

Software as a Service (SaaS) Subscription Agreement

This Software as a Service Agreement (the “Agreement”) is made [DATE]

PARTIES

C.H.I. (UK) LIMITED incorporated and registered in England and Wales with company number 05377131 whose registered office is at Town Hall Chambers, Wallsend, Tyne and Wear, NE28 7AT (“**Supplier**”)

[**CLIENT**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED ADDRESS] (“**Customer**”)

BACKGROUND

- A. The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of creating, storing, updating and retrieving Occupational Health Records for Customers’ Employees;
- B. The Customer wishes to use the Supplier’s service in its business operations;
- C. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier’s service subject to the terms and conditions of this Agreement.

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AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Affiliates: means in relation to the Customer, any person, firm, trust, corporation or other entity or combination thereof which directly or indirectly (a) controls the Company, (b) is controlled by that Company or (c) is under common control with that Company; the terms "control" and "controlled" meaning ownership of fifty percent (50%) or more, including ownership by trusts with substantially the same beneficial interests, of the voting and equity rights of such person, firm, trust, corporation or other entity or combination thereof or the power to direct the management of such person, firm, trust, corporation or other entity or combination thereof.

Authorised Users: those employees, agents, independent contractors and paying clients of the Customer and Affiliates, who are authorised by the Customer to use the Services and the Documentation.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 10.5.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the Customer and its Affiliates.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and any data generated by, or derived from the Customer's use of the Services, whether hosted or stored within the Services or elsewhere.

Cybersecurity Requirements: all laws and regulations relating to security of network and information systems and security breach and incident reporting requirements, including Data Protection Legislation and Network and Information Systems Regulations 2018 (*SI 506/2018*), as amended or updated from time to time.

Data Protection Legislation: the UK Data Protection Legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

Documentation: the document made available to the Customer by the Supplier online via <https://orchidlive.com/> or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: [Enter].

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Incident: any Vulnerability, Virus or security incident which:

- A. may affect the Software or the Services;
- B. may affect the Supplier's network and information systems, such that it could potentially affect the Customer or the Software or the Services; or
- C. is reported to the Supplier by the Customer.

Initial Subscription Term: the initial term of this agreement as set out in Schedule 2.

Intellectual Property Rights: patents, rights to inventions, copyright, moral rights, trade marks, business names and domain names, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Latent Vulnerability: any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Mandatory Policies: the Customer's business policies [attached OR listed] in Schedule 3.

Mitigate: the taking of such reasonable steps that would be taken a prudent supplier in accordance with Good industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety) provided these are approved by the Customer in writing in advance, and the terms **Mitigated** and **Mitigation** shall be construed accordingly.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Renewal Period: the period described in Clause 14.1.

Services: the subscription services provided by the Supplier to the Customer under this Agreement via <https://orchidlive.com/> or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in Paragraph 1 of Schedule 1.

Subscription Term: has the meaning given in Clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services: the Supplier's policy for providing support in relation to the Services as set out in Schedule 3.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to Clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or programme) 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 programme or data, including the reliability of any programme or data (whether by re arranging, altering or erasing the programme 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.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.9 A reference to writing or written includes email but not faxes.

1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER SUBSCRIPTIONS

2.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 Not Used

2.3 The Customer shall not knowingly:

- A. distribute or transmit to the Supplier, via the Services, any Viruses or Known Vulnerability or Latent Vulnerability;
- B. store, access, publish, disseminate, distribute or transmit via the Services any material which:

- (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

- (ii) facilitates illegal activity;

- (iii) depicts sexually explicit images;

- (iv) promotes unlawful violence;

- (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

- (vi) is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, on no less than thirty (30) days' prior written notice to the Customer, such notice

specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Customer's access to the Services for the duration of time that the breach remains unremedied.

2.4 The Customer shall not:

- A. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (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; or
 - (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 and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
- C. use the Services and/or Documentation 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 and/or Documentation available to any third party except the Authorised Users, or
- E. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, if there is any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this Clause 2 are granted to the Customer and any subsidiary or holding company of the Customer.

3. ADDITIONAL USER SUBSCRIPTIONS (not used)

4. SERVICES

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 The Supplier shall make the Services available 24 hours a day, seven days a week, except for:

- A. planned maintenance carried out during the maintenance window of 8.00 pm to 6.00 am UK time; and
- B. unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy on no less than ninety (90) days' notice in writing to the Customer and shall ensure that any amendment to the Support Services Policy does not adversely affect the Support Services.

5. CUSTOMER DATA

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

5.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 5, **Applicable Laws** means the UK Data Protection Legislation and any other relevant law that applies in the UK.

5.3 The parties acknowledge that:

- A. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- B. The Supplier may occasionally transfer or store Personal Data outside of the UK or EEA in the course of providing the Services. When such occasions arise the Supplier will ensure that it has adequate safeguards in place and any such transfers are in compliance with the Applicable Laws relating to the protection of personal data.

5.4 Without prejudice to the generality of clause 5.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

5.5 Without prejudice to the generality of clause 5.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:

- A. process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- B. With the exception of any named parties in Schedule 6, shall not transfer any personal data outside of the UK or European Economic Area unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- C. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- D. notify the Customer without undue delay and in any event within twenty-four (24) hours on becoming aware of a personal data breach;
- E. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement in accordance with clause 14.5 unless the Supplier is required by

Applicable Law to store the personal data (and for these purposes the term “delete” shall mean to put such data beyond use); and

- F. maintain complete and accurate records and information to demonstrate its compliance with this Clause 5 and immediately inform the Company if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

5.6 Other than those sub-contractors set out in Annex 6 the Supplier may not authorise any other third party or sub-contractor to process the Personal Data outside of the EEA without the Customer’s consent. The Supplier shall update Schedule 6 from time to time with all approved sub-contractors and include relevant details such as name, location and contact information. The Supplier remains fully liable to the Customer for the sub-contractor’s performance of its processing obligations. The parties agree that for the purposes of the sub-contractor obligations, the Supplier shall be deemed to be the controller or any Personal Data in the possession of the sub-contractor.

6. SUPPLIER’S OBLIGATIONS

6.1 The Supplier undertakes that the Services will be performed in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice.

6.2 The undertaking at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier’s instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier’s duly authorised contractors or agents.

6.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6.4 The Supplier:

- A. does not warrant that the Customer’s use of the Services will be uninterrupted or error-free;
- B. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.5 The Supplier warrants and undertakes that that:

- A. it has and will maintain all necessary accreditations, licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
- B. it will comply with all applicable laws and regulations with respect to its obligations under this Agreement ;
- C. it will cooperate with the Customer in all matters relating to the Services and comply with the Customer’s instructions; and

6.6 The Supplier:

- A. warrants that the Services are ISO 27001 accredited.
- B. shall take all reasonable steps not to introduce any Viruses into the Customer’s network and information systems via the Services or Software or otherwise.

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

- A. provide the Supplier with:
 - (i) all necessary cooperation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- B. without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- C. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time.
- D. Take responsibility for documenting the nature of any custom development work and conducting internal training to ensure that their staff are fully aware of how that custom functionality works.
- E. Perform thorough acceptance testing on any custom development work - once such work has been signed off as agreed and pushed to a live production environment, no further changes can be made to the functionality of the custom development work without incurring additional costs.
- F. Agree that the undertaking of substantial custom development work may mean that the Customer is not eligible for future feature upgrades. Any additional testing required to enable future feature upgrades will incur costs to be borne by the customer.
- G. Agree that prior to entering into this agreement, they have raised all necessary due diligence questions, made their own enquiries and are satisfied by the accuracy of any information supplied by the Supplier that they are relying on

8. CHARGES AND PAYMENT

8.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this Clause 8 and Schedule 1 and the support fees in accordance with Clause 4.3 and Schedule 1.

8.2 The Customer shall on the Effective Date provide to the Supplier valid, approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

- (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (ii) subject to Clause 14.1, at least 30 days prior to [each anniversary of the Effective Date] for the Subscription Fees payable in respect of the next Renewal Period; and
- (iii) the Customer shall pay each invoice within 30 days after the date of such invoice.

8.3 If the Supplier has not received payment within 30 days after the due date, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of NatWest Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 If the Supplier has not received payment within 60 days after the date of such invoice, then it may serve notice on the Customer that it will stop providing the Services within 7 days unless payment is received.

8.5 All amounts and fees stated or referred to in this Agreement:

- A. shall be payable in pounds sterling;
- B. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated in this Agreement, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY [AND COMPLIANCE WITH POLICIES]

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- A. is or becomes publicly known other than through any act or omission of the receiving party;
- B. was in the other party's lawful possession before the disclosure;
- C. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or **(d)** is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Subject to Clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party.

10.7 The above provisions of this Clause 10 shall survive termination of this Agreement, however arising.

11. SECURITY OF NETWORK AND INFORMATION SYSTEMS

11.1 The Supplier warrants that the information in Schedule 5 on the security of its network and information systems is up to date and accurate and that it will update the Customer immediately if there are any changes to such information.

11.2 The Supplier shall notify the Customer immediately it becomes aware of any Incident, and respond without delay to all queries and requests for information from the Customer about any Incident, whether discovered by the Supplier or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under the Network and Information Systems Regulations 2018 (NIS Regulations) and Data Protection Legislation and that the Customer may be required to comply with statutory or other regulatory timescales.

11.3 The Supplier will ensure the continuity of the Services at all times in accordance with the information on business continuity management set out in Schedule 5.

11.4 The Supplier agrees to co-operate with the Customer in relation to:

- A. all aspects of its compliance with the NIS Regulations (if applicable);
- B. any requests for information, or inspection, made by any regulator (including in connection with the NIS Regulations);
- C. any request for information made in respect of any of the information provided in Schedule 5; and
- D. any Incident.

12. INDEMNITY

12.1 The Supplier shall defend the Customer, the Authorised Users, its Affiliates and its and their officers, directors and employees against any and all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Customer as a result of infringement of a third party's intellectual property rights

13. LIMITATION OF LIABILITY & INSURANCE

13.1 Nothing in this Agreement excludes the liability of the Supplier:

- A. for death or personal injury caused by the Supplier's negligence; or
- B. for fraud or fraudulent misrepresentation.

13.2 Subject to Clause 13.1 and Clause 13.2:

- A. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- B. subject to Clause 12.1 (Indemnities), the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £100,000; and
- C. the Supplier not be liable for any losses caused by third parties.

13.3 the Supplier shall have in place and maintain for a period of three years following expiry or termination of this Agreement, relevant insurances to cover Supplier's potential liabilities under this Agreement.

14. TERM AND TERMINATION

14.1 This Agreement shall, unless otherwise terminated as provided in this Clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of **XX** months (each a **Renewal Period**), unless:

- A. Either party notifies the other party that it wishes to terminate the Agreement, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- B. otherwise terminated in accordance with the provisions of this Agreement;
- C. and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- A. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- B. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- C. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or

more other companies or the solvent reconstruction of that other party;

- D. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; **(f)** an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party; **(g)** the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- E. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- F. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- G. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 14.3(c) to Clause 14.3(i) (inclusive); or
- H. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 On termination of this Agreement for any reason:

- A. all licences granted under this agreement shall terminate and the Customer shall cease all use of the Services and/or the Documentation within 90 days of the date of termination of this Agreement;
- B. the Supplier shall provide all assistance and information requested by Customer and at the Customer's cost shall co-operate with Customer and any replacement provider of the Services to facilitate a smooth transition from the Supplier; and
- C. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14.5 On termination of this Agreement for any reason, the Supplier:

- A. shall make no further use of the Customer Data;
- B. at the written direction of the Customer, at the Customer's cost and upon payment of the corresponding invoice, the Supplier shall destroy or return the Customer Data or, in the case of any Customer Data in electronic form, delete such Customer Data; and
- C. the Supplier shall preserve at the Customer's cost, all Customer Data in its possession until it has received any such instructions.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

16. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

17. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is deemed deleted under Clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Specifically - the Supplier's product feature roadmap for developing the Orchid Live software is subject to change as internal and client priorities evolve and certain projects may be delayed or stopped at the discretion of the Supplier.

21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. ASSIGNMENT

22.1 The Supplier may not at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Customer.

23. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. THIRD PARTY RIGHTS

Except as provided in clauses 2.6 and 12.1, this Agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act.

25. NOTICES

25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including

non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

SUBSCRIPTION FEES

1. SUBSCRIPTION FEES

- The Subscription Fees shall be £XX per annum, payable annually in advance. The Subscription Fees cover an unlimited number of employees, clinicians, cloud hosting, upgrades & maintenance, a round of initial training/onboarding for the senior team/system admins and ongoing customer support.
- SMS messages will be charged at XXp per message, subject to a 5% annual increase. £X will be added to the initial invoice as a pre-payment for SMS usage, with a balancing payment/refund/deduction being made either at the renewal of the contract or its termination.
- Video calling will be charged at £XX per hour per participant, and £XX per hour for any recordings (please note this feature is currently unavailable but will be released in the coming months) subject to an annual 5% increase. £X will be added to the initial invoice as a pre-payment for video call usage, with a balancing payment/refund/deduction being made either at the renewal of the contract or its termination.

2. ADDITIONAL FEES

£XX will be added to the initial invoice to cover the costs of data imports (please see Schedule 7 for more information on data imports):

- **DELETE AS APPROPRIATE**

- Employee personal details and line manager/work role - added to personal details page and work role page
- Files - to be stored in the files/attachments section of the employee record
- Dashboard Users - creating new dashboard users
- Surveillance assessment and recall dates - creation of a new assessment containing the assessment type, outcome, results, the screening date and the recall date
- Referrals/Cases - creating new cases from your existing case data
- New Starter Pre-placements - creating new pre-placements from your existing pre-placement data
- Immunisations - creating new immunisations from your existing immunisations data
- Clinical notes - creation of 'additional notes' for each employee in their record
- Questionnaires - bringing in existing questionnaire data into a human readable format

£XX will be added to the initial invoice to cover the costs of custom development work - to be specified in a new schedule. The commencement of any custom development work is subject to a lead time of 16 weeks from formal confirmation of the specification and/or a purchase order.

Any additional training required (for the wider clinical/admin team, external clinicians, clients users or refresher training for the senior team/system admins), bulk clinical data import or custom development work required will be charged at £945 per day.

If as part of any data import, configuration or custom development work we receive instructions from you that are subsequently altered or amended after the initial draft work has been submitted for approval, we reserve the right to charge additional fees to carry out this extra work. For example, following your provision of a specification, we build a custom management referral form, and then once the initial work has been completed and made available on your development site, you ask us to add or remove additional fields, then such extra work will be discussed at the time between the parties, approval sought for additional budget to cover any incremental costs, and these will be invoiced at the end of the implementation phase or project.

3. VAT

VAT is charged at the prevailing rate on all goods and services provided.

SCHEDULE 2

SUBSCRIPTION TERM

Initial Subscription Term: **XX** months.

SCHEDULE 3

SUPPORT TERMS:

A. SERVICE TO BE PROVIDED WITHIN THE SUPPORT/LICENCE FEE

- Access to CHI's Support Desk
- To correct application software faults and to provide solutions and advice on how to recover from them.
- To offer advice and guidance and, where appropriate, assistance on the effective use and configuration of the application.
- To issue maintenance upgrades of the software and documentation to the core Orchid Live system

B. SERVICE HOURS

09:00 to 17:00 Monday to Friday

Scheduled Service Hours : **40** per week

No support service will be available during weekends or English bank holidays.

C. LIMITS TO THE SUPPORT SERVICE

- The annual support charge does not include support at the customer's site unless previously agreed and

invoiced; any fixes to the software will be issued online.

- The support service is costed at a particular level of usage. If a customer makes an excessive use of the 'advice and guidance' element of the service, CHI reserve the right to recommend further training and to impose additional charges for use of the services at CHI's standard rates.

D. ADDITIONAL SERVICES NOT INCLUDED IN THE SUPPORT CHARGE

- Hardware and system software advice, procurement and installation.
- Tailoring the software to suit a customer's individual requirements.
- Additional training.
- Support on the Customer's site.

E. SUPPORT DESK

The primary function of the support desk is to provide customers with a central point of contact for reporting and progressing problems arising from the use of the service. Customers may also request general assistance, enquire on service status and availability, or discuss any other service related issues.

Scheduled Support Desk service hours are : **09:00 - 17:00 Mon - Fri.**

The Support desk can be contacted on **0191 500 9746** during the above hours or by emailing support@orchidlive.com.

All reasonable means will be used to resolve problems for the Customer. CHI will agree with the Customer a resolution plan and will endeavour to make every effort to adhere to the resolution plan as far as it is in their power to do so.

SCHEDULE 4

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. PROCESSING BY THE SUPPLIER

1.1 SCOPE:

All Personal data including data considered to be sensitive personal data processed by the Data Processor on behalf of the Data Controller in the course of the Data Processor providing Services to the Data Controller

1.2 NATURE

The provision of cloud-based occupational health record storage services (the "Services") via the URL <https://orchidlive.com> by the Data Processor to the Data Controller as agreed between the Parties.

1.3 PURPOSE OF PROCESSING

The provision of the Services by the Data Processor to the Data Controller.

1.4 DURATION OF THE PROCESSING

The duration of the provision of the Services (as defined below) by the Data Processor to the Data Controller.

2. TYPES OF PERSONAL DATA

- Names
- Titles
- Email addresses
- Phone numbers
- Addresses
- Medical health records
- Information relating to individuals' employment
- Server log information (including IP addresses, pages accessed, information requested, the date and time of the request, the source of access to the Data Controller's website, browser version and operating system).
- Online identifiers (including cookies and similar technologies)
- Any other Personal Data processed by the Data Processor on behalf of the Data Controller from time to time

3. CATEGORIES OF DATA SUBJECT

Natural persons in the employment of (or otherwise engaged by) the Data Controller whose Personal Data and occupational health records are stored by the Data Processor in accordance with the terms of the Services

SCHEDULE 5

SUPPLIER'S NETWORK AND INFORMATION SYSTEMS SECURITY

SECURITY OF SYSTEMS AND FACILITIES

The Supplier warrants to use the following processes and procedures to keep the Client data secure:

- All data is encrypted using industry standard AES256 encryption at rest and in transit.
- All data is backed up automatically every hour
- ISO27001 Accreditation will be kept up to date by the Supplier
- Cyber Essentials Accreditation will be kept up to date by the Supplier
- All changes to the data are audited

INCIDENT HANDLING

- The system will be penetration tested by external parties on a regular basis
- A Disaster Recovery process is in place

BUSINESS CONTINUITY MANAGEMENT

- Orchidlive systems run in three separate Amazon AWS Availability Zones
- Auto-failover in place means that and servers that go down for any reason are automatically replaced

MONITORING, AUDITING AND TESTING

- All systems include Amazon Inspector, a service to track and report cyber attacks
- All systems are code tested by external services (probely.net)
- Test processes are written for many parts of the system to automate testing of new code.
- Integrated software (SonarQube) reports on any code changes that could be vulnerabilities

INTERNATIONAL STANDARDS ISO27001 accredited

SCHEDULE 6 - Data Sub-Processors

Supplier Name	Location of Data Processing	Data Processed
Whereby	Ireland	Video calls
Sinch Clicksend	Australia	Mobile numbers, contents of SMS messages
Amazon Web Services	UK	All PII and clinical data contained on Orchid Live

SCHEDULE 7 - Data Import Terms

Data must be provided by the Customer in final form, ready for import. If data cleansing, manipulation or transformation is required by the Supplier, this will incur additional charges.

If a database field mapping exercise is required prior to a final import, the Supplier must receive samples of the files to be imported with column headers and data format in final form in order to undertake this exercise. Any subsequent changes to data structure or column headers will incur additional charges as import scripts will need to be re-written.

For file imports where a mapping exercise is required prior to a final import, the Supplier must receive a sample folder and files that match the file/folder structure and naming convention of the final data set. Any subsequent changes to file/folder structure or naming conventions will incur additional charges as import scripts will need to be re-written.

In the event of a live changeover from an existing system, the Supplier will conduct at most two rounds of data imports - an interim import to allow for immediate system changeover and a final import once the final data extract from the previous software system or OH provider has been delivered. Additional rounds of imports can be undertaken, but this will be at additional cost.

Definitions of what different import types involve:

- Employee personal details - to populate fields on the 'Personal Details' page in Orchid Live.

- Employee details must be contained in a single file, with each employee having a unique ID (and if applicable unique contract name/ID), and each attribute being in its own column. We can import employee attributes that match our existing database fields: additional database fields / employee attributes will incur additional charges since we will need to create these in our database.
- Employee line manager - creating a new, single work role and adding a line manager to that work role
 - There must be a single and unambiguous current manager identified per employee. The employee ID, manager's name and email address must be present in the same file.
- Files - to be stored in the files/attachments section of the employee record
 - Each filename or the folder name within which files are stored must contain the employee's unique ID. Alternatively if files have a unique ID that doesn't match the employee unique ID, we need a mapping document to show a 1:1 relationship between these two types of unique ID.
- Surveillance assessment and recall dates - creation of a new assessment containing the assessment type, outcome, results, screening date and the recall date
 - There must be a single file (at most, one file per assessment type) containing the employee's unique ID, assessment type, outcome, clinical notes / results, screening date and recall date in a format that matches the Orchid Live database structure. Any other fields will be aggregated into a free text notes field.
 - Surveillance assessments must be clearly identifiable as surveillance assessments.
 - Surveillance must be clearly marked with a current status in a single column, otherwise we will attribute a status of 'closed on import'
- Cases - creating new cases from your existing case data
 - Where data fields match the Orchid Live database structure, we'll create cases / case events that match those attributes. Any other fields will be aggregated into a free text notes field.
 - Cases must be clearly marked with a current status in a single column, otherwise we will assume all cases are closed.
 - Cases must be clearly identifiable as cases.
- Pre-placements - creating new pre-placements from your existing pre-placement data
 - Where data fields match the Orchid Live database structure, we'll create pre-placement events that match those attributes. Any other fields will be aggregated into a free text notes field.
 - Pre-placements must be clearly marked with a current status in a single column, otherwise we will attribute a status of 'closed on import'
 - Pre-placements must be clearly identifiable as pre-placements.
- Immunisations - creating new immunisations from your existing case data
 - Where data fields match the Orchid Live database structure, we'll create immunisation events that match those attributes. Any other fields will be aggregated into a free text notes field.
 - Immunisations must be clearly identifiable as immunisations.
- Clinical notes - creation of a single new 'additional notes' file for each employee in their record.
 - Clinical notes should be a single file, linked directly to a unique employee ID.
- Questionnaires - bringing in existing questionnaire data into a human readable format

- If the questionnaire data doesn't fit the existing Orchid Live questionnaire structure, we will convert them into PDFs, and then each PDF will be stored in the files/attachments section on an employee profile in Orchid.
- Appointments - creating new appointments from your existing data
 - Appointments must be clearly identifiable as appointments and contained in a single file.
 - Mandatory fields:
 - Start Date
 - End Date
 - Start time
 - End time
 - Diary Name
 - Appointment reason
 - If you want to link appointments to an employee, a unique employee ID must be present in the appointments file.
 - There are additional appointment fields available in the Orchid Live system. If you want to bring in fields that don't match the Orchid Live database structure, these attributes will be aggregated in the confidential notes field for an appointment.
- Dashboard Users - creating new dashboard users
 - We require a single list of dashboard users containing first name, surname, email address, the unique name of contract(s) they are permitted access to, dashboard user role(s).
 - Dashboard users and managers can be linked, but the email address must match.
 - We will automatically import all dashboard users as only able to view their own line managed employees. If you require any other visibility, you can change this manually.

Regular SFTP imports of personnel data into Orchid Live - where these cannot be provided in a delta format (i.e. changes only since last import) then additional charges may apply as we will need to build an additional step to de-duplicate the data import each time.

Where the data structure being sent to Orchid Live via SFTP changes or is incorrect / deviates from the agreed mapping, then any investigation or remedial work undertaken by CHI will be chargeable.

Signatories

Signed by Oliver Bridge for and on behalf of CHI (UK) Ltd

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF

CUSTOMER]

END OF DOCUMENT