These Shepherd Terms of Service located at https://www.shepherdcmms.com/terms ("***General Terms***"), together with any annexes, including applicable Order(s), Statement of Work Terms and any other applicable terms on this Shepherd website currently or added in the future (collectively, the "***Agreement***"), are entered into by and between Shepherd as set forth below ("**Shepherd**") and the entity or person placing an order for, or accessing, any services provided by Shepherd ("**Customer**" or "**you**").

If you are accessing or using the Services on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to "you" or "Customer" reference your company.

The Agreement constitutes a binding agreement between Shepherd (as defined in clause 2), and Customer (each, a "***Party***") under which Shepherd provides Customer access to Shepherd's Services. Customer accepts and agrees to be bound by the Agreement by executing an Order Document or by using Shepherd's Services.

I GENERAL CONDITIONS

1. These General Conditions ("**Conditions**") apply to the licensing of the Software and provision of software maintenance and support services by Shepherd to the Customer under the Agreements. Shepherd may also provide the Customer with implementation, consulting, development, and training services under the Agreements.
2. Shepherd is a duly registered EU member-state company with its headquarters at Roseni 12, 10111 Tallinn, Estonia (TAX ID EE101856658; registration #12473809) and offices globally.
3. The Software, as well as any updates, documentation and license keys associated thereto, remain the propriety of Shepherd and are licensed to the Customer, not sold.

LICENSE GRANT

4. Subject to the timely payment by the Customer of any applicable license fees set forth in the Agreement, and the Customer's strict adherence to the terms of the Agreement (including these Conditions), Shepherd grants to the Customer a time-limited, non-exclusive, non-transferable, non-sublicensable, revocable, and worldwide copyright license to use the Software in connection with the Customer's internal business operations up to the capacity purchased by the Customer.

RESTRICTED USES

5. The Customer shall not:
   5.1. transfer, rent, lease, loan, sublicense or distribute the Software, or permit third parties to use or access it on a timeshare, service bureau, outsourced, software-as-a-service or other similar basis, for charge or otherwise;
   5.2. decompile, disassemble or reverse engineer the Software or otherwise attempt to gain access to its source code, except to the extent expressly permitted by the applicable law;
   5.3. remove, circumvent, disable, damage or otherwise interfere with security-related or limiting features of the Software;
   5.4. copy, offer for public display, translate, adapt, modify or otherwise alter the Software, or create derivative works thereof, except to the extent expressly permitted by the applicable law;
   5.5. modify or delete the copyright and other proprietary rights notices on or in the Software; or
   5.6. use, or attempt to use the Software in violation of any terms of the Agreement or not in accordance with the Software's technical documentation;
   5.7. evaluate the Software for the purpose of competing with Shepherd;
   5.8. make any copies of the license keys except for backup copies; or
   5.9. cause or permit any third party to do any of the above.
6. The Customer acknowledges that Shepherd may use technological measures to enforce the compliance of the Customer's usage of the Software with the terms of the Agreement.
7. The Customer's violation of any terms above shall constitute a fundamental breach of the Agreement.

GENERAL BILLING AND SERVICE PRINCIPLES

8. Unless otherwise agreed, Shepherd shall invoice the Customer on a monthly, periodic or annual basis, according to the exact agreement in the detailed terms section of the Agreement:
   8.1. in advance for software licenses, maintenance and support and fixed-fee projects (including fixed-fee implementation and consulting services);
   8.2. if so agreed, in arrears for pay-as-you-go services (including capped-price implementation and consulting projects) and costs.
9. Upon signing of the Agreement the Customer has to pay a deposit "Deposit", unless otherwise agreed in writing. The Deposit is a collateral payment that can be used by Shepherd to cover the Customer's payable amounts in arrears ("Periodic Billing") or immediately.
10. The Customer pays all fees and costs due to Shepherd within thirty (30) days following receipt of an invoice, plus applicable sales, use and other similar taxes, if the invoice does not state an earlier payment date.
11. Invoicing for licenses will start at signing of the agreement and continue for the whole duration of the agreement, regardless of usage by the Customer.
12. The general Shepherd pricelist applies for any additional or follow-up services (incl. hypercare) or Support requested by the Customer. Any discounts applied to work effort and cost for go-live will not be applied to post-go-live services nor prolongations or additional orders unless explicitly agreed in writing between the parties.
13. Shepherd has the right to bill for any additional work according to existing pricelist in case of:
    (i) delays or changes due to the Customer (including delays in provision of quality data);
    (ii) delays or changes due to the Customer implementation or integration partners;
    (iii) delays in go-live and exceeding the agreed duration of the implementation project;
    (iv) meetings that have not been called by Shepherd but that the Customer insists that Shepherd participates in (i.e. out of scope meetings or other Customer meeting requests).
14. When exceeding the agreed duration and/or scope of the implementation project, all work will be billed on an hourly basis according to the pricelist. If the budget of the Agreement is exhausted or the Customer extends the go-live duration then the implementation will move to hourly pricing.
15. Shepherd provides functional support to the customer via e-mails, online meetings and phone calls. Any request for on-site resources will have to be separately agreed at a to-be-agreed rate, reflective of the travel time involved. Subsequently associated travel expenses are to be billed with a retainer invoice prior to travel.
16. All work will be carried out during a standard 8-hour working day. Any requests for services to be performed outside of Customer's local business hours are to be agreed in writing and will be billed at a 1.5x the stated rate during Monday to Friday, weekends and holidays will be billed at a rate of 2x the normal rate.
17. Shepherd may increase the agreed prices (including license, maintenance and support fees) from time to time and no more than once during any 12-month period. Shepherd will notify the Customer of such price change in writing.
18. Shepherd shall license the Software and provide the services to the Customer subject to the Customer's timely payment of all applicable fees and strict adherence to the Agreement.
19. Shepherd has the right to ask for a retainer or prepayment of the invoice issued.
20. Transfer fees are covered equally by the Partied when they are up to 100 USD per transfer. Transfer fees are payable only by the Company in amounts exceeding 100 USD.
21. Shepherd has the right to restrict access to the Software in case of payment delays.
22. Upon payment delays Shepherd has the right to cancel Customer meetings and delay go-live until full payment. Access will be restricted without a separate confirmation needed from the Customer.
23. In the event of a breach of a monetary obligation under this Agreement, the Customer shall pay to Shepherd interest on the amount due at the rate of 0,2% of overdue amount per day.
24. Shepherd has no liability regarding any claims from restricting access to the Software or from restricting Users if this has been done due to non-payment of invoices.
25. Any ticket or Customer request has a minimum billing rate of 15 minutes.
26. In case of meeting cancellations after the time of the meeting the full meeting time will be applied for billing. Unattended meetings will count towards the total implementation hours, any additional work will be billed on an hourly pricelist.
27. Shepherd has the right to verify the count of actual users at any time. The Customer hereby gives irrevocable consent to this and if, necessary, undertakes to facilitate the verification of actual

Users. In case of discrepancies Shepherd has the right to bill for the actual Users for up to three (3) previous years. The Customer has the right to increase or reduce the number of users (effective from the next calendar month but not sooner than in 30 days), but the minimum monthly license fee is 500 USD even in case of reduced users. Reduction of users by Customer is effective 30 days after the proper notice in writing has been received by Shepherd. Increasing the number of users can be done in an email, confirming the right to do so. Shepherd has no liability for exceeded or incorrectly presented representation rights by the Customer's contacts.

SUPPORT

28. Shepherd provides the Customer with software maintenance and technical support services ("Support") as described in this Agreement as an additionally billed service, unless a problem is caused by a bug. A bug status shall be decided by Shepherd.
29. Unless otherwise agreed between the Parties in writing, Shepherd provides Support in accordance with its then-current support policies which Shepherd may change at any time as long as such changes do not materially degrade availability of Support to the Customer during the validity of the Agreement.
30. Customer places all support requests to Shepherd through by sending an e-mail to: support@shepherdcmms.com.

30.1. Shepherd handles Customer's support requests only during the Support hours, that is from 07:00 to 19:00 CET (for EMEA) or 09:00 to 19:00 EEST (for US Customers) Monday to Friday, excluding holidays.

30.2. Shepherd will use commercially reasonable efforts to respond to support requests placed by the Customer through designated support channels during support hours within the response time targets commensurate with the severity of each request.

30.3. Support requests are incident reports, feature requests and assistance requests. Incidents are situations where the functionality, availability or performance of the Software is degraded.

(i) Severity 1 incident means that the Software is unavailable or substantially fails to perform.
(ii) Severity 2 incident means substantial degradation in availability or performance of the Software.
(iii) Severity 3 incident means minimal to no impact on the availability or performance of the Software.
(iv) Feature request is a request for new or altered functionality of the Software.
(v) Assistance request is request that is neither an incident report nor a feature request.

31. Response targets are 4 support hours for Severity 1 incidents, 2 business days for Severity 2 incidents, and 3 business days for Severity 3 incidents and assistance requests. No response targets apply to feature requests. Response target is not a solution target.
32. Shepherd is not obliged to respond to any support requests during planned outages. Shepherd will usually schedule planned outages to weekends or holidays.
33. Process for handling Severity 1 and Severity 2 incidents:
    (i) Shepherd opens a trouble ticket and assigns it to an engineer;
    (ii) the engineer performs initial diagnostics and responds to Customer within the response time target;
    (iii) the engineer performs extended diagnostics and/or corrective activities and provides periodic progress reports to Customer.
34. Process for handling Severity 3 incidents and assistance requests:
    (i) Shepherd opens a trouble ticket and assigns it to an engineer;
    (ii) the engineer performs initial diagnostics and responds to Customer within the response time target;
    (iii) Shepherd uses commercially reasonable efforts to include the fix in the next major release of Software.
35. The Shepherd User guide includes generic support documentation, any custom documentation is billed on an hourly basis.

SOFTWARE MAINTENANCE

36. Shepherd may, from time to time and at its sole discretion, elect to publish new versions of the Software that may include bug fixes, performance improvements, and/or new or modified functionality. Shepherd aims to release new versions of its mobile application and bundle biannually.
37. While Shepherd tries to make new versions of the Software functionally compatible with earlier versions thereof, it is not always possible or feasible. Therefore, Shepherd explicitly disclaims any warranties concerning the Customer's ongoing ability to use any previously created customizations built by Shepherd, the Customer or any third party or regarding any damage claims due to updates.
38. New versions of the Software are available to the Customer at no additional cost on top of the applicable license fees. Availability of the Software does not include its installation, which is billed on an hourly fee basis in case the Customer wishes for Shepherd to install the new version.
39. Notwithstanding anything in this section, Shepherd reserves the right to develop other products, including products that complement the Software or provide functionality that is partially overlaps that of the Software. Such products shall not be subject to any provisions of the Agreement.
40. The Customer has to have updated software for any computers, tablets, phones for Shepherd software to work properly. The Customer confirms that he is aware of this and also the fact that speed varies with processor size and memory for computers, tablets and phones. The Customer must have at least one admin user.
41. Shepherd is not liable for any data losses or errors due to or connected with excessive storage of offline request data which is only stored locally on devices with limited or insufficient memory, including but not limited to e.g. images, files, large volumes of requests etc. The Customer and its users must ensure that adequate memory is available on the device before performing offline tasks with the Shepherd application.
42. Upon termination of the Agreement the Customer has to uninstall the bundle themselves and bear all liability for any possibly data loss, Shepherd has no data loss liability. Shepherd will maintain data for the monthly license billing amount if the Customer does not explicitly request in writing the deletion of the bundle by Shepherd.

IMPLEMENTATION SUPPORT

43. Shepherd will bill the Customer for implementation support at the hourly rate listed in the Agreement. For on-site support, Shepherd will also bill the Customer for reasonable travel and accommodation expenses of the implementation support staff, including for the hours spent travelling to and from the Customer. All travel related costs must be paid as a retainer prior to any travel based on a retainer invoice by Shepherd.

DATA PROCESSING

44. Data provided by the Customer for processing with the Software remains on the Customer's NetSuite server and is never transmitted to Shepherd or any third party as a result of the operation of the Software.
45. Concerning the processing of personal data with the Software, the Customer is to be seen as 'controller' and NetSuite as 'processor' within the meaning of EU General Data Protection Regulation (GDPR). Since the Software is a SuiteApp running natively within NetSuite or on Customer-controlled devices, Shepherd shall not be considered a 'sub-processor'.
46. It remains the responsibility of the Customer to provide, in its customer contracts, terms of service or other such documents, to its own customers adequate information about the Customer's personal data processing policies.

PROPRIETARY RIGHTS

47. Shepherd represents and warrants that it either owns or has a valid license to the Software and that the execution and consummation of the transactions contemplated by the Agreement will not violate the terms of any agreement to which Shepherd is party or the intellectual property rights of any third party.
48. The Software, workflow processes, user interface, designs, and other technologies provided by Shepherd as part of the Software are the proprietary property of Shepherd, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Shepherd.
49. Shepherd retains and reserves all intellectual property rights not explicitly granted under the Agreement.
50. Nothing in the Agreement constitutes an assignment of copyright or any other intellectual property right. Nothing in the Agreement gives the Customer any permission to use Shepherd's trademarks (whether registered or unregistered).

MUTUAL CONFIDENTIALITY

51. "**Confidential Information**" means all information that is disclosed by either Party ("**Discloser**") to the other ("**Recipient**"), and includes, among other things:
    (i) any and all information relating to products or services provided by the Discloser, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts;
    (ii) (with Shepherd as Discloser) the terms of the Agreement, including without limitation all pricing information.
    (iii) Confidential Information excludes information that:
    (iv) was rightfully in the Recipient's possession without any obligation of confidentiality before receipt from the Discloser;
    (v) is or becomes a matter of public knowledge through no fault of the Recipient;
    (vi) is rightfully received by the Recipient from a third party without violation of a duty of confidentiality; or
    (vii)is independently developed by or for the Recipient without use or access to the Confidential Information.
52. The Recipient must not disclose the Confidential Information of the Discloser to any third party or use the Confidential Information in violation of the Agreement.
53. The Recipient may disclose the Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each Party acknowledges that any misuse of the other Party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either Party may seek immediate injunctive relief in such event.
54. Notwithstanding any of the foregoing, the fact of existence of the Agreement shall not be considered Confidential Information, and each Party is free to publicly disclose the fact that the Customer is using the Software. Any further details concerning such use shall only be published with the other Party's prior approval that shall not be unreasonably withheld. The Customer agrees to participate in Shepherd case-study program to give feedback about the service and Software.
55. The Customer is not allowed to present the Software or its functionalities to Shepherd's competitors without prior written consent by Shepherd.

TERMINATION AND PROLONGATION

56. During the Term of the Agreement license fees have to be paid in full even in case of no go-live or lack of usage by Customer. For example, in case of a 1-year Contract Term the 12-months' worth of license fees are payable in any case, even upon prior termination.
57. The Agreement expires at the end of the term specified therein if the Customer notifies Shepherd at least 30 days in advance in writing of the wish to terminate. In case of no notification the contract automatically prolongs for another 12-month period with the pricing of the then-current pricelist.
58. Shepherd may cancel the Agreement upon a material breach of the Customer after a 30-day notice/cure period, or upon other reasons after a 90-day notice period. Upon termination of the Agreement, the Customer must discontinue using the Software, de-install and destroy or return to Shepherd the Software and all copies thereof, within 5 days. Upon Shepherd's request, the Customer will provide written certification of such compliance.
59. If the Customer disagrees with a general license price change announced by Shepherd, it shall notify Shepherd thereof within 15 days from the day the Customer became aware of the price change and the Agreement shall terminate as of the effective date of the change, unless Shepherd withdraws the change by notifying the Customer thereof prior to such date.
60. The Agreement will not be terminated in case of debts and Shepherd can continue monthly license billing until all debts have been settled.

WARRANTY, REMEDY AND DISCLAIMERS

61. Disclaimer. Shepherd disclaims all express and implied warranties, including without limitation the implied warranty of merchantability and fitness for a particular purpose. The Customer understands that the software may not be error free, and use may be interrupted.
62. NetSuite disclaimer. The Customer agrees to provide access to its NetSuite account as part of using the software. The software interoperates with NetSuite and depends on the continuing availability and access to NetSuite. If for any reason the software cannot access or use NetSuite, the software may not function.

LIMITATION OF LIABILITY

63. There may be situations in which (as a result of material breach or other liability) the Customer is entitled to make a claim against Shepherd. In each situation (regardless of the form of the legal action (e.g. contract or tort claims)), Shepherd is not responsible for any damage and does not have any liability beyond the greater of (i) the amount paid or payable by the Customer to Shepherd within the 12 months prior to the event that gave rise to the claim.
64. Even if it knows of the possibility of such damage or liability, in no circumstance is Shepherd responsible for any: loss of, or damage to, data or information; lost profits, revenue, or productivity; or other special, consequential, incidental or indirect damages. Shepherd is not liable for the actions of the Customer employees or consequences of giving access to unauthorized employees if Shepherd had reason to believe the giving of access has been approved by the Customer.

DEFENSE OF THIRD-PARTY CLAIMS

65. Shepherd will defend or settle any third-party claim against the Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark or other intellectual property right. The Customer must promptly notify Shepherd of the claim in writing, cooperate with Shepherd in the defense, and allow Shepherd to control the defense or settlement of the claim; provided, however, that the Customer's failure to provide such notification shall not relieve Shepherd of its obligations unless the Customer's failure has materially prejudiced Shepherd's ability to perform such obligations.
66. Costs. Shepherd will pay infringement claim defense costs incurred as part of its obligations above, and Shepherd negotiated settlement amounts, and court awarded damages.
67. Process. If such a claim appears likely, then Shepherd may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Shepherd determines that none of these are reasonably available, then Shepherd may terminate the Agreement and refund any prepaid and unused fees.
68. Exclusions. Shepherd has no obligation for any claim arising from: Shepherd's compliance with the Customer's specifications; any combination of the Software with other technology where the infringement would not occur but for the combination; or technology not provided by Shepherd.
69. This section contains the Customer's exclusive remedies and Shepherd's sole liability for intellectual property infringement claims.

GOVERNING LAW AND JURISDICTION

70. Governing law. The Agreement is governed by and construed under the laws of the U.S. State of Delaware for Customers with their registered address at the time of signing of the Agreement in the USA, Canada and LATAM and by the laws of the Republic of Estonia for all other Customers, without regard to its conflicts of law principles.
71. Arbitration. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled for Customers with their registered address at the time of signing of the Agreement in the USA, CANADA and LATAM by arbitration held in English language in Delaware, U.S, and administered by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures. The decisions of the arbitrators may be entered in any court of competent jurisdiction. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled for all other Customers by arbitration held in English language in Stockholm, Sweden, in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The decisions of the arbitrators may be entered in any court of competent jurisdiction.
72. Injunctive Relief and Attorney's Fees. Nothing in the Agreement prevents either Party from seeking injunctive or equitable relief in any court of competent jurisdiction. The prevailing Party in any arbitration is entitled to recover its attorney's fees and costs, including collection costs and debt management costs, from the other Party.

MISCELLANEOUS

73. Entire Agreement. The Agreement constitutes the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The Customer is not relying on any representation concerning this subject matter, oral or written, not included in the Agreement. No representation, promise or inducement not included in the Agreement is binding.
74. Interpretation. In case of any discrepancy or contradiction between the terms explicitly set forth in the Agreement and these Conditions, the Agreement shall prevail.
75. Non-Assignment. Neither Party may assign or transfer the Agreement to a third party, nor delegate any duty, except that the Agreement may be assigned, without the consent of the other Party, as part of a merger, or sale of all or substantially all of the business or assets, of a Party.
76. Independent Contractors. The Parties are independent contractors with respect to each other.
77. Non-solicitation. The Customer is prohibited from approaching, whether directly or indirectly, any Shepherd staff with employment, cooperation etc offers that result in Shepherd staff leaving Shepherd employment and is liable for all damages including equitable relief in case of breach of said obligation.
78. Non-poaching. During the term of the Agreement and for a one (1) year term thereafter, the Parties shall not solicit or encourage any employee, vendor, independent contractor or any person offering services through the Party to the other Party, to leave or terminate their relationship with the opposing Party (ie Shepherd for Customer and Customer for Shepherd) for any reason. This prohibition includes any and all communications on the matter, including (indirect offers), presentations, informal communications and anything else that might be construed as having the end goal of approaching the individual in question with what might be viewed as solicitation/poaching intent. In case of violation of said prohibition the violating party is liable for all damages (including indirect) to the other Party, including equitable relief in case of breach of said obligation and subject to immediate termination of the Agreement.
79. Enforceability. If any term of the Agreement is invalid or unenforceable, the other terms remain in effect.
80. Survival of Terms. All terms that are either explicitly stated to survive the termination of the Agreement or that by their nature are reasonably expected to survive termination of the Agreement, will survive.
81. Force Majeure. Non-performance by either Party shall be excused if and to the extent it is caused by Force Majeure, and if the Party affected by Force Majeure notifies the other Party of the onset of Force Majeure without undue delay. Force Majeure are circumstances which are beyond the control of the affected Party and which, at the time the Agreement was entered into or the noncontractual obligation arose, the affected Party could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the affected Party could not reasonably have been expected to overcome. Force Majeure also include any restrictions placed on the affected Party or its suppliers in connection with an epidemic or pandemic, even if such restrictions could have been foreseen at the time the Agreement was entered into or the noncontractual obligation arose.
82. Compliance Audit. No more than once in any 3-month period Shepherd (or its representative) may audit the Customer's usage of the Software at any Customer facility. The Customer will cooperate with such audit. The Customer agrees to pay within 30 days of written notification any fees applicable to the Customer's use of the Software in excess of the license.
83. Modification Only in Writing. No modification or waiver of any term of the Agreement is effective unless signed by both parties. Each Party may change the e-mail address that the other Party may use for the delivery of notices by notifying the other Party of the change.
84. Notices. Any notices intended to give rise to legal effects under the Agreement shall be considered given if made in writing and delivered by hand, by courier, or by registered mail, or if a notice made in a format that can be reproduced in writing and sent to the e-mail address of the receiving Party has been acknowledged by the receiving Party by sending a notification of acknowledgment to the e-mail address of the sending Party.
85. Export Compliance. The Customer must comply with all applicable export control laws of the European Union, the United States or other relevant jurisdictions, as well as any other applicable laws and regulations.
86. US Government restricted rights. If the Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software provided in connection with the Agreement are "commercial items," "commercial computer software" or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution by or for the United States government is governed solely by the terms of the Agreement and is prohibited except to the extent permitted by the terms of the Agreement.
87. No PO Terms. Shepherd rejects any terms set forth or referred to in the Customer's purchase order if such terms are additional to or different from the terms of the Agreement.
88. Feedback. By submitting ideas, suggestions or feedback to Shepherd regarding the Software, the Customer agrees that such items submitted do not contain confidential or proprietary information; and the Customer hereby grants Shepherd an irrevocable, unlimited, royalty-free and fully paid perpetual license to use such items for any business purpose.
89. Modifications. Shepherd may modify these Terms, or any service-specific supplemental terms. If Customer ordered a Service through a partner or distributor, any modification will take effect upon the date of the modification, and Customer may avoid the applicability of the modification only by ceasing its use of a Service.