

TERMS AND CONDITIONS

1. BINDING TERMS

- 1.1 These Terms and Conditions are entered into between Orah and the Customer. They govern Orah's supply of, and the Customer's use of, the Orah Service.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms and Conditions, the following definitions apply:

App has the meaning given in the Purchase Order.

Authorised User means any personnel who the Customer allows access to the Orah Service.

Orah means Boardingware International Limited (New Zealand company number 4897879).

Orah Service has the meaning given in the Purchase Order.

Orah Software means the App, the Orah/ Boardingware API and any other software used by Orah to deliver the Orah Service to the Customer.

Business Day means any day (other than a Saturday, Sunday or public holiday, as defined in section 5(1) of the Holidays Act 2003) on which banks are open for general banking business in Auckland, New Zealand.

Confidential Information means any non-public information, or financial or business information, relating to the other Party.

Customer means the customer specified in the Purchase Order.

Customer Data means the data generated by the Customer or an Authorised User in the course of using the Orah Service.

Fees means the amounts payable by the Customer to Orah for the Orah Service, as specified in the Purchase Order.

Intellectual Property means all intellectual property, proprietary and industrial rights (whether existing in statute, at common law or in equity), including all copyright, know-how, trade secrets, trade marks, business names, inventions, patents, design rights, and all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable, and all applications for any of the foregoing rights.

Parties means Orah and the Customer and **Party** means either one of them.

Purchase Order means the purchase order in respect of the Orah Service signed by the Customer and Orah.

Start Date has the meaning given in the Purchase Order.

Term has the meaning given in the Purchase Order.

Terms and Conditions means these terms and conditions, as amended and/or replaced from time to time.

Website means www.orah.com (or any replacement website).

- 2.2 In these Terms and Conditions, the following rules of interpretation apply:

- a. References to **persons** include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- b. References to **clauses** are to those in these Terms and Conditions.
- c. References to the words **including**, **include** or similar words are not to be construed as implying any limitation and are deemed to have the words **without limitation** following them.
- d. References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).
- e. References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- f. No **rule of construction** (including the contra proferentem rule) applies to the disadvantage of a Party because that Party (or its relevant advisor) was responsible for the drafting of this agreement or any part of it.

3. TERM

- 3.1 These Terms and Conditions come into effect on the Start Date and will continue in force for the Term, subject to clause 3.2 and any early termination under clause 12.
- 3.2 Unless either Party notifies the other in writing at least 60 Days before expiry of the Term that it does not wish to extend the Term or sign a new Purchase Order, these Terms and Conditions will continue beyond the Term on an annual rolling basis until either Party gives the other no less than 60 Days written notice of termination.

4. ORAH SERVICE

- 4.1 Orah will provide the Orah Service to the Customer during the

Term on a non-exclusive basis and subject to these Terms and Conditions.

- 4.2 The Customer agrees to receive and use the Orah Service (including the Orah Software) in accordance with these Terms and Conditions, the operating procedures notified by Orah from time to time and all applicable privacy laws.

- 4.3 Orah may require the Customer to use all new releases and versions of the applications and computer programs forming part of the Orah Service, including any new features or functionality. Orah may also change or remove existing features or functionality of the Orah Service at its discretion.

- 4.4 The Customer agrees that there may be instances when it is unable to use the Orah Service, including due to maintenance requirements or an issue with Orah's third party host. Orah will use reasonable endeavours to minimise any interruption to the Customer's use of the Orah Service, but Orah will not be liable for any loss or damage as a result.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer will provide Orah with a written list of its Authorised Users. Only Authorised Users may access and use the Orah Service.

- 5.2 The Customer shall be responsible and liable for:

- a. all acts and omissions of its Authorised Users in connection with their use of the Orah Service;
- b. safeguarding and protecting Authorised Users' passwords and log-in details;
- c. deactivating the log-in of any Authorised User who the Customer ceases to employ or engage, or who has their authorisation withdrawn for any reason; and
- d. immediately notifying Orah (by email to support@orah.com) if the Customer suspects any unauthorised access or use of the Orah Service.

- 5.3 When using or accessing the Orah Service, the Customer must not, and must ensure that its Authorised Users do not:

- a. undermine the security of the Orah Service or use it in a manner which may impair its functionality;
- b. make any alteration, modification or adaptation to, or remove any functionality or components from, the Orah Service;
- c. copy, decompile, disassemble or reverse engineer all or any part of the Orah Service (or attempt to do any of the foregoing);
- d. access all or any part of the Orah Service in order to build a product or service which competes with Orah's products or services; or
- e. use the Orah Service for any illegal or unauthorised purpose or for any malicious means.

6. FEES

- 6.1 The Customer will pay the Fees to Orah:

- a. in New Zealand dollars unless the Purchase Order specifies a different currency, and in either case at the prevailing exchange rate at the date of transfer;
- b. in cleared and immediately available funds on or before the 20th day of each month;
- c. into the bank account specified in writing by Orah; and
- d. free and clear of any restriction, condition, set-off, deduction or withholding (except as required by law).

- 6.2 All Fees are exclusive of all taxes and levies (unless otherwise stated).

7. INTELLECTUAL PROPERTY

- 7.1 The Parties agree that Orah owns all Intellectual Property in connection with the Orah Service (including the Orah Software) and any improvements, enhancements, modifications or adaptations to the same.

- 7.2 The Customer agrees to take all actions as may be reasonably required by Orah to perfect or enforce Orah's title to the Intellectual Property under clause 7.1, which shall include executing and delivering any document required in order to perfect or enforce such title.

- 7.3 This clause 7 shall survive termination of these Terms and Conditions.

8. SECURITY, CUSTOMER DATA AND PERSONAL INFORMATION

- 8.1 The Customer Data, and all Intellectual Property in the Customer Data, shall be and remain owned by the Customer.

- 8.2 The Customer hereby grants to Orah a worldwide, non-exclusive, royalty-free, transferable, irrevocable licence to access, use, store, modify, copy and communicate the Customer Data for the sole purpose of:

- a. enabling Orah to perform its obligations, and exercise

- its rights, under these Terms and Conditions;
- b. providing, updating, improving and protecting the Orah Service, the Orah Software and the Website;
- c. communicating with the Customer by responding to its requests, comments and questions and to send emails and other communications relating to the Orah Service to the Customer;
- d. complying with all applicable laws and regulations;
- e. better understanding how the Customer is using the Orah Service and Orah Software;
- f. delivering tailored advertising to the Customer via the Orah Software;
- g. verifying the identity of individuals to access the Orah Service;
- h. providing all technical and implementation support to the Customer;
- i. carrying out training or marketing relating to the Orah Service;
- j. communicating new or updated services on offer in relation to the Orah Service; and
- k. delivering automated decision making, including profiling,

and for no other purposes.

- 8.3 Orah and Customer agrees to comply with its following policies in force from time to time (all of which are available on the Website):

- a. Privacy Policy.
- b. Cloud Security Whitepaper.
- c. Information Security Whitepaper.

- 8.4 Orah agrees that:

- a. it is committed to preserving security in relation to the Orah Service; and
- b. data privacy is recognised as paramount to Orah and it will not be reduced or compromised by unilateral decisions made by Orah.
- c. In the case of a merger or acquisition of Orah, the successor entity shall continue to uphold the commitments set forth in Orah's Privacy Policy with regard to any personal information that Orah holds at the time when ownership is transferred.

- 8.5 Orah will regularly monitor its compliance with its obligations under this clause 8 and will notify the Customer in writing of any breach of any such obligations.

- 8.6 The Customer hereby indemnifies Orah (and its representatives) against all liabilities, damages, expenses and losses (including all legal costs) arising from any claim that the Customer Data, or any use of it in accordance with these Terms and Conditions, infringes any third party's Intellectual Property or any other applicable laws or privacy rights.

- 8.7 To the extent that Customer Data constitutes personal information (as defined by the Privacy Act 1993) or is otherwise protected by applicable privacy and/or data protection laws, it will be stored and managed strictly in accordance with Orah's policies specified in clause 8.3 above. The Customer acknowledges that, in holding, storing and using such personal information, Orah is acting as the Customer's service provider and (except as expressly set out in these Terms and Conditions) does not control or determine the purposes for which that personal information is processed.

- 8.8 Customer Data (including personal information) will be stored by Orah on secure servers which are located in Ireland (in the European Union), Virginia, United States of America and/or Sydney, Australia.

- 8.9 Any enquiries relating to security, customer data or personal information in respect of the Orah Service should be submitted to Orah's data and personal information controller at privacy@orah.com.

9. CONFIDENTIALITY

- 9.1 Except as permitted by clause 9.2, neither Party will disclose the other Party's Confidential Information to any person, or use such Confidential Information for any purpose, other than to perform its obligations under these Terms and Conditions. For the avoidance of doubt, if the Customer sends these Terms and Conditions and/or the Purchase Order to any competitor or potential competitor of Orah, this shall constitute a material breach of these Terms and Conditions.

- 9.2 Notwithstanding clause 9.1, either Party may disclose any of the other Party's Confidential Information with the other Party's prior written consent or if and to the extent that disclosure is required by law.

- 9.3 This clause 9 shall survive termination of these Terms and Conditions.

10. WARRANTIES

- 10.1 Each Party warrants and represents that it has full power and authority to enter into and perform its obligations under these Terms and Conditions and that the entry into and performance of these Terms and Conditions does not constitute a breach of any law or obligation.

- 10.2 To the maximum extent permitted by law, all other warranties and representations (whether express or implied) are hereby excluded by Orah, and Orah gives no warranty or representation regarding the quality, availability or performance of the Orah Service, or its fitness for the Customer's purposes or requirements.

11. LIABILITY

- 11.1 Orah's maximum aggregate liability under these Terms and Conditions, whether arising in contract, tort (including negligence) or otherwise, is limited to an amount equal to the Fees paid by the Customer in respect of the period of three months prior to the liability arising.

- 11.2 Neither Party will be liable to the other Party for any indirect, consequential or special loss or damage, loss of revenue, economic loss or loss of goodwill.

- 11.3 This clause 11 shall survive termination of these Terms and Conditions.

12. TERMINATION

- 12.1 Either Party may terminate these Terms and Conditions immediately by written notice to the other Party if:

- a. the other Party commits a material breach of these Terms and Conditions and fails to remedy that breach within 10 Business Days of being required to do so in writing; or
- b. the other Party is subject to insolvency or any receivership, administration or liquidation.

- 12.2 Either Party may terminate these Terms and Conditions by giving the other party written notice more than 60 days from the renewal date.

- 12.3 On and following termination or expiry of these Terms and Conditions for any reason:

- a. all rights granted under these Terms and Conditions will immediately terminate (except where these Terms and Conditions expressly state otherwise);
- b. the Customer must pay all Fees due prior to termination, and will not be entitled to any refund for any prepaid Fees; and
- c. Customer Data stored on Orah's systems may be irretrievably deleted and Orah will not be liable for any loss or damage following, or as a result of, the cancellation of these Terms and Conditions.

13. GENERAL

- 13.1 These Terms and Conditions, together with the Purchase Order, constitute the entire agreement of the Parties relating to the matters dealt with in them and supersede and extinguish any previous agreement (whether oral or written) between the Parties in relation to such matters.

- 13.2 These Terms and Conditions, including its compliance to our Privacy Policy, will continue to be enforced unless stated otherwise.

- 13.3 All notices and communications to be given under these Terms and Conditions must be in writing and shall be deemed to have been received:

- a. at the time of delivery, if delivered by hand;
- b. 3 Business Days after the date of mailing, if sent by ordinary post within New Zealand;
- c. 10 Business Days after the date of mailing, if posted or delivered overseas;
- d. if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if necessary) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

- Any notice or communication received or deemed received after 5.00pm on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

- 13.4 If there is a dispute between the Parties in relation to these Terms and Conditions remains unresolved for more than 20 Business Days:

- a. either Party may, by notice to the other Party, refer the dispute to mediation in accordance with the LEADR

New Zealand Incorporated standard mediation agreement; and

- b. following such referral to mediation, neither Party may commence court proceedings in relation to the dispute until the mediation procedure is complete, provided that nothing in this clause shall affect a Party's right to seek interlocutory and/or injunctive relief.
- 13.5 These Terms and Conditions may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each Party.
 - 13.6 The Customer may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under these Terms and Conditions without the prior written consent of Orah.
 - 13.7 The rights and remedies set out in these Terms and Conditions are cumulative and not exclusive of any other rights or remedies provided by these Terms and Conditions, whether at law or in equity.
 - 13.8 If any provision of these Terms and Conditions becomes invalid or unenforceable, the remainder of these Terms and Conditions will remain valid and enforceable to the fullest extent permitted by law.
 - 13.9 No Party will be deemed to have waived any right under these Terms and Conditions unless the waiver is in writing and signed by that Party.
 - 13.10 The Purchase Order may be executed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of the Purchase Order.
 - 13.11 These Terms and Conditions will be governed by and construed in accordance with New Zealand law and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to these Terms and Conditions.