

## END USER LICENSE AGREEMENT (EULA)

### PLEASE READ CAREFULLY BEFORE ACCESSING THE SOFTWARE:

This agreement is a legal agreement between you (**Licensee** or **you**) and SEER 365 Ltd of Old Station House, Station Approach, Swindon, SN1 3DU (**SEER** or **we**) for GYDE365 computer application (**Software**).

We license use of the Software to you on the basis of this agreement. We do not sell the Software to you. We remain the owners of the Software at all times.

OPERATING SYSTEM REQUIREMENTS: One of the following compatible browsers will be needed to access the Software: Microsoft Edge, Google Chrome or Apple Safari. Cookies will also need to be enabled.

### IMPORTANT NOTICE:

- ACCESS TO THE SOFTWARE IS SUBJECT TO YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT WHICH BIND YOU..
- IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS THE SOFTWARE.

## 1. Interpretation

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

**Applicable Data Protection Laws:** means:

(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which a party is subject, which relates to the protection of personal data.

(c) To the extent any other relevant data protection law not included in (a) and (b) above applies, the law of the relevant jurisdiction to which a party is subject, which relates to the protection of personal data.

**Authorised Users:** those employees of the Licensee who are authorised by the Licensee to use the Software and any third parties that SEER permit to have access.

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

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

**Licence:** the licence granted by SEER to the Licensee to access the Software as detailed in this Agreement.

**Licensee Data:** the data inputted by the Licensee, Authorised Users, or SEER on the Licensee's behalf for the purpose of accessing and/or using the Software or facilitating the Licensee's access and/or use of the Software and/or for the purpose of the provision of the Services.

**Services:** means granting access to the Software.

**Subscription Period:** the period of access to the Software granted by SEER.

**User Subscription:** the user subscription which entitles Authorised Users to access and use the Software in accordance with the Licence.

**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 the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;

- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and
- (c) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.5 References to clauses are to the clauses of this Agreement.

## **2. Licence**

2.1 SEER shall, during the Subscription Period, provide the Licensee with access to the Software on and subject to the terms of this Agreement.

2.2 SEER shall use commercially reasonable endeavours to:

- (a) make the Software available 95% of the time, except for:
  - (i) planned maintenance carried out during the maintenance window outside of Normal Business Hours; and
  - (ii) unscheduled maintenance performed during Normal Business Hours, provided that SEER has used reasonable endeavours to give the Licensee at least 6 normal UK Business Hours' notice in advance;
- (b) correct faults, add functionality or otherwise amend or upgrade the Software as may be required from time to time provided that no delay or failure by SEER to correct faults, add functionality or otherwise amend or upgrade the Software under this clause shall constitute a breach of contract.

2.3 Subject to the Licensee complying with the terms and conditions of this Agreement, SEER hereby grants to the Licensee a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to access and use the Software during the Subscription Period solely for the Licensee's internal business operations.

2.4 The Licensee 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 the Licence:

- (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 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; or
- (b) access all or any part of the Software in order to build a product or service which competes with the Software; or
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except the Authorised Users; or
- (d) introduce or permit the introduction of, any Virus or Vulnerability into SEER's network and information systems.

2.5 In relation to the access and use of the Software, the Licensee:

- (a) shall procure that, to the extent any Authorised Users are provided with individual login details to access the Software, such Authorised Users keep their login details safe and secure and do not share with or disclose such details to any person;
- (b) shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify SEER;
- (c) shall be responsible for ensuring that its network, IT infrastructure and systems comply with the relevant specifications as may be provided by SEER from time to time.

2.6 Unless expressly authorised by SEER in writing, the rights provided under this clause 2 are granted to the Licensee only, and shall not be considered granted to any subsidiary or holding company of the Licensee.

2.7 SEER may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Licence.

### **3. Services**

3.1 If SEER's performance of its obligations under this Agreement is prevented, delayed or compromised by any act or omission of the Licensee, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, SEER shall have no liability for any issues arising.

3.2 The Licensee acknowledges that the provision of the Software may enable or assist it to access the website content of, correspond with and purchase products and services from third parties via third-party websites, including Microsoft support services and content, and that it does so solely at its own risk. SEER makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Licensee, with any such third party. Any contract entered into and any transaction completed via any third-party is between the Licensee and the relevant third party, and not SEER. SEER recommends that the Licensee refers to the third party's terms and conditions and privacy policy prior to using the relevant third-party. SEER does not endorse or approve any third-party, nor the content of any third-party, made available via its Software.

#### **4. Licensee's obligations**

4.1 The Licensee acknowledges that the successful use of the Software to meet the Licensee's requirements and to achieve its intended results and provision of the Services depend at least in part on the information and data supplied or deployed by the Licensee for such purpose, including Licensee Data, and accepts responsibility for the suitability and completeness of such information and data and any outputs from the Software.

4.2 The Licensee shall:

- (a) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (b) ensure that the Authorised Users access and use the Software in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (c) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to data centres where the Software is hosted, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet.

4.3 The Licensee shall own all right, title and interest in and to all of the Licensee Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Licensee Data.

## **5. Confidentiality and publicity**

- 5.1 Each of SEER and the Licensee shall, keep confidential all, and shall not use for its own purposes (other than the implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to a party from the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party.

## **6. SEER warranties**

- 6.1 SEER:
- (a) does not warrant that:
    - (i) the Licensee's use of the Software will be uninterrupted or error-free; or
    - (ii) that the performance of the Software will meet the Licensee's requirements; or
    - (iii) the Software will be free from Vulnerabilities or Viruses;
  - (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 Licensee acknowledges that the provision of access to the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.2 SEER warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 6.3 All other conditions, warranties or other terms not expressly set out in this Agreement and which might have effect between the parties or be implied or incorporated into this agreement, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

## 7. Limits of liability

7.1 Except as expressly and specifically provided in this Agreement, the Licensee assumes sole responsibility for results obtained from the use of the Software by the Licensee, and for conclusions drawn from such use and any use or reliance on any outputs. SEER shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by the Licensee in connection with access or use of the Software, and/or in connection with the provision of any Services, or any actions taken by SEER at the Licensee's direction.

7.2 Except as expressly stated in clause 7.3:

(a) SEER shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if SEER was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data;

(b) the total liability of SEER, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement (including in connection with the provision of the Services) or any collateral contract, shall in no circumstances exceed a sum equal to either the sum paid by the Licensee for access to the Software in the 12-months (or part thereof) prior to the liability arising or, in the absence of the Licensee making any such payments, a sum equivalent to the licence fee that SEER would have charged based on its standard commercial rates in force at the time.

7.3 The limitations and exclusions under this clause shall apply to the fullest extent permissible at law, but nothing in this agreement limits or excludes liability for:

- (a) death or personal injury caused by the negligence of SEER, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which may not be excluded by law.

## **8. SEER Intellectual property rights**

- 8.1 The Licensee acknowledges that all Intellectual Property Rights in and to the Software and any applicable amendments or upgrades belong and shall belong to SEER, and except as set out in clause 8.2, the Licensee shall have no rights in or to the Software.
- 8.2 The Licensee acknowledges that SEER may collect and use certain background data of the Licensee generated as a result of the Licensee accessing and/or using the Software, and the Licensee grants to SEER a non-exclusive, royalty-free and perpetual licence to use the aforesaid data.
- 8.3 The Licensee acknowledges that Licensee Data may become available to SEER as a result of the Licensee accessing and/or using the Software. The Licensee hereby grants SEER non-exclusive royalty-free licence to use and copy Licensee Data for the purpose of providing the Licensee with access to the Software.

## **9. Data protection**

- 9.1 If SEER processes any personal data on behalf of the Licensee when performing its obligations under this agreement, SEER and the Licensee agree that the Licensee shall be the data controller and SEER and Licensee shall be data processors and in any such case:
- (a) The Licensee shall ensure that it is entitled to transfer the relevant personal data to SEER so that SEER may lawfully process the personal data in accordance with this License on the Licensee's behalf;
  - (b) SEER shall process the personal data only in accordance with the terms of this agreement and any instructions reasonably given by the Licensee from time to time and the Licensee shall indemnify and hold SEER harmless against any claims made against SEER as a result of acting in accordance with the Licensee's instructions;
  - (c) Each of SEER and the Licensee will comply with all applicable requirements of Applicable Data Protection Laws. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws; and
  - (d) each of SEER and the Licensee shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

For the purposes of this clause 9, the terms **controller**, **processor**, **personal data** and **processing** shall have the meaning given to them in the Data Protection Act 2018.



## **10. Termination**

- 10.1 Without affecting any other right or remedy available to it, SEER may terminate this Agreement and the Licence with immediate effect by giving written notice to the Licensee if:
- (a) the Licensee commits a material breach of any term of this agreement; and/or
  - (b) any other agreement which regulates the Licensee's use of the Software is terminated (howsoever).
- 10.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 10.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.
- 10.4 On termination or expiry of this agreement for any reason:
- (a) all rights granted to the Licensee under the Licence shall cease;
  - (b) the Licensee shall cease all activities authorised by the Licence;

## **11. ENTIRE AGREEMENT**

- 11.1 This Agreement (and any other written contract, where applicable) entered into between SEER and the Licensee constitute the entire agreement between SEER and the Licensee, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between Seer and the Licensee, whether written or oral, relating to its subject matter.
- 11.2 The Licensee acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 11.3 The Licensee agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **12. GENERAL**

- 12.1 Neither SEER nor the Licensee shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 12.2 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between SEER and the Licensee.
- 12.3 If any provision of this agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of this agreement and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by SEER or the Licensee in enforcing or partially enforcing any provision of this agreement shall not be construed as a waiver of any of their respective rights under this Agreement.
- 12.5 The parties to this Agreement do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The formation, existence, construction, performance, validity and all aspects of this Agreement and any and all matters relating to it shall be governed by the laws of England and Wales and the courts of England shall have exclusive jurisdiction to settle any disputes arising between SEER and the Licensee in connection with this Agreement.