

**(1) SCIENCE & ENGINEERING APPLICATIONS LTD**

**and**

**(2) CUSTOMER**

**CHAI® SOFTWARE AGREEMENT**

LAST UPDATED 28 MAY 2021

**CLAUSE**

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## THIS AGREEMENT

Please read carefully before you purchase and/or use the Software. By proceeding to purchase and/or use the Software you are agreeing to be bound by the terms of this agreement. See Schedule 1 for Data Protection clauses.

## PARTIES

- (1) **SCIENCE & ENGINEERING APPLICATIONS LTD** incorporated and registered in England and Wales with company number 11140695 whose registered office is at Cae Crin, Rhoscolyn, Holyhead, Anglesey, LL65 2EQ (**Scienap**).
- (2) **THE ORGANISATION USING THE SOFTWARE** (the **Customer**).

## AGREED TERMS

### 1. INTERPRETATION

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

<b>Authorised Users:</b>	those employees, agents, independent contractors and or volunteers of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 1.1.
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in Wales when banks in London are open for business.
<b>Business Hours:</b>	9am to 5.00pm local UK time on a Business Day.
<b>Confidential Information:</b>	information that is proprietary or confidential including all Documentation and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.
<b>Customer Data:</b>	the data inputted by the Customer, Authorised Users, or Scienap on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>Data Protection Legislation:</b>	<ol style="list-style-type: none"><li>(a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then</li><li>(b) any successor legislation to the GDPR or the Data Protection Act 1998.</li></ol>
<b>Documentation:</b>	the documents made available to the Customer by Scienap either sent directly, sent with the Software or made available online at a web address notified by Scienap to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
<b>Effective Date:</b>	the earliest of date of purchase or first use after any free trial period.
<b>Fees:</b>	the fees as described on our website or sent directly to the Customer.
<b>Initial Subscription Term:</b>	the initial term of this agreement is 1 day unless agreed otherwise in writing.
<b>Renewal Period:</b>	the period described in clause 14.1 having a duration of 1 day unless agreed otherwise in writing.
<b>Records:</b>	information entered into the Software by Authorised Users about an individual.
<b>Services:</b>	the subscription services provided by Scienap to the Customer under this agreement.
<b>Software:</b>	the CHAI software provided by Scienap as part of the Services.
<b>Subscription Term:</b>	has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
<b>Virus:</b>	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.

- 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 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.
- 1.6 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.
- 1.7 A reference to writing or written includes e-mail.
- 1.8 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. LICENCE AND AUTHORISED USERS**

- 2.1 Subject to the Customer paying the Fees, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Scienap hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal operations.
- 2.2 The Customer shall not, and shall ensure that Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
  - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property,

and Scienap reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's, and any Authorised User's, access to any material that breaches the provisions of this clause.

- 2.3 The Customer shall not, and shall ensure that Authorised Users 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) subject to clause 22.1, 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
  - (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Scienap.

### **3. SERVICES**

- 3.1 Scienap 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.
- 3.2 Scienap shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during a maintenance window typically sometime between 10.00 pm to 2.00 am UK time; and
  - (b) unscheduled urgent maintenance.
- 3.3 The Customer shall ensure that it has adequate safeguards and procedures in place to deal with all planned, unscheduled and unforeseen unavailability of the Software.

### **4. NOT USED**

### **5. CUSTOMER DATA**

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. The Customer shall grant Scienap an exclusive, unlimited and irrevocable royalty free licence to use the Customer Data that is not personal data.
- 5.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Scienap shall be for Scienap to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Scienap. Scienap shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 5.3 In the event that it applies, both parties will comply with all applicable requirements of the Data Protection Legislation.
- 5.4 The parties acknowledge that Scienap is the Data Processor and the Customer is the Data Controller for the purposes of Data Protection Legislation.
- 5.5 Clauses 5.3, 5.4 and Schedule 1 apply in addition to, and do not relieve, remove or replace, a party's obligations under Data Protection Legislation.
- 5.6 Scienap will not amend, alter or update any Records (**Unforeseen Processing**) unless an unforeseen event occurs and the parties have agreed and documented in writing additional safeguards and terms (**Additional Terms**) to apply in respect of such Unforeseen Processing. In the event of any conflict or inconsistency between the Additional Terms and the terms of this Agreement, including Schedule 1, the Additional Terms shall prevail in respect of the Unforeseen Processing only.

### **6. SCIENAP'S OBLIGATIONS**

- 6.1 Scienap undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 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 Scienap's instructions, or modification or alteration of the Services by any party other than Scienap or Scienap's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Scienap will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Scienap:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free;
  - (b) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - (c) 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.

- 6.3 This agreement shall not prevent Scienap 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.

## **7. CUSTOMER'S OBLIGATIONS**

7.1 The Customer shall:

- (a) provide Scienap with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by Scienap;

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;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Scienap may adjust any agreed timetable, price or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement or the End User Licence Agreement;
- (e) be solely responsible for the legally, reliability, integrity, accuracy and quality of all Records.

## **8. NOT USED**

## **9. FEES AND PAYMENT**

9.1 The Customer shall pay the Fees to Scienap in accordance with this clause 9.

9.2 The Customer shall keep payment details and payments up to date at all times using our website provided for this purpose (if available), or whatever alternative arrangements have been agreed in writing with Scienap.

9.3 If payment becomes overdue by 3 days or more and without prejudice to any other rights and remedies of Scienap:

- (a) Scienap may, without liability to the Customer, disable the Customer's and all Authorised Users' password, account and access to all or part of the Services and Scienap shall be under no obligation to provide any or all of the Services while the payments concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of HSBC UK Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable; and
- (c) are exclusive of value added tax, which shall be added to Scienap's invoice(s) at the appropriate rate.

9.5 Scienap shall be entitled to increase the Fees at the start of each Renewal Period upon 30 days' prior notice to the Customer.

9.6 If the Customer disputes any fees:

- (a) the Customer shall notify Scienap in writing immediately specifying the reasons for disputing the fees;
- (b) Scienap shall provide all evidence as may be reasonably necessary to verify the disputed fees;
- (c) the Customer shall pay to Scienap all amounts not disputed by the Customer;
- (d) the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
- (e) if the parties have not resolved the dispute within 30 days of the Customer giving notice to Scienap, the dispute shall be resolved by arbitration.

## **10. PROPRIETARY RIGHTS IN THE SERVICES**

10.1 The Customer acknowledges and agrees that Scienap and/or its licensors own all intellectual property rights in the Services and the Documentation (unless marked otherwise on specific forms). Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents,

copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 Scienap 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.

## **11. CONFIDENTIALITY**

11.1 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.

11.2 Subject to clause 11.4, 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.

11.3 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.

11.4 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Scienap's Confidential Information.

11.7 Scienap acknowledges that the Customer Data is the Confidential Information of the Customer.

11.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.9 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

## **12. INDEMNITY**

12.1 The Customer shall defend, indemnify Scienap against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Scienap arising out of or in connection with:

- (a) the Customer's use of the Services and/or Documentation;
- (b) any breach of the Customer's warranties contained in this agreement; and
- (c) any claim made against Scienap for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Scienap's use of any material requested and provided by the Customer.

12.2 Scienap shall defend the Customer, its officers, directors, employees and volunteers against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) Scienap is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to Scienap in the defence and settlement of such claim, at Scienap's expense; and

- (c) Scienap is given sole authority to defend or settle the claim.

In the defence or settlement of any claim, Scienap may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 12.3 In no event shall Scienap, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - (a) a modification of the Services or Documentation by anyone other than Scienap;
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Scienap; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Scienap or any appropriate authority.
- 12.4 The foregoing states the Customer's sole and exclusive rights and remedies, and Scienap's (including Scienap's employees, agents and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

### 13. LIMITATION OF LIABILITY

- 13.1 Except as expressly and specifically provided in this agreement:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Scienap shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Scienap by the Customer in connection with the Services (including any forms or Records), or any actions taken by Scienap at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
  - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.2 Nothing in this agreement excludes the liability of Scienap:
  - (a) for death or personal injury caused by Scienap's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
  - (a) Scienap shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
  - (b) Scienap's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), 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 the greater of £10,000 or the total Subscription Fee paid during the 12 months immediately preceding the date on which the claim arose.

### 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 defined by the Renewal Period, unless:
  - (a) either party cancels the Subscription; or
  - (b) otherwise terminated in accordance with the provisions of this agreement;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 fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment;
  - (b) 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 30 days after being notified in writing to do so;

- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

14.3 Scienap or the Customer may terminate this agreement at any time for any reason. Scienap must provide at least 30 days notice if the Customer is not in default. The Customer does not need to provide any notice and will be refunded if applicable in accordance with clause 14.4. This refund is unconditional.

14.4 On termination of this agreement for any reason:

- (a) all licences granted by Scienap under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Scienap may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause (b), unless Scienap receives, no later than ten days after the date of termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data held by Scienap. Scienap shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Scienap in returning or disposing of Customer Data if termination is due to the Customer;
- (d) 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;
- (e) the Customer shall immediately pay to Scienap all sums outstanding under this agreement; and
- (f) Scienap will refund any unused Subscription Fees to the Customer. An administration fee may be charged by Scienap for termination. This fee will not exceed £30+VAT or 30 days Subscription Fees, whichever is the lower.

## 15. **FORCE MAJEURE**

Scienap 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 (whether involving the workforce of Scienap or any other party), failure of a utility service or transport or telecommunications network, 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 sub-contractors, epidemic or pandemic, provided that the Customer is notified of such an event and its expected duration.

## 16. **CONFLICT**

If there is any conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

- (a) this agreement;
- (b) the schedules of (a);
- (c) Purchase Order or any communication with the Customer.

## 17. **VARIATION**

Scienap may vary the terms of this agreement from time to time. The Customer will be given at least 30 days notice of any changes during which time the Customer may terminate the contract without incurring any early termination administration fees.

## 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.

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 Customer shall not, without the prior written consent of Scienap, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22.2 Scienap may 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.

## **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**

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 1999.

## **25. NOTICES**

25.1 Any notice required to be given under this agreement shall be by email to the other party's email address as set out below:

- (a) Scienap's email address: Notice@ChaiWellbeing.com;
- (b) Customer's email address: the latest email address you have provided to us.

25.2 A notice sent by email shall be deemed to have been received at the time of transmission, or if this time falls outside of Business Hours, when Business Hours resume.

## **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).

## SCHEDULE 1- DATA PROTECTION

1. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Scienap is the Processor. The only processing that Scienap is authorised to do is listed in the attached *Schedule for Processing* by the Customer and may not be determined by Scienap.
2. Each party acknowledges that this schedule does not relieve it of any of its own direct responsibilities and liabilities under Data Protection Legislation and it is aware that it may be subject to investigative and corrective powers of supervisory authorities, including fines, penalties and compensation, if it fails to meet its obligations.
3. Both parties will comply with all applicable requirements of the Data Protection Legislation. This schedule is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation.
4. Scienap shall notify the Customer promptly if it considers that any of the Customer's instructions infringe the Data Protection Legislation but the Customer remains ultimately responsible for ensuring its compliance with Data Protection Legislation and nothing in this paragraph 4 affects the Customer's liability for its unlawful instructions.
5. Without prejudice to the generality of clause paragraph 1 the Customer warrants that:
  - 5.1 it has all necessary and appropriate consents and notices in place to enable lawful transfer of Personal Data to Scienap for the duration and purposes of the Agreement; and
  - 5.2 it has undertaken due diligence in relation to Scienap's processing operations, and it is satisfied that:
    - (a) Scienap's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage Scienap to process the Personal Data; and
    - (b) Scienap has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.
6. Scienap shall provide, at the Customer's cost, reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer (acting reasonably), include:
  - 6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
7. Scienap shall in relation to any Personal Data processed in connection with its obligations under this agreement:
  - 7.1 unless required to do otherwise by Law, process that Personal Data only in accordance with the attached *Schedule for Processing* and on the instruction of Authorised Persons;
  - 7.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 7.3 ensure that:
    - (a) its Personnel do not process Personal Data except in accordance with this Agreement;
    - (b) it takes reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:
      - (i) are aware of and comply with Scienap's duties under this schedule;
      - (ii) are subject to appropriate confidentiality undertakings with Scienap or any Sub-processor;
      - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement or required by Law; and
      - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

- 7.4 not transfer Personal Data outside of the EU or UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or Scienap has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) Scienap complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses reasonable endeavours to assist the Customer, at the Customer's cost, in meeting its obligations); and
  - (d) Scienap complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
  - (e) at the written direction of the Customer, delete or return, at the Customer's cost, Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Scienap is required by Law to retain the Personal Data.
8. Subject to paragraph 9, Scienap shall notify the Customer immediately if it:
- 8.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 8.2 receives a request to rectify, block or erase any Personal Data;
  - 8.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 8.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 8.6 becomes aware of a Data Loss Event.
9. Scienap's obligation to notify under paragraph 8 shall include the provision of further information to the Customer in phases, as details become available.
10. Taking into account the nature of the processing, Scienap shall provide the Customer, at the Customer's cost, with reasonable assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 8 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 10.1 the Customer with full details and copies of the complaint, communication or request;
  - 10.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 10.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 10.4 reasonable assistance as requested by the Customer following any Data Loss Event; and
  - 10.5 reasonable assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
11. Scienap shall maintain complete and accurate records and information to demonstrate its compliance with this schedule.
12. Scienap shall maintain records to allow for audits, on reasonable notice during Business Hours, of its data processing activity by the Customer or the Customer's designated auditor.
13. The Customer consents to Scienap using self-employed contractors as Sub-processors to process any Personal Data related to this Agreement. Scienap confirms that it has entered or (as the case may be) will enter with such Sub-processors into a written agreement incorporating terms which are substantially similar to those set out in this Schedule.
14. Notwithstanding paragraph 13, before appointing any other party as a Sub-processor to process any Personal Data related to this Agreement, Scienap must:
- 14.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 14.2 obtain the consent of the Customer (not to be unreasonably withheld or delayed);
  - 14.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this schedule such that they apply to the Sub-processor; and

- 14.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
15. As between Scienap and the Customer, Scienap shall remain fully liable for all acts or omissions of any Sub-processor.
16. The Customer may at any time on not less than 30 working days' notice, revise this schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement) provided that any additional costs incurred by Scienap as a result of such revision shall be borne by the Customer and that the commercial allocation of liability shall not be affected.
17. The Customer shall indemnify and keep indemnified Scienap in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by Scienap and any Sub-processor arising from or in connection with any:
  - 17.1 non-compliance by the Customer with the Data Protection Legislation;
  - 17.2 processing carried out by Scienap or any Sub-processor pursuant to any instruction by the Customer that infringes any Data Protection Legislation; or
  - 17.3 breach by the Customer of any of its obligations under this schedule.
18. Scienap shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:
  - 18.1 only to the extent caused by the processing of Personal Data under this Agreement and directly resulting from Scienap's breach of this schedule; and
  - 18.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by the Customer.
19. If a party receives a compensation claim from a person relating to processing of Personal Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall consult with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Agreement for paying the compensation.
20. The parties agree that the Customer shall not be entitled to claim back from Scienap any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify Scienap in accordance with paragraph 17.
21. Paragraphs 17 to 20 are intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary, except to the extent not permitted by Law (including Data Protection Legislation) and that it does not affect the liability of either party to any Data Subject.
22. Each party agrees to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 working days' notice to Scienap amend this schedule to ensure that it complies with any guidance issued by the Information Commissioner's Office provided that any additional costs incurred by Scienap as a result of such amendment shall be borne by the Customer and that the commercial allocation of liability shall not be affected.

#### **Data Sub-Processors**

Scienap have appointed the following sub-processors:

Hetzner Online GmbH, Industriestraße 25, 91710 Gunzenhausen, Germany. <https://www.hetzner.com>  
Hetzner provide Scienap's cloud servers.

## SCHEDULE FOR PROCESSING

### Processing, Personal Data and Data Subjects

1. Scienap shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the Processing	<p>Scienap processes data from two different Data Subject groups:</p> <ol style="list-style-type: none"> <li>1) Contact details of our Customer and their Authorised Users of the Software (<b>User Admin Data</b>); and</li> <li>2) Our Customer's clients' data recorded by Authorised Users (<b>Client Wellbeing Data</b>)</li> </ol> <p>User Admin Data is limited to basic contact information (usually name and email address and phone number).</p> <p>Regarding Client Wellbeing Data, the Software accesses, records and analyses the Customer's client's wellbeing data on Scienap's computer systems. Data Subjects will typically be vulnerable people being supported by local authorities or volunteer groups, or in the care of a hospice.</p>
Duration of the Processing	Processing is ad-hoc subject to Customer requirements. Processing will cease on termination of the agreement.
Nature and purposes of the processing	<p>User Admin Data is obtained, stored and used by Scienap to facilitate safe, secure and authorised use of the Software. It is also used to provide notifications regarding the use and any contractual matters relating to Software or Scienap.</p> <p>Regarding Client Wellbeing Data, the processing is usually automatic using a cloud server and only under exceptional circumstances following instructions from the Customer will Scienap see any personal data.</p> <p>Exceptional circumstances most likely involve viewing a single record as part of a fault finding exercise (with faults notified to Scienap by the Customer or automatically detected) or viewing and amending a single record at the specific instruction of the Customer. Finally, deleting or processing records in accordance with this Agreement or legal requirements.</p> <p>The purpose of the processing is to provide the Customer with a digital record of their clients' personal wellbeing or hospice nursing record as established and recorded by the Customer, and to create client specific notes and tasks to enable the Customer to provide effective wellbeing support.</p>
Type of Personal Data	<p>User Admin Data is typically an email address and in some instances a contact phone number.</p> <p>Client Wellbeing Data includes: name, address, date of birth, demographics, medical history and current wellbeing observations and health status or hospice nursing records.</p>

<p>Categories of Data Subject</p>	<p>Scienap processes data from two different Data Subject groups:</p> <ol style="list-style-type: none"> <li>3) Contact details of our Customer and their Authorised Users of the Software (<b>User Admin Data</b>); and</li> <li>4) Our Customer's clients' data recorded by Authorised Users (<b>Client Wellbeing Data</b>)</li> </ol> <p>Our Customer's clients are likely to include vulnerable people (including children, mentally ill or with learning disabilities, elderly and terminally ill).</p>
<p>Security Measures</p>	<p>Personal Data is stored on Scienap's secure servers provided by reputable cloud service providers in the UK and EU. All data is encrypted during any data transfers. Authorised User access is controlled by password protected accounts. User accounts have controls that limited access to Personal Data and this is set up by the Customer. Client Wellbeing Data is not normally viewed by Scienap.</p> <p>If Scienap is instructed to access Client Wellbeing Data, only those staff who absolutely need access have it. Those staff use two factor authentication and they have contracts of confidentiality. All access by the Customer and Scienap is logged for audit purposes.</p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under UK or EU member state law to preserve that type of data.</p>	<p>All Personal Data will be returned and or deleted from Scienap's servers in accordance with the termination clauses of this Agreement unless required by Law otherwise.</p>

## APPENDIX A - DEFINITIONS

**Authorised Person:** means the persons or categories of persons that are authorised by the Customer to give Scienap personal data processing instructions, namely, any director, officer, employee, volunteer, agent, consultants or contractor of the Customer who contacts Scienap to request support pursuant to the Agreement;

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach,** take the meaning given in the GDPR.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by Scienap under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Losses:** means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Law:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
  - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
  - (iii) the costs of compliance with investigations by a Supervisory Authority;

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**Law:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant party is bound to comply;

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Personnel:** means all directors, officers, employees, agents, consultants and contractors of Scienap and/or of any Sub-Contractor engaged in the performance of its obligations under this agreement.

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third party appointed to process Personal Data on behalf of Scienap in relation to the agreement.

**Supervisory Authority:** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation.