Service available for access via the Internet. Licensee shall provide, at Licensee's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Service over the Internet, and

(b) Licensor hereby acknowledges that the Service may be interrupted due to (i) website downtime for scheduled maintenance at Licensor's sole discretion, or (ii) interruptions in Internet connectivity or other website downtime caused by circumstances beyond Licensor's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures, or delays involving hardware of software not within Licensor's control or network intrusions. Licensee hereby acknowledges and agrees that Licensor shall not, in any way, be liable for, or have responsibility with respect to, any such Service interruptions and releases Licensor from any claims relating thereto.

13. **Third Party Service**.

(a) the Service operates in, connects to and/or interfaces with certain third-party operating systems, applications and other service, that Licensee is responsible for obtaining, installing, supporting and maintaining such service, and that Licensor shall not, unless otherwise agreed to by the parties, be responsible for obtaining, installing, supporting or maintaining any such service; and

(b) certain third-party service is incorporated into the Services and that such third party service is licensed to Licensee and may be subject to additional terms, and that this Agreement does not grant Licensee the right the use such third party service in any manner other than in connection with Licensee's authorized use of the Service in the manner provided herein.

14. **General**.

(a) **Assignment**—This Agreement, and any rights and licenses granted hereunder (including the License) may not be assigned by Licensee without the prior written approval of Licensor but may be assigned without Licensee's consent by Licensor to (i) a parent or subsidiary, (ii) an acquirer of all or substantially all of its assets, (iii) a successor by merger or amalgamation. Any purported assignment in violation of this section shall be void.

(b) **Entire Agreement—**This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, without affecting the validity or enforceability of any separate agreement in writing between Licensee and Licensor. Except as otherwise agreed in writing, neither party has relied on any representations or warranties that are not made in this Agreement.

(c) **Non-Waiver**—None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Licensor, and such waiver may only be effected by an instrument

in writing signed by an authorized officer of Licensor. No waiver of any provision of this Agreement shall constitute a waiver of any other provisions or of the same provision on another occasion.

(d) **Notices**—Any notice, consent, waiver, approval, authorization or other communication to be delivered in connection with this Agreement must be in writing.

The parties expressly disclaim the application of the *United Nations Convention on Contracts for the International Sale of Goods*, or any adopting legislation with respect thereto, with respect to this Agreement. Notwithstanding the foregoing parts of this Section 14(e), nothing in this Agreement shall prevent a party from seeking injunctive or other equitable relief from any court of competent jurisdiction relevant to the matter then in dispute.

(e) **Inurement**—Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and permitted assigns.

(f) **Relationship**—Licensee agrees that no joint venture, partnership, employment or agency relationship exists between Licensor and Licensee as a result of this Agreement or use of the Service, the relationship is strictly as licensee-licensor. The sole relationship that exists by virtue of this Agreement is that between Licensee and Licensor.

(g) **Force Majeure**— Neither party shall be responsible for a failure to fulfil its obligations under this Agreement or for delay in doing so if such failure or delay is due to circumstances beyond its reasonable control, such as acts of God, acts of government, war, riots, strikes and accidents in transportation.

(h) **Severability**— If any of the provisions of this Agreement or any part thereof shall be or held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or parts thereof, and the rights and obligations of the parties shall be construed and enforced accordingly, with the invalid or unenforceable provisions or parts modified so as to be limited and enforced to the fullest extent possible.

(i) **Interpretation**— In this Agreement, any word is deemed to include the masculine, feminine, neuter, singular or plural form thereof as the context so required. The captions and headings used in this Agreement are for convenience only and do not constitute substantive matter and are not to be construed as interpreting this Agreement. The word "**including**", the word "**includes**" and the phrase "**such as**", when following a general statement or term (whether or not non-limiting language such as "without limitation" or "but not limited to" or other words of similar import are used with reference thereto), is not to be construed as limiting, but rather as permitting the reference to all other items or matters that could reasonably fall within its broadest possible scope, and the word "**or**" between two or more listed matters does not imply any exclusivity between the matters being connected.

(j) **Ethical Practices**— Licensee will comply with its own ethical codes, which incorporates applicable laws, regulations and standards. In the absence of its own ethical codes, Licensee commits to carry out its business in accordance with principles which are consistent with the Arcadis General Business Principles ("AGBP") located here: Arcadis AGBP.

15. **Counterparts**— This Agreement may be executed in counterparts (including by way of facsimile or electronic transmission), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16. **Language of Agreement**— The parties hereto confirm that they have requested that this Agreement and all related documents be drafted in English. Any French translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties. *Les parties aux présentes ont exigé que la présente entente et tous les documents*

connexes soient rédigés en anglais. Toute traduction de celle-ci est non-officielle, est fournie à des fins d'information seulement et ne crée aucun lien contractuel entre les parties.

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IN WITNESS WHEREOF, each party has caused this Agreement to be signed and delivered by its duly authorized representative to be effective as of the Effective Date.

[ARCADIS LEGAL ENTITY NAME]

Name: _____

Title: _____

Date: _____

Signature: _____

[CUSTOMER NAME]

Name: _____

Title: _____

Date: _____

Signature: _____