

1 Definitions

In these Terms, the following terms have the stated meaning:

Access Agreement means an agreement between you and us setting out additional terms and conditions in relation to the SaaS Service, to be read in conjunction with these Terms.

Additional Services means any additional services that we agree to provide to you under an Access Agreement.

Admin User means your personnel who have been provided with the generic login details for the OrbViz Website Builder.

Affiliates means any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a party.

Confidential information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, these Terms. Our Confidential Information includes Intellectual Property owned by us or our affiliates (or our licensors), including the OrbViz Software. Your Confidential Information includes the Data.

Customer Success Services means the customer success services including data wrangling, administrative user training, and URL certificate setup or URL supply services.

Data means all data, content, images, videos and information (including Personal Information) owned, held, used or created by or on behalf of you that is stored using, or inputted into, the Services.

Fees means the applicable fees agreed in writing between you and us in an Access Agreement or via AWS Market Place OrbViz standard pricing.

Force Majeure an event that is beyond the reasonable control of a party, excluding:

- an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- a lack of funds for any reason.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade-marks and designs, data and databases, data schemas, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Objectionable means includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

OrbViz Software is the software owned by us (or our licensors) that is used to provide the SaaS Service.

Personal Information has the meaning given in the Privacy Act 2020 or any subsequent amendment or replacement statute.

SaaS Service means the subscription service, including onboarding and subscription services. The SaaS Service is described in more detail on the Website, as the Website is updated from time to time.

Services means the Website Builder, Customer Success Services, SaaS Service and any Additional Services.

Start Date is the date you set up an account, or otherwise access the Services.

Terms means these terms titled OrbViz terms of use.

Underlying Systems means the OrbViz Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any open source or third party licenced services or solutions, systems and networks.

We, us or our means OrbViz Limited and its affiliates.

Website means the internet site at www.orbviz.com, or as agreed between the parties, where the data is visualised.

Website Builder means the web application including the administrative panel where data is uploaded and the content management system.

Year means a 12-month period starting on the Start Date or the anniversary of that date.

You or your means you, or if clause 3.1.2 applies, both you and the other person on whose behalf you are acting.

2 Interpretation

2.1 In these Terms:

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|-------|---|
| 2.1.1 | clause and other headings are for ease of reference only and do not affect the interpretation of these Terms; |
| 2.1.2 | words in the singular include the plural and vice versa; |
| 2.1.3 | a reference to: |
| (a) | a party to these Terms includes that party's permitted assigns; |
| (b) | personnel includes officers, employees, contractors and agents, but a reference to your personnel does not include us; |
| (c) | a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity; |
| (d) | including and similar words do not imply any limit; and |
| (e) | a statute includes references to regulations, orders or notices |

made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

3 Application of Terms

- 3.1 These Terms apply to your use of the Services. By clicking I agree:
- 3.1.1 you agree to these Terms; and
 - 3.1.2 where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 3.2 If you do not agree to these Terms, you are not authorised to use the Services, and must immediately stop doing so.
- 3.3 We may change these Terms at any time by notifying you of the change by email or posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Services from the date on which the Terms are changed, you agree to be bound by the changed Terms.
- 3.4 These Terms were last updated on 31 May 2021.

SERVICES

4 General

- 4.1 We must use reasonable efforts to provide the Services:
- 4.1.1 in accordance with these Terms and New Zealand law;
 - 4.1.2 exercising reasonable care, skill and diligence; and
 - 4.1.3 using suitably skilled, experienced and qualified personnel.

5 Non-exclusive

- 5.1 Our provision of the Services to you is non-exclusive. Nothing in these Terms prevents us from providing the Services to any other person or organisation.

6 Availability

- 6.1 Subject to clause 6.2, we will use reasonable efforts to ensure the SaaS Service is available during normal business hours in New Zealand. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We will use reasonable efforts to notify you by email in advance with details of any unavailability.
- 6.2 Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

7 Additional Services

- 7.1 We may, from time to time, make available additional services to supplement the SaaS Service.
- 7.2 At the your request, and subject to you paying the applicable Fees (and any additional fee set out in an Access Agreement), we may agree to provide to you with Additional Services in accordance with these Terms and as set out in an Access Agreement.

YOUR OBLIGATIONS

8 General use

- 8.1 You and your personnel must:
- 8.1.1 use the Services in accordance with these Terms solely for:
 - (a) your own internal business purposes; as per any Access Agreement or for public conveyance of the Data; and
 - (b) lawful purposes
 - 8.1.2 not resell or make available the Services to any third party, or otherwise commercially exploit the Services, unless otherwise agreed in any Access Agreement.

9 Access conditions

- 9.1 When accessing the SaaS Service, you and your personnel must:

9.1.1	not impersonate another person or misrepresent authorisation to act on behalf of others or us;		Data through, the Services, to the public or for internal business purposes.
9.1.2	not attempt to undermine the security or integrity of the Underlying Systems;	11.2	If you make the Data publicly available through the Services, you warrant that:
9.1.3	not attempt to copy, recreate or reverse engineer the Services;	11.2.1	you have complied with clauses 11.1 and 12.2; or
9.1.4	not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;	11.2.2	the Data does not contain any Personal Information.
9.1.5	not attempt to view, access or copy any material or data other than:	DATA	
	(a) that which you are authorised to access; and	12	Our access to Data
	(b) to the extent necessary for you and your personnel to use the SaaS Service in accordance with these Terms;	12.1	You acknowledge that:
9.1.6	neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, knowingly incorrect or misleading; and	12.1.1	We will require access to the Data to exercise our rights and perform our obligations under these Terms; and
9.1.7	comply with any terms of use on the Website, as updated from time to time by us.	12.1.2	to the extent that this is necessary but subject to clause 26 and 27, we may authorise a member or members of our personnel to access the Data for this purpose.
10	Personnel	12.2	You must arrange all consents and business approvals both that are necessary for us to access the Data as described in clause 12.1 and to make the data publicly available through the Website.
10.1	Without limiting clauses 8 and 9, no individual other than your personnel may access or use the SaaS Service unless otherwise agreed in an Access Agreement.	12.3	If Data is to be used in a public website, you warrant that the Data does not contain Personal Information.
10.2	You may authorise any member of your personnel to be an Admin User, in which case you will provide us with the Admin User's name and email address so that we can notify users of changes to the Services as required.	13	Analytical Data
10.3	You must procure each Admin User's compliance with clauses 8 and 9 and any other reasonable condition notified by us to you.	13.1	You acknowledge and agree that:
10.4	A breach of these Terms by your personnel (including, to avoid doubt, an Admin User) is deemed to be a breach of these Terms by you.	13.1.1	We may:
11	Authorisations	(a)	use Data and information about you and your end users' use of the Services to generate anonymised and aggregated statistical and analytical data (Analytical Data); and
11.1	You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Services, including to use, store and input Data into, and process and distribute	(b)	use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
		(c)	use the insights to describe the benefits of the Services to customers prospective customers.
		13.2	our rights under clause 13.1 above will survive termination of these Terms; and

13.3 title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

14 Agent

14.1 You acknowledge and agree that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law.

14.2 You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

15 Backups of Data

15.1 While we will take standard industry measures to back up all Data and settings stored using the Services, you agree to keep a separate back-up copy of all Data uploaded by you onto the SaaS Service.

16 International storage of Data

16.1 You agree that we may store Data (including any Personal Information) in secure servers in Australia or New Zealand and may access that Data (including any Personal Information) in Australia and New Zealand from time to time.

17 Indemnity

17.1 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

FEES

18 Fees

18.1 You must pay us the Fees.

19 Invoicing and payment

19.1 We will provide you with valid GST tax invoices monthly in advance for the Fees due in the following month.

19.2 The Fees exclude GST, which you must pay on taxable supplies under these Terms.

19.3 You must pay the Fees:

19.3.1 by the 20th of the month following the date of invoice; and

19.3.2 electronically in cleared funds without any set off or deduction.

20 Overdue amounts

20.1 We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate of 5% per annum, charged monthly.

21 Increases

21.1 We may increase the Fees once each Year at the end of each annual term and will provide notice of the increase in the rollover notification with at least 60 days' notice.

21.2 In addition to Clause 21.1, if at any time, your and/or your users' use of the SaaS Service exceeds the agreed storage or bandwidth parameters then we reserve the right to increase the applicable Fees for the additional costs of meeting your increased needs. Where your or your users' use of the SaaS Service exceeds the agreed parameters, we may recommend the purchase of Additional Services to accommodate your increased usage of the SaaS Service.

21.3 If you do not wish to pay the increased Fees, you may terminate these Terms on no less than 14 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate these Terms in accordance with this clause, you are deemed to have accepted the increased Fees for the roll-over term.

INTELLECTUAL PROPERTY

22 Ownership

22.1 Subject to clause 22.2, title to, and all Intellectual Property Rights in, the Services, the Website, the Website Builder and all Underlying Systems is and remains our property. You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

22.2 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.

23 Know-how

23.1 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes, any know-how, techniques, ideas, methodologies, and

- similar Intellectual Property used by us in the provision of the Services.
- 24 Feedback**
- 24.1 If you provide us with ideas, comments or suggestions relating to the Services or Underlying Systems (together **Feedback**):
- 24.1.1 all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- 24.1.2 we may use or disclose the feedback for any purpose.
- 25 Third party sites and material**
- 25.1 You acknowledge that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply our endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

CONFIDENTIALITY

- 26 Security**
- 26.1 Each party must, unless it has the prior written consent of the other party:
- 26.1.1 keep confidential at all times the Confidential Information of the other party;
- 26.1.2 effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- 26.1.3 disclose the other party's Confidential Information to its personnel or professional advisors on a 'need to know' basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 26.1.1 and 26.1.2.
- 27 Permitted disclosure**
- 27.1 The obligation of confidentiality in clause 26 does not apply to any disclosure or use of Confidential Information:
- 27.1.1 for the purpose of performing a party's obligations or exercising a party's rights under these Terms;

- 27.1.2 required by law (including under the rules of any stock exchange);
- 27.1.3 which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- 27.1.4 which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- 27.1.5 by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 27.

WARRANTIES

- 28 Mutual warranties**
- 28.1 Each party warrants that it has full power and authority to enter into and perform its obligations under these Terms.
- 29 No implied warranties**
- 29.1 To the maximum extent permitted by law:
- 29.1.1 our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD\$1,000.00; and
- 29.1.2 we make no representation concerning the quality of the Services and do not promise that the Services will:
- (a) meet your requirements or be suitable for a particular purpose, including that the use of the Services will fulfil or meet any of your statutory roles or responsibilities; or
- (b) be secure, free of viruses or other harmful code, uninterrupted or error free.

- 30 Consumer Guarantees Act**
- 30.1 You agree and represent that you are acquiring the Services, and accepting these Terms, for the purposes of trade. The parties agree that:

- 30.1.1 to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Services or these Terms; and
- 30.1.2 it is fair and reasonable that the parties are bound by this clause 30.

31 Limitation of remedies

- 31.1 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:
- 31.1.1 supplying the Services again; and/or
- 31.1.2 paying the costs of having the Services supplied again.

LIABILITY

32 Maximum liability

- 32.1 Our maximum aggregate liability under or in connection with these Terms or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by you under these Terms in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability). The cap in this clause 32.1 includes the cap set out in clause 29.1.1.

33 Unrecoverable loss

- 33.1 Neither party is liable to the other under or in connection with these Terms or the Services for any:
- 33.1.1 loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- 33.1.2 consequential, indirect, incidental or special damage or loss of any kind.

34 Unlimited liability

- 34.1 Clauses 32 and 33 do not apply to limit our liability under or in connection with the Agreement for:
- 34.1.1 personal injury or death;
- 34.1.2 fraud or wilful misconduct; or
- 34.1.3 a breach of clause 26 or 27.

- 34.2 Clause 33 does not apply to limit your liability:

- 34.2.1 to pay the Fees;
- 34.2.2 under the indemnity in clause 17; or
- 34.2.3 for those matters stated in clause 34.1.

35 No liability for other's failure

- 35.1 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

36 Mitigation

- 36.1 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms.

TERM, TERMINATION AND SUSPENSION

37 Duration

- 37.1 Unless terminated under clauses 37 or 38, these Terms and your right to access the SaaS Service:
- 37.1.1 start on the Start Date; and
- 37.1.2 unless otherwise agreed in any Access Agreement, continue for successive terms of 12 months from the Start Date unless a party gives at least 30 days' notice that these Terms will terminate on the expiry of the current subscription term.

38 Other Termination rights

- 38.1 Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
- 38.1.1 at the end of the Customer Success Services, decides that the Data is not fit for purpose or of a sufficient quality to be suitable for implementation of the SaaS Service;
- 38.1.2 breaches any material provision of these Terms and the breach is not:
- (a) remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or

- (b) capable of being remedied;
- 38.1.3 becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
- 38.1.4 is unable to perform a material obligation under these Terms for 30 days or more due to Force Majeure.
- 39 Consequences of termination**
- 39.1 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 39.2 On termination of these Terms, you must pay all Fees for Services including any outstanding for the current annual subscription.
- 39.3 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms and subject to clause 39.4, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- 39.4 At any time prior to one month after the date of termination, you may request:
- 39.4.1 a copy of any Data stored using the SaaS Service, provided that you pay the our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
- 39.4.2 deletion of the Data stored using the SaaS Service, in which case we must use reasonable efforts to promptly delete that Data.
- 39.5 To avoid doubt, we are not required to comply with clause 39.4.1 to the extent that you previously requested deletion of the Data.
- 40 Obligations continuing**
- 40.1 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 17, 22, 24, 25, 26, 27, 32, 33, 34, 35, 39, 40, 43, 44 and 45, continue in force.
- 41 Rights to restrict or suspend**
- 41.1 Without limiting any other right or remedy available to us, we may restrict or suspend your or your

- customers access to the SaaS Service (either the administrative login and/or the resulting website(s), and/or delete, edit or remove the relevant Data if we consider that you (including any of your personnel) have:
- 41.1.1 undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- 41.1.2 used, or attempted to use, the SaaS Service:
- (a) for improper purposes; or
- (b) in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;
- 41.1.3 transmitted, inputted or stored any Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading;
- 41.1.4 failed to pay the Fees in accordance with these Terms or an Access Agreement; or
- 41.1.5 otherwise materially breached these Terms.

42 Process

- 42.1 We must notify you where we restricts or suspends your access, or delete, edit or remove Data, under clause 41.
- 42.2 Clause 39.4.1 will not apply to the extent that it relates to Data deleted or removed under clause 41.

DISPUTES

43 Good faith negotiations

- 43.1 Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, these Terms through good faith negotiations.

44 Obligations continue

- 44.1 Each party must, to the extent possible, continue to perform its obligations under these Terms even if there is a dispute.

45 Right to seek relief

- 45.1 This clause 45 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

GENERAL

46	Force Majeure	53.1	These Terms sets out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of these Terms that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 53.
46.1	Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure, provided that the affected party:		
46.1.1	immediately notifies the other party and provides full information about the Force Majeure;		
46.1.2	uses best efforts to overcome the Force Majeure; and		
46.1.3	continues to perform its obligations to the extent practicable.		
47	Rights of third parties	54	Subcontracting and assignment:
47.1	No person other than us and you have any right to a benefit under, or to enforce, these Terms.	54.1	You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
48	Waiver	54.2	Any change of control is deemed to be an assignment for which our prior written consent is required under clause 54.1. In this clause change of control means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in the effective control.
48.1	To waive a right under these Terms, that waiver must be in writing and signed by the waiving party.		
49	Independent contractor	55	Law
49.1	Subject to clause 14, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.	55.1	These Terms are governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms.
50	Notices		
50.1	If we need to contact you, we may do so by email or by posting on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these terms by emailing notices@orbviz.com .		
51	Severability		
51.1	If any provision of these Terms is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.		
51.2	If modification under clause 51.1 is not possible, the provision must be treated for all purposes as severed from these Terms without affecting the legality, enforceability or validity of the remaining provisions of these Terms.		
52	Variation		
52.1	Subject to clause 21, any variation to these Terms must be in writing and signed by both parties.		
53	Entire agreement:		