

Symbiant GRC and Audit Management Software

Terms and Conditions

→ www.symbiant.co.uk

Symbiant®

**HM Treasury Orange Book
Aligned GRC & Audit
Management Software**

→ www.symbiant.co.uk



1. Definitions

The definitions of the EULA shall continue to apply but the following additional apply:

Agreement	"Agreement" means collectively, these terms herein and the terms set forth in the SLA or any further agreement between the relevant parties.
Customer	"Customer" means "You" as set forth in the licence.
Customer Data	"Customer Data" means information submitted by or entered by you or a User or automatically uploaded through the use of the SaaS Services including, but not limited to, account information, network information, user IDs and usage details.
Exclusions	"Exclusions" means the following events, which events shall be excluded from the calculation of Uptime (i) a force majeure event; (ii) outages due to Scheduled Downtime; (iii) outages based on Customer networks or Domain Name Server issues; (iv) Customer's configuration, scripting, coding; (v) internet outages; (vi) Customer outages requested by Customer; and (vii) Customer changes to its environment which hinder the SaaS Services.
Scheduled Downtime	"Scheduled Downtime" means planned downtime of which Symbiant has notified Customer at least forty-eight (48) hours in advance.
SaaS Services	"SaaS Services" means access to the online, web-based version of the Software (including Documentation), provided by Symbiant or its third-party provider through the use of the System.
SaaS Service Credit	"SaaS Service Credit" means in the event that Symbiant is unable to meet the stated level of Uptime in any month, the Customer must submit a request for credit, and Symbiant will provide to the Customer a credit against future service fees in the manner and to the extent described below.
Subscription Term	"Subscription Term" means any specific duration identified on an Order during which the SaaS Services will be provided otherwise it will be a ninety-day (90) rolling contract.
System	"System" includes the software and hardware used to provide the SaaS Services to the Customer over the Internet, including Software, Documentation, other software, web and/or other internet servers, any associated offline components, and all updates thereto.
Uptime	"Uptime" means the time the SaaS Services are available for access and use through the System, but subject to the Exclusions described herein.
User	"User" means your employees, contractors or representatives that you authorise to use the Software.

2. SaaS Services

2.1 Right to Use the SaaS Services

Subject to the terms of the Agreement and payment of applicable fees, during the Subscription Term, Symbiant grants to Customer a non-exclusive, non-transferable right which Customer cannot sub-licence, for Customer and its Users to access and use the SaaS Services for Customer's internal business purposes.

2.2 Contract Period and Termination

The default contract period is 90 days. Unless the client has had free customisations of pages and reports, the client can terminate without reason by giving Symbiant 90 days written notice. If the client has had free customisations of pages and/or reports, then the notice period is six (6) months.

2.3 Acceptable Use Policy (AUP)

Acceptable Use Policy which outlines unacceptable use of Symbiant's Software-as-a-Service (SaaS), which interacts with, or access, the Internet (the "Services"). This Policy is in addition to any other terms and conditions under which Symbiant provides the Services to you. The examples listed in this Policy are not exhaustive. Prohibited uses and activities include, without limitation, any use of the Services in a manner that, in Symbiant's reasonable judgment, involves, facilitates, or attempts any of the following:

- a) violating any law of, or committing conduct that is tortuous or unlawful in, any applicable jurisdiction;
- b) displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;
- c) advocating or encouraging violence against any government, organisation, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;
- d) accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content
 - a) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right,
 - b) in violation of any applicable agreement, or
 - c) without authorisation;
 - e) deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
- f) obtaining unauthorised access to any system, network, service, or account;
- g) interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;

- h) introducing or activating any viruses, worms, harmful code and/or Trojan Horses;
- i) sending or posting unsolicited messages or e-mail, whether commercial or not,
 - a) to any recipients who have requested that messages not be sent to them, or
 - b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
- j) evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;
- k) holding Symbiant or its affiliates up to public scorn or ridicule; and/or reselling Symbiant's services, in whole or in part, to any entity or individual, without Symbiant's prior written consent, or misrepresenting your relationship with Symbiant.

Questions about acceptable use can be directed via <https://www.symbiant.co.uk/company/contact-us>

3. Fees

3.1 Fees

The SaaS Hosting Fees payable by the Customer to Symbiant are those stated in each Order.

3.2 Advance Payment

All fees are payable in advance of service for the full month(s) the invoice covers.

3.3 Payment Frequency Options

Customers can elect to pay monthly, quarterly, six months or annually by credit card, standing order or BACS upon invoice.

3.4 Price Fixing Period

Your fees are fixed for a minimum period of twelve (12) months or for the fixed-term of the agreement and providing your licence does not change or your account does not default, neither will our charges.

3.5 Administration Fees

Administration fees: company forms, failed or late payments, and visits to our facilities are chargeable, and not included in our advertised prices.

3.6 Missed or Late Payments

If your payments are late, your account will go into default. The advertised monthly fees are based on all payments being made on time, which means by the day they are due. We reserve the right to increase monthly fees if three (3) or more payments are late in a 12-month period. We also reserve the right to terminate unpaid or overdue accounts without notice and/or change the monthly fee for accounts that default.

3.7 Suspension for Non-Payment

In the event that the Customer does not pay all Fees due within the time period specified on the invoice or other written agreement, Symbiant reserves the right to suspend the Customer's use of the Service by whatever means it deems appropriate until such time as the client's account is back in good standing and all due fees are paid in full.

3.8 Online Training

Online training – up to 30 minutes per session is free, fees may be applied for longer training sessions.

3.9 Manual Data Removal Charges

If a client requests information to be manually removed from our servers, a charge will be applied for the engineer's time.

3.9.1 Payment Error Challenges

If the Customer believes they have made any errors in payments they shall have the right to challenge that payment within a maximum of three (3) months of the date of payment. Any challenge must be made in writing and sent to the Symbiant Accounts dept within the aforementioned time frame. If no challenge is made within this time frame, the payment shall be deemed final and non-refundable.

4. Customer Data and Responsibilities / Security / Data Protection

4.1 Customer Data

Customer Data shall be protected and treated as Confidential Information.

4.2 Security

Symbiant uses commercially reasonable practices, including encryption and firewalls, designed to enable Customer Data to be disclosed only to Customers and authorised Users.

4.3 Backup

Symbiant uses commercially reasonable practices designed to enable the backup of the Customer Data consistent with Symbiant's storage policies and procedures, applicable to each twenty-four (24)-hour period.

4.4 Restoration of Data

Symbiant will not be responsible for any unauthorised access to or alteration, theft or destruction of the Customer Data through accident, fraudulent means or devices unless such access, alteration, theft or destruction is caused as a direct result of Symbiant's negligence or intentional misconduct, in which case Symbiant's commercially reasonable efforts to restore the Customer Data shall be limited to the most recent back-up of the Customer Data.

4.5 Data Controller / Data Processor Position

Symbiant is not a data controller in respect of our client's data. This is because the client retains exclusive control over the purpose for which the data is processed and the content of the data. We have no way of determining how and in what manner the data is processed as well as the degree of control over the content of personal data. For data protection purposes, we are classified as a data processor. Symbiant shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of Article 28 of EU GDPR and ensure the protection of the rights of the data subject and comply with this regulation.

4.6 Sensitive Personal Data

The client should not store any sensitive personal data on the Symbiant system without prior written permission from Symbiant's Data Protection Officer or a Symbiant company director. If such data is going to be stored we will require you to disclose the full nature of the details and intended use.

4.7 Client Responsibilities for Credentials and Access

The client is responsible for all log-in Credentials and access security and the monitoring of site access. Administrator users can set password strength and rotation policies and check access via logs. These logs show you when users have logged in and any failed attempts. You can activate account lockouts after x number of failed attempts; these accounts will require an administrator to manually re-activate.

4.8 User Accounts

Except to the extent caused by our breach of this Agreement,

- (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorised by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and
- (b) we are not responsible for unauthorised access to your account.

4.9 GDPR

Our data privacy policy is available [here Our Policies](#).

In Brief, unless required by law, we do not share data with any third parties. We only use and keep personal data in order to contact you about the service we have been contracted or contacted for. We keep your Name, Job Role, Email address, and Telephone number with the name and address of the company you are working for. If you require us to remove this data, we will need an alternative valid contact as we may need to alert your company of important notices including invoices. Unless we are requested to remove your data, it will be kept for as long as your company is our client or is potentially interested in our services.

5. Availability

5.1 Availability and Remedies for Defaults

Symbiant uses commercially reasonable efforts to maintain the availability of the SaaS Services and System twenty-four (24) hours per day, seven (7) days per week, less Scheduled Downtime, in accordance with Symbiant's policies. Symbiant commits to achieving 99.9% Uptime on a monthly basis, less the Exclusions described above. If Uptime falls below 99%, it shall be considered a minor default; and if Uptime falls below 98%, it shall be considered a major default. In case of a minor default, the Customer is entitled to 2 days' credit for SaaS Services fees, based on the monthly SaaS Hosting Fees paid. In the event of a major default, the Customer is entitled to 5 days' credit for SaaS Hosting Fees, based on the monthly SaaS Hosting Fees paid. Any credits issued to Customer will be applied towards the next billing period applicable to Customer or otherwise as agreed between the parties. Except the credits issued under this Section will be the Customer's sole and exclusive remedy for the default event giving rise to the credit.

5.2 Downtime

Scheduled Downtime and unscheduled interruptions may occur, and Symbiant does not warrant uninterrupted availability of the System. Normal software or hardware upgrades are scheduled for nights and weekends, GMT Time, and are intended to cause a minimum amount of interruption to SaaS Services and System availability. In the event that an unscheduled interruption occurs, Symbiant will use commercially reasonable efforts to resolve the problem and return the System to availability as soon as practical. During such Scheduled Downtime and unscheduled interruptions, the Customer may be unable to transmit and receive data through the SaaS Services. The Customer agrees to cooperate with Symbiant during the Scheduled Downtime and unscheduled interruptions if assistance from the Customer is necessary in order to restore the System to working order.

5.3 Exclusions

The Exclusions defined above shall be excluded from the calculation of Uptime.

5.4 Changes

In addition to Scheduled Downtime, Symbiant may temporarily restrict Customer's access to parts of the SaaS Services for necessary, unplanned maintenance or system administration purposes without notice or liability.

6. Non-Disclosure Agreement

PARTIES

6.1 Customer

Any company that is a client of ours or in talks with us to become a client or use our service (the "Customer"); and

6.2 Symbiant

Symbiant is a company incorporated in England and Wales registration number 04027419 having its registered office at Princes Exchange, Princes Square, Leeds. LS1 4HY ("Symbiant").

AGREEMENT

7. Definitions

7.1 In this Agreement:

(a) “Agreement”

means this agreement, and any amendments to this agreement from time to time;

(b) “Customer Confidential Information” means:

- any information disclosed by or on behalf of the Customer to Symbiant at any time before the termination of this Agreement;
- all information databased on the Symbiant servers; or
- was marked as “confidential”; or
- should have been reasonably understood by Symbiant to be confidential;
- “Permitted Purpose” means the purpose of providing software or other services provided by Symbiant.

8. Term

8.1 This Agreement shall come into force from when the Customer contacts Symbiant and shall continue in force until 1 year after the client is no longer a customer.

9. Recipient's Confidentiality Obligations

9.1 Symbiant must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as Symbiant uses to protect Symbiant's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

9.2 Permitted Disclosures

Notwithstanding Clause 9.1, Symbiant may disclose the Customer Confidential Information to Symbiant's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

9.3 Exceptions to Confidentiality

This Clause 9 imposes no obligations upon Symbiant with respect to Customer Confidential Information that:

- (a) is known to Symbiant before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of Symbiant; or
- (c) is obtained by Symbiant from a third party in circumstances where Symbiant has no reason to believe that there has been a breach of an obligation of confidentiality.

9.4 Required Disclosures

The restrictions in this Clause 9 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of Symbiant on any recognised stock exchange.

9.5 Use After Termination

Upon the termination of this Agreement, Symbiant will immediately cease to use the Customer Confidential Information.

9.6 Destruction of Data After Termination

Within 31 working days following the date of termination (providing all clients' obligations have been met) of this Agreement, Symbiant will destroy all databases the Customer used from our servers and backup servers.

9.7 Duration of Confidentiality Obligations

The provisions of this Clause 9 shall continue in force for a period of 3 years following the termination of this Agreement, at the end of which period they will cease to have an effect.

10. Warranties

10.1 Customer Warranty

The Customer warrants to Symbiant that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

10.2 Symbiant Warranty

Symbiant warrants to the Customer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

10.3 Entire Warranties Clause

All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

11. Termination

11.1 Contract Period and Notice Requirements

The default contract period is ninety (90) days. Unless the client has had free customisations of views and reports, the client can terminate without reason by giving Symbiant ninety (90) days written notice, if the client has had free customisations of views and/or reports, then the minimum notice period is six (6) months. Eligible invoices due in that period are to be paid.

11.2 Effect of Termination

Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have an effect, save that the following provisions of this Agreement shall survive and continue to have an effect (in accordance with their express terms or otherwise indefinitely): Clauses 7, 9, 11.2, 11.3 and 12.

11.3 Accrued Rights

The termination of this Agreement shall not affect the accrued rights of either party.

11.4 Termination Procedure

To terminate your account, go to the [Contact Us](#) page, click on General Contact and fill in the form, ensure you select "Cancel Account" for the department.

12. General

12.1 Waiver

No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

12.2 Variation

This Agreement may be varied by a new general non-disclosure agreement that is published on the Symbiant website.

12.3 Third-Party Rights

This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

12.4 Liability

Nothing in this Agreement shall exclude or limit any liability of a party for fraud or fraudulent misrepresentation, or any other liability of a party that may not be excluded or limited under applicable law.

12.5 Assignment and Sub-Contracting

Neither Party shall assign, sub-contract or deal with this Contract in any other way without the prior written consent of the other Party, such consent shall not be unreasonably withheld or delayed. Any sub-contracting or assignment shall not relieve the Client from any liability, obligation or duty attributable to the Client under this Contract.

12.6 Entire Agreement

This Contract comprises the entire agreement between the Parties and supersedes all previous communications, representations or agreements between the Parties with regard to their respective rights and obligations hereunder.

12.7 Precedence of Terms

These terms and conditions shall have precedence over any other document referred to in the Contract except the Quotation. In particular, but without prejudice to the foregoing, these terms and conditions shall prevail over any terms or conditions contained in or referred to in any order or other document emanating from the Client.

12.8 Severability

Each of the provisions and sub-provisions of the Contract is severable from the others. Any provision or sub-provision which is held to be illegal, invalid or unenforceable, shall be severed from the others without affecting or impairing the remainder of the affected provision or the remainder of the Contract which shall remain in full force and effect.

12.9 Client Logos

Unless explicitly told otherwise in writing, Symbiant have the right to display clients' logos on its website as a way to inform other businesses of the types of firms who have already benefited from using our software and/or services and as a way to illustrate our position in the market.

12.10 Support

All clients get free Standard support. Our premium support service allows clients to ask our support team to make unlimited changes and customisations to forms and reports at no charge. Clients can make changes themselves to reports and forms or pay for our support team to make the changes on a case-by-case basis. Once premium support is activated, it can only be cancelled when you cancel your account after a minimum period of 12 months. All support is subject to our fair use policy.

12.11 Insurance

Symbiant maintains professional indemnity insurance with Hiscox Insurance to the value of GBP £2,000,000.

12.12 Storage Limits

Each module has unlimited data storage & 1GB of file storage (attachments). File storage is a combined total – meaning if you had three (3) modules you would have a total allowed attachment storage of 3GB for your site. Further file storage can be purchased as required.

12.13 No Third-Party Rights

The Parties to the Contract do not confer any rights on any person who is not a party to the contract and expressly exclude the operation of the Contracts (Rights of Third Parties) Act 1999. For the purpose of this Clause, lawful assigns of the Parties are not "third parties".

Additional Provisions

- (a) Nothing in the Contract is intended to or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have the authority to act as an agent for, or to bind, the other party in any way.
- (b) This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- (c) The courts of England and Wales shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

Note: *The terms and conditions page also has links to policies and details of Service Level Agreements.*

Highly Trusted

Affordable

Customisable

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