

ORCHESTRA

MASTER SERVICE AGREEMENT

FOR ORCHESTRA SERVICES

Orchestra Services GmbH
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ORCHESTRA

This Master Service Agreement (“MSA”, “Agreement”) is effective as of [EFFECTIVE DATE],

BETWEEN: **Orchestra Services GmbH** (the “Contractor”), a company organized and existing under the laws of **Switzerland/Zürich**, with its head office located at:

Hohlstrasse 509
8048 Zürich

Switzerland,

AND: **[CLIENT COMPANY NAME]** (the “Customer”), a company organized and existing under the laws of **[STATE/PROVINCE]**, with its head office located at:

[COMPLETE ADRESSE]

[COUNTRY].

The Contractor and the Customer shall be individually referred to as a “**Party**” and collectively referred to as the “**Parties**”, as the context may require.

PREAMBLE

Orchestra Services GmbH together with its subsidiary company, S.C. Orchestra Development Services S.R.L., (hereinafter "Orchestra") is the Service Provider of "Orchestra Enterprise Service Management" (hereinafter "Orchestra ESM"), which is a Cloud-based Software as a Service ("Cloud&SaaS") that consists of various business services; a software solution that supports customers in their service management processes. Orchestra also provides Support and Consulting services that could or could not be related to Orchestra ESM.

In all contractual relationships in which Orchestra and its Sub-contractors provide Orchestra Services, this Master Service Agreement (hereinafter also referred to as "MSA") applies exclusively unless otherwise regulated in writing.

The Customer intends to order services of/around Orchestra ESM, related or unrelated Consulting and/or Support services, as described in Order Forms, for his productive business usage. For the provision of each respective service, the Customer shall contract a separate Order Form as Statement-of-work ("SoW") or Service Level Agreement ("SLA") in addition to this MSA.

Each Order Form is annexed to this MSA and thus incorporates the terms and conditions set out in this document so that the MSA is in each case an essential regulating component of an Order Form.

For any follow-up activities resulting from an existing order, further Order Forms shall be concluded, as far as the scope of services is limited and completed.

Unless otherwise agreed, the respective Order Form is agreed between the parties as a service agreement.

These regulations apply accordingly to pre-contractual relations.

At the date of signature, this MSA contains the following Annexes:

- (a) Annexe 1.1: Service Description for Orchestra ESM (EN)
- (b) Annexe 1.2: Service Description for Support and Consulting services (EN)
- (c) Annexe 2.1: General Data Protection Policy (EN)
- (d) Annexe 2.2: Data Processing Policy for Cloud&SaaS (EN)
- (e) Annexe 3.1: Rates and Conditions for Cloud&SaaS (EN)
- (f) Annexe 3.2: Rates and Conditions for Consulting services (EN)
- (g) Annexe 3.3: Rates and Conditions for Support services (EN)
- (h) Annexe 4.1: Order Form – SoW (EN)
- (i) Annexe 4.2: Order Form – SLA (EN)

1. DEFINITIONS, ACRONYMS

- (1) **Master Service Agreement**, or **MSA**, is the current document.
- (2) **Orchestra** is a reference to the service organization consisting of Orchestra Services GmbH (**ORC**) and its subsidiary company S.C. Orchestra Development Services S.R.L. (**ORO**). I.e., Orchestra means both companies.
- (3) **Sub-contractors** are companies affiliated with Orchestra in the scope of providing Orchestra services, consulting, and/or support activities.
- (4) **Software as a Service**, or **SaaS**, is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.
- (5) **Cloud and Software as a Service**, or **Cloud&SaaS**, or **Cloud-based SaaS**, is a SaaS hosted in the Cloud; in the current document, these terms refer to the Cloud-based Software solutions, related support services, and/or consulting services provided by Orchestra.
- (6) **Orchestra Enterprise Service Management**, or **Orchestra ESM**, is the Cloud-based SaaS platform developed and licensed by Orchestra.
- (7) **Consulting Services** means the provision of expertise or strategic advice that could or could not be related to Orchestra ESM, such as set-up service organization, implementation, configuration, or training services.
- (8) **Support Services** are activities required for the successful implementation, operation, and/or improvement of Orchestra services; support services could or could not be related to Orchestra ESM.
- (9) **Orchestra service** means any of the services offered by Orchestra: Cloud&SaaS, Consulting Services, and Support Services.
- (10) **Customer Data** means all personal, behavioural, and demographic data that is collected from Customers during business interactions with Orchestra; it also includes content, materials, data, personal data, and information that is processed in the production system of the Orchestra ESM, or that derives from its use.
- (11) **Authorized User**, or **Named User** is a person at the Customer, its affiliates, or business partners to whom the Customer grants access authorization to the Cloud&SaaS.
- (12) **Cloud materials** are all materials that are provided to the customer before or within the framework of the contractual service provision by Orchestra, including materials created through the provision of support or consulting services for the customer, materials created in cooperation with the customer; it does **not** include customer data, confidential information of the customer or the Cloud&SaaS.
- (13) **Documentation** refers to Orchestra's technical and functional documentation for the Orchestra Services as well as descriptions of roles and responsibilities (when applicable), which are made available to the customer together with the contracted Orchestra Services.
- (14) **Affiliated Company** or **Affiliate** means a company in which the Customer has an equity interest of more than 50%.

- (15) **Business Partner** is a company that requires access to one or more provided Orchestra Service in connection with the internal business transactions of Customer or its Affiliates; it includes the customers, distributors, service providers, and/or suppliers of Customer or its Affiliates.
- (16) **Term** – consists of a minimum term and all renewal terms agreed in this MSA or an annexed Order Form for an Orchestra Service.
- (17) **Usage Metrics** or **Metrics** are the usage parameters for determining the agreed usage volume and calculating the respective remuneration for Orchestra Services, specified in the Order Form.
- (18) **Order Form** is an agreement between Orchestra and the customer for an Orchestra Service, which supplements the current MSA.
- (19) **Service Level Agreement**, or **SLA**, is an Order Form annexed to this MSA; describes Service levels, the Service object, responsibilities, rates, and conditions for the setup and operation of the agreed service.
- (20) **Additional Terms and Conditions** means product-specific supplementary terms and conditions that apply to an Orchestra Service and are referenced in the Order Form.
- (21) **Statement of Work**, or **SoW**, is an Order Form annexed to this MSA; describes a supplementary service or a project that is related to a provided Orchestra Service; it might have changed rates and/or Additional Terms and Conditions.
- (22) **Orchestra Policies** refers to the operational guidelines and policies referenced in an Order Form that Orchestra applies for the provision of Orchestra Services.
- (23) **Confidential information** refers to all information that Orchestra or the Customer protects against unrestricted disclosure to third parties, or which is to be considered confidential according to the circumstances of disclosure or its content, including the agreement itself. See Section 21 below.
- (24) **Agreement** – in the current document, refers to this MSA with all its applicable annexes.
- (25) **Effective date** – is the date from which this agreement is effective, set out at the beginning of this MSA.
- (26) **Intellectual Property**, or **IP**, means any patents or patent applications, registered or unregistered trademarks, including any applications for registration, inventions, discoveries, topography rights, utility models and improvements whether or not capable of protection by patent or registration, registered or unregistered copyright or design rights (including applications), any goodwill in any trade or service name, trading style or get-up, rights in know-how, and any other intellectual or proprietary rights, wherever in the world enforceable, including all reversions, renewals and extensions of such rights.

2. SETUP SERVICES

- (1) Before productive use of an Orchestra Service, an implementation phase, “Orchestra Service Transition Project”, must be carried out with technical system setup and other preparations, unless it has already been implemented during an earlier project phase (e.g., Proof of Concept project). The setup of the newly ordered Orchestra Service shall be agreed upon in an attached SoW or SLA.

3. COOPERATION AND OBLIGATIONS TO CONTRIBUTE

- (1) The basis for the cooperation is a joint target-oriented approach, which includes the will of both parties to collaborate and cooperate in a spirit of partnership. Within the framework of close and fair cooperation, the contractual partners jointly assume the overall responsibility for this process.
- (2) If a project obstacle or an issue arises that was not obvious when the respective Order Form was agreed, or if a contractual provision becomes unreasonably disadvantageous for one of the contracting parties, the contracting parties shall endeavour to contribute to an appropriate alignment of interests through negotiations and new agreements.
- (3) The Customer undertakes to support Orchestra in the fulfilment of its contractually agreed services, insofar the Customer’s cooperation is required for the success of the service provision. This might include, the timely provision of information, and/or data materials.
- (4) The Customer shall grant Orchestra employees’ access to the offices, contacts, systems and all necessary information and documents, insofar as these are required for the execution of the agreed services.
- (5) Cooperation and provision of required materials by the Customer shall be free of charge for Orchestra.
- (6) If Orchestra is unable to perform the agreed services or can only perform them at additional expense, due to a lack of or insufficient cooperation or provision of materials, it shall be entitled to claim additional expenses, to a reasonable extent, from the Customer.
- (7) If the Customer recognizes that its information and requirements are incorrect, incomplete, unclear, or impracticable, it shall immediately notify Orchestra of this fact and the consequences that it recognizes.

4. CHANGE REQUEST

- (1) Either party may request modifications or additions of existing services or services under implementation.
- (2) If additional or changed requirements or circumstances arise during the Orchestra Service Transition project, which have not been considered in the agreed scope, but

which are necessary or useful to be fulfilled, such services shall be subject to an express written request for change.

- (3) Such separate requests for changes or additions will be billed according to the terms listed on the applicable Order Form, based on actual expenditures. Change requests must be approved by Orchestra Service Management or hierarchical supervisors to be effective.
- (4) The Customer may request additions or changes to the services during the period of validity of the Order Form, even after the successful implementation of the originally ordered service, by submitting a written request to Orchestra. Orchestra will provide the Customer with a comment and/or estimate, if applicable, regarding the requested modification.
- (5) Changes or additions affecting system functions, system services, performance characteristics, deadlines, prices, costs, or other terms or conditions, shall be mutually agreed in writing by the contracting parties, within the framework of a change procedure, before implementation.
- (6) If the Customer's requests for changes and additions require additional testing by Orchestra, Orchestra shall be entitled to invoice the costs associated therewith by Orchestra's Rates and Conditions applicable to the respective service.
- (7) The originally agreed deadlines and/or delivery dates will be extended by the time taken to analyse the request for change or extension.
- (8) If no agreement has been reached between the contracting parties on the change request within 14 days after the analysis of the change request has been completed and communicated, the contract shall be performed on the original terms.
- (9) Delays resulting from an agreed change are not the responsibility of the Contractor and do not constitute a delay on the part of the Contractor.

5. ACCEPTANCE

- (1) Within two (2) weeks after the notification, about completion of the Orchestra Service implementation, has been sent to the Customer, the Customer shall verify the results and provide a written acceptance, or inform Orchestra in writing of the detected defects, with a precise description of the symptoms of the defect.
- (2) If the Customer fails to make a declaration within this period, or if the Service or part of the Service is productively used during this period, the implementation shall be deemed accepted. The details of the relevant acceptance rules are regulated in the Service Agreement.

6. RIGHTS OF USE

- (1) During the term of the Service Contract, Orchestra grants the customer the simple non-transferable worldwide right to use each provided Orchestra Service (including its implementation and configuration), the Cloud materials and Documentation

exclusively for the handling of the internal business transactions of the Customer and its Affiliates according to the contractual conditions, especially the product-specific Additional Terms and Conditions, Orchestra Policies, and Documentation.

- (2) The Customer may allow Authorized Users to access and use the provided Orchestra Service(s) to the contractually agreed extent (following the usage metrics and volumes agreed in the Order Form). The user credentials for the Orchestra Service(s) shall be used by only one user at the same time, however, they may be transferred from one person to another if the original user is no longer authorized to use the service. The Customer shall be liable for the acts and omissions of its Authorized Users, Affiliates, and Business Partners in the same manner as it is liable for its acts and omissions concerning its use of Orchestra Services and shall ensure that they comply with the contractual terms and conditions regarding the use of Orchestra Services and Cloud Materials. Furthermore, the Customer is prohibited from sublicensing, licensing, selling, leasing, renting, or otherwise making any Orchestra Service or related Cloud Materials available to third parties, whether for payment or free of charge.
- (3) When using an Orchestra Service, the Customer is prohibited from doing any of the following:
 - (a) To copy, translate, disassemble, decompile, reverse engineer, or otherwise modify any Orchestra Service, Cloud Materials, or the Documentation (unless permitted by mandatory law) in whole or in part or to create derivative works thereof, however, the Documentation may be copied for internal use to the extent necessary.
 - (b) To use an Orchestra Service in a manner that violates applicable law, by transmitting information and data that is unlawful or infringes the intellectual property rights of third parties.
 - (c) To compromise or circumvent the operation or security of an Orchestra Service.
- (4) The Customer is responsible for monitoring the use of the acquired Orchestra Services and will immediately notify Orchestra in writing of any usage exceeding the Metrics specified in the Agreement. Orchestra shall be entitled to verify at any time that the use of provided Orchestra Services are in accordance with the terms of the contract and that the agreed Metrics are respected. If the customer needs more users than the number of users stipulated in the current contract, it is obliged to sign an extension contract, which includes the conditions of additional use and remuneration. The obligation to pay the additional fee will arise from the date on which the excess is reached.
- (5) Orchestra may temporarily suspend a customer's access to a provided Orchestra Service (in whole or in part) at any time to prevent harm if and for as long as there is a reasonable likelihood that continued use of the service by the Customer, or its Authorized users, is in breach of contract, or that continued use of the respected service may harm the rights of other Orchestra customers or third parties in a way

that requires immediate action to prevent harm. Orchestra will promptly inform the Customer of such suspension. If circumstances allow, the customer will be informed in advance in writing or by e-mail. Orchestra shall determine the duration and scope of the suspension as is reasonable in the circumstances of the case.

- (6) The Cloud&SaaS can contain links to web services that are offered by Orchestra partners and/or third-party providers on external websites, which can be accessed through the Cloud&SaaS and are subject to the usage regulations of these third-party providers. Orchestra only provides technical access to the content of such integrated websites, for whose content these third parties are exclusively responsible.
- (7) Authorized Users can access certain Orchestra Services via mobile applications (mobile apps) made available through third-party websites such as the Android or Apple App Store. The use of the mobile applications as such is subject to the terms and conditions agreed upon at the time of downloading/accessing the mobile application and not to the terms of this Service agreement.

7. ORCHESTRA RESPONSIBILITIES AND DUTIES

- (1) Orchestra Services will be provided as set out in the Order Form, respecting the provisions of Section 6 above. Orchestra will provide Cloud&SaaS, related or unrelated support- and, if agreed, consulting services, as defined in the Order Form. The nature and functionality of the Services shall be finally agreed by Orchestra, as set out in the Order Form and the documents attached thereto. Orchestra is not obliged to provide additional services or performance characteristics.
- (2) The performance features of the Orchestra Services and Orchestra Policies can be further developed and adapted by Orchestra to take technical progress into account or to ensure continuous compliance with mandatory law ("Continuous Improvement").
- (3) Orchestra provides information about Continuous Improvements with an appropriate period of notice (usually 2 weeks before it takes effect), through e-mail, the support portal, release notes, or within the Cloud&SaaS.
- (4) Orchestra and/or its affiliated companies may create analyses in which (partial) customer data and information is used, which result from the use of the Orchestra Services by the Customer in accordance to Section 10 Paragraph (2) below.
- (5) Analyses will anonymize and aggregate data and will be treated as Cloud materials. Examples of how analyses are used include:
 - (a) resource and support optimization,
 - (b) research and development,
 - (c) process automation for continuous improvement,
 - (d) performance enhancements,
 - (e) development of new Orchestra products and services,
 - (f) data security and integrity reviews,

- (g) internal demand planning and data products, such as industry trends and developments,
- (h) indices and anonymous benchmarking.

8. SUBCONTRACTOR

- (1) Orchestra is entitled to use Sub-contractors to fulfil its contractual obligations if they are in a contractual relationship with Orchestra in which at least the same rules on confidentiality and data protection apply and they are not in competition with the Customer.

9. AUTHORITY

- (1) The employees of Orchestra shall not enter any employment relationship with the Customer. The Customer shall only give instructions to the responsible manager of the employee appointed by Orchestra.

10. CLIENT AND PERSONAL DATA, CLIENT'S RESPONSIBILITIES AND DUTIES

- (1) The Customer is responsible for the content of the Customer data and its recording in the Orchestra Services.
- (2) By Section 21 below, the Customer grants Orchestra (as well as its Sub-contractors) the right to use Customer data exclusively and as far as necessary (i) to provide agreed Orchestra Services (including the creation of backup copies and the execution of penetration tests), as well as (ii) to check the compliance of the Customer with the regulations of Section 6 above and (iii) analyse and store anonymised business data to provide improvement and benchmark data.
- (3) The Customer collects, updates, and processes all personal data contained in the Customer data following the applicable data protection law.
- (4) The Customer shall maintain appropriate security standards for the use of Orchestra Services by the Authorized Users.
- (5) The Customer is solely responsible for assessing the suitability of Orchestra Services for its business processes and for complying with all applicable legal provisions regarding Customer data and the use of Orchestra Services.
- (6) The Customer is obligated to assist in the provision of the Orchestra Services to the necessary extent, free of charge, by possessing infrastructure and telecommunication facilities for access to those services.
- (7) Orchestra points out that cooperation is a prerequisite for the proper performance of provided Orchestra Services. The Customer shall bear the disadvantages and additional costs resulting from the breach of its obligations. In addition, provisions of Section 17 below also apply.
- (8) During the Term of the Agreement, the Customer shall have the opportunity at any time to access, extract and export the Customer data in a standard format. Access

and export may be subject to technical restrictions and requirements (as described in the documentation, for example). In this case, Orchestra and the Customer will agree on an appropriate method for enabling the Customer to access the Customer data.

- (9) Before the end of the contract, Orchestra will provide a data export in a standard readable format to the Customer containing Customer data from the Cloud&SaaS, or other Orchestra Services according to the Orchestra exit procedure. After the end of the contract, Orchestra and its Sub-contractors are commissioned to delete the storage or overwrite the Customer data remaining on the servers used for hosting the Cloud-based Orchestra Services, unless their storage is required by mandatory law. The stored data is subject to the agreed-upon confidentiality rules.

11. PAYMENT TERMS

- (1) Payment terms are defined in the relevant Rates and Conditions Annexes.

12. TAXES

- (1) All agreed remunerations are subject to the applicable value-added tax.
- (2) Fees and other charges imposed under an Order Form will not include taxes, all of which will be for the Customer's account.
- (3) The customer must provide to Orchestra any direct pay permits or valid tax-exempt certificates before signing an Order Form if applicable.
- (4) If Orchestra is required to pay taxes (other than its income and payroll taxes), Customer will reimburse Orchestra for those amounts and indemnify Orchestra for any taxes and related costs paid or payable by Orchestra attributable to those taxes.

13. RETENTION OF TITLE

- (1) Orchestra reserves the right of ownership of delivered services until the purchase price has been paid in full, including payment of all claims resulting from the business relationship.
- (2) The Customer acquires the rights of use of the delivered service only after full payment of the respective remuneration. Before this, he only has a provisional right of use.

14. TERMS AND TERMINATIONS

14.1. TERM OF THIS MSA

- (1) The Term of this MSA will begin on the effective date and will continue for an initial period. The initial term is at least till 31st of December of effective year but minimum sixty (60) months.

14.2. TERMINATION OF THIS MSA

- (1) If the MSA has no annexed current Order Form, the MSA will terminate after the initial term.
- (2) Any Party may terminate this MSA by giving at least six (6) months' notice to 31st of December.
- (3) Otherwise, the MSA will terminate automatically six (6) months after termination of the last Order Form.

14.3. TERM OF ORDER FORMS

- (1) Each Order Form shall initially run for the minimum term agreed therein ("Initial Term"). After expiry of the Initial Term, it shall be automatically extended by the Renewal Term if agreed therein (each a "Renewal Term"), unless the Order Form is terminated by one of the parties in accordance with Subsection 14.2 above.
- (2) The term of each ordered Orchestra Service is stated on the relevant Order Form.
- (3) At any time of a Term of an Order Form, an effective MSA must be in place.

14.4. TERMINATION OF ORDER FORMS

- (1) The termination of individual Order Forms does not affect other Order Forms or contracts.
- (2) Ordinary (partial) termination of the Order Form is excluded during the Initial Term or Renewal Term.
- (3) Customer may terminate each Order Form ordinary (partial) with a notice period of at least six (6) months to the end of the current Initial Term or Renewal Term.
- (4) Orchestra may terminate each Order Form ordinary (partial) with a notice period of at least six (6) months to the end of the current Initial Term or Renewal Term.
- (5) In the event of price adjustments to an agreed price list for an Order Form, the Customer shall have a special right of termination at the end of the previous contract term with three (3) months' notice in writing.
- (6) With the end of the Order Form (i) the customer's access to the relevant Orchestra Service is terminated; (ii) the right of the customer, the Authorized Users, and the Affiliated Companies to use the relevant Orchestra Service and the Confidential Information of Orchestra ends; and (iii) the Confidential Information of the respective disclosing party is returned or deleted as agreed.
- (7) In the event of termination by either Party, the Customer shall be entitled to a pro-rata refund of any prepaid fees for the original term of the respective Orchestra Service that would have expired after the date of termination.
- (8) If Orchestra does not remove material and legal defects in the service in accordance with Section 15 Paragraph (9) below and Section 16 below; and if Orchestra has not removed the defect even after the expiration of an appropriate period of grace set by the Customer in writing; and if the suitability of the service is thereby reduced

more than just insignificantly; the Customer may terminate its subscription with a notice period of six (6) month for the affected service. Termination must be made by registered mail.

- (9) In the case of legal defects, Orchestra has the right to terminate the contract and in that case, it will refund the Customer's prepaid remuneration for the remaining term after the cancellation date (see Section 15 Paragraph (10) below) and pay damages within the framework of Section 20 below.

14.5. GENERAL TERMINATIONS

- (1) Terminations must be in writing to be effective.
- (2) The special termination rights and the right to terminate the MSA and individual order forms for important reasons remain reserved.
- (3) If the (partial) notice of termination is not given within the aforementioned time limits or the time limits relating to special termination rights and/or if the written form has not been complied with, the notice is not valid.
- (4) Orchestra expressly reserves the right to terminate the contract for important reasons, such as repeated or gross breach of essential contractual obligations (in particular in the event of a breach of the conditions set out in Sections 6, 10, 19 and 21 of the current Document).

15. WARRANTY

- (1) Each party warrants that it is currently and will continue to comply with all applicable laws and regulations under this Agreement; (i) in the case of Orchestra, in connection with the operation of its business in connection with the provided Orchestra Services; and (ii) in the case of Customer, in connection with Customer Data and use of the acquired Orchestra Services.
- (2) Orchestra warrants that the provided Orchestra Services fulfil the specifications agreed upon in the conditions and the Documentation during its term and that they do not violate the rights of third parties when used by the Customer according to the contract.
- (3) Orchestra assures that:
 - (a) The provided services shall conform to their published specification and are free from material defects.
 - (b) The provided SaaS or any Software or code used in the provision of related or unrelated Support, Consulting or additional Services are free of viruses, malware, Trojan horses, or other malicious code that may cause harm.
 - (c) Will not disable, damage, erase, disrupt or impair the normal operation of computer systems, or security programs residing on computer systems.
 - (d) It will comply with applicable laws in force relating to the provision of the Orchestra Services.

- (e) It has full power and authority to enter into the Agreement with the Customer and to fully perform and comply with all its obligations under this Agreement or any signed Order Form.
- (4) Orchestra assures that the Consulting Service corresponds to the agreed-upon service description. This is provided through supplementary performance or rectification of defects specified by Section 15 Paragraph (9) below.
- (5) If Consulting Services provided by Orchestra are not subject to acceptance or does not provide them properly or if Orchestra commits other breaches of duty outside of the area of material and legal liability for defects, the Customer must make a written complaint to Orchestra and grant Orchestra an additional period of sufficient length, within which Orchestra gets the opportunity to fulfil the service properly or to find a remedy in another way; Section 20 below applies for damages.
- (6) If the suitability of the Service for the contractual use is reduced by more than an insignificant amount, the Customer is entitled to request an appropriate reduction of the remuneration for the period in which the Service's usability is reduced. Section 20 below shall apply to damages for defects.
- (7) The remedy for the deficiency can also consist of showing the Customer reasonable possibilities to avoid the effects of the deficiency in the respective Orchestra Service.
- (8) If the supplementary performance or rectification of defects fails after the expiration of a reasonable period of grace specified in writing by the Customer, the Customer shall be entitled to claim a reduction of the fee for the relevant Consulting Services as specified in the corresponding Order Form or, alternatively, to withdraw from the Agreement in compliance with Section 14.5 above(8). Section 20 below shall apply to damages for defects.
- (9) Orchestra rectifies deficiencies in the Consulting services or other Orchestra Services, including Cloud&SaaS, which are subject to acceptance, by providing the Customer with a new, defect-free status of the respective Orchestra Service or by rectifying the deficiency.
- (10) In the case of legal defects, Orchestra shall, at its own discretion, (i) either procure the right for the Customer to use the Orchestra Service as agreed, or (ii) change the respective Orchestra Service so that the allegation of infringement gets removed, without significantly impairing the contractual use of the Customer by this, or (iii) terminate the Order Form according to Section 14.4 above(9).
- (11) The Customer is always obligated to immediately report any breaches of duty by Orchestra in writing with an exact description of the reason.
- (12) Warranty rights due to material and legal defects in the acceptance of accessible Orchestra Services shall expire one (1) year after acceptance; the same warranties also apply for all related Orchestra Services.
- (13) The warranties will not apply if (i) the Orchestra Service is not used according to the Agreement or Documentation, (ii) any non-conformity is caused by Customer, or any

product or service not provided by Orchestra, or (iii) the Orchestra Service was provided for no fee.

16. REMEDY

- (1) The customer's sole and exclusive remedies and Orchestra's full liability for breach of the warranty under Section 15 will be the re-performance of the deficient service.

17. THIRD-PARTY CLAIMS

- (1) If a third-party asserts proprietary rights violation, which conflicts with the exercise of the contractually granted right of use for the Orchestra Services or Cloud materials, the Customer must inform Orchestra immediately in writing and comprehensively.
- (2) If the Customer ceases to use the contractual Orchestra Services or Cloud Materials for damage reduction or other important reasons, the Customer is obligated to inform the third party in writing that the cessation of use is not associated with an acknowledgement of the alleged violation of proprietary rights. He will only conduct the legal dispute with the third party in agreement with Orchestra or authorize Orchestra to conduct the dispute.
- (3) The foregoing applies accordingly if a third party assert claims against Orchestra, that are attributable to actions of the Customer, Authorized Users, or third-party access.

18. DISCLAIMER

- (1) Except as expressly outlined in the Agreement, neither Orchestra nor its Sub-contractors make any warranty, express or implied, statutory or otherwise, including warranties of merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results arising from the use of or integration of the products or services provided under this Agreement, or that the operation of the products or services will be secure, uninterrupted or error-free.
- (2) The customer agrees that by subscribing to Orchestra Services, it is not relying on Orchestra's future functionalities, public comments, advertising materials, or product roadmaps.

19. INTELLECTUAL PROPERTY RIGHTS

- (1) The Customer may only use Orchestra Services, related Cloud materials, and Documentation to the extent specified in the contract. Unless the Customer is expressly granted rights to this, all other rights are entitled to Orchestra, its Sub-contractors, or its licensors in connection with the provided Orchestra Services, even if they arise through the specifications or cooperation of the Customer.

- (2) Unless otherwise agreed, the Customer has all rights regarding the Customer Data in its relationship with Orchestra.

20. LIABILITY

- (1) In all cases of contractual and non-contractual liability, Orchestra will only pay damages or compensation for futile expenditures to the extent determined below:
 - (a) In the case of intent, Orchestra is fully liable; in the case of gross negligence or the absence of a condition for which Orchestra has assumed a guarantee, only to the amount of the foreseeable damage, which should have been prevented by Orchestra.
 - (b) In case of a breach of an essential obligation, Orchestra shall only be liable up to the limits of liability referred to in Section 20 Paragraph (2) below. For this section, a breach of an essential obligation is a breach of an obligation the performance of which is indispensable for the obligations undertaken in the MSA or the breach of which jeopardises the achievement of the objectives set out in the relevant Order Form and the performance of which the customer can regularly rely on.
- (2) In the cases of Section 20 Paragraph (1) Letter (b) above, liability is limited to CHF 1,000,000 per claim and in total to the remuneration paid for the respective Orchestra Service in accordance with the related Order Form per contract year.
- (3) However, the respective remuneration must reach at least CHF 300,000 in the relevant contract year.
- (4) We reserve the right to object to contributory negligence (e.g., breach of the obligations of the Customer under clause 10).
- (5) The limitations of liability under Section 20 Paragraph (1) shall not apply to liability for personal injury and liability under the Product Liability Act.
- (6) Any liability on the part of Orchestra in respect of loss of profit, missed savings or revenue, damage arising from third-party claims against the Customer and for other consequential damage shall be excluded.
- (7) The defence of joint negligence will remain open.
- (8) For all claims against Orchestra for damages or compensation for futile expenditures in the case of contractual and non-contractual liability, a limitation period of one (1) year applies, subject to longer limitation periods according to mandatory legal law; it begins with the time of the occurrence of the damage. The deviating statute of limitations for claims due to material and legal defects, as defined in Section 15 above, remains unaffected by the regulations of this paragraph.

21. CONFIDENTIALITY

- (1) Confidential information refers to all information that Orchestra or the Customer protects against unrestricted disclosure to third parties, or which is to be considered confidential according to the circumstances of disclosure or its content, including the agreement itself.
- (2) The following information is considered Confidential Information of the customer: the Customer Data, marketing and business requirements, implementation plans of the Customer, and/or information about the Customer's financial situation; and Confidential Information of Orchestra: the Cloud&SaaS and all related or unrelated Orchestra Services, the Documentation, Cloud materials and analyses created in accordance with Section 7 Paragraph (4) above, information about research and development, product offers, pricing and availability of Orchestra products and services, all Orchestra software, programs, tools, data or other materials that Orchestra provides to the Customer pre-contractually or based on an Order Form.
- (3) The Parties undertake to treat all Confidential Information of the respective other Party obtained before and within the scope of the performance of the contract in the same way as they protect their comparable Confidential Information, for an unlimited period, but at least with reasonable care. Disclosure to third parties shall only be permitted to the extent that this is necessary for the exercise of rights or the performance of the contract and these persons are essentially subject to comparable confidentiality obligations as regulated herein. Reproductions of Confidential Information of the respective other parties must, as far as technically possible, contain all indications and notes on its confidential or secret character which are contained in the original.
- (4) Section 20 Paragraph (1) does not apply to Confidential Information which:
 - (a) has been independently developed by the Recipient without recourse to the Confidential Information of the disclosing Party, or
 - (b) has become generally accessible to the public without breach of contract by the Recipient or has been received lawfully and without obligation of secrecy from a third party entitled to provide such Confidential Information, or
 - (c) was known to the Recipient without restriction at the time of disclosure, or
 - (d) is exempted from the foregoing provisions upon written consent of the disclosing Party.
- (5) Neither party shall use the name of the other party in publicity, advertising, or similar activities without the other party's prior written consent. However, Orchestra is authorized to use the name of the Customer in references to customer lists, conferences with investors or at times acceptable to both parties within the framework of Orchestra's marketing activities (including references and success stories, customer opinions reflected in the press, reference customer visits,

participation in trade fairs). Orchestra may pass on information about the Customer to its Sub-contractors for marketing and other business purposes; in case that this includes the provision and use of contact data of the customer's contact persons, it will require supplementary permission from the Customer.

22. CUSTOMER-REFERENCE AGREEMENT

- (1) The contracting parties agree that the Orchestra shall be entitled to use the Customer as a customer reference. Orchestra shall be entitled to use a mention to the Customer as a reference with logo on Orchestra's website, in presentations or publications created by Orchestra, or in pre-agreed success stories.

23. GENERAL

- (1) **Verbal** agreements to supplement a respective Order Form are **not** effective. Amendments and supplements to the Agreement as well as all declarations of intent and declarations regarding the exercise of rights to structure the Agreement, in particular terminations, reminders or setting of deadlines, must be made in writing. This also applies to the waiver of the written form requirement. The written form requirement may also be complied with by correspondence, or, apart from notices of termination, by electronically transmitted signatures (digital signature, transmission of scanned signatures by e-mail).
- (2) The Cloud&SaaS, Cloud Materials, and Documentation are subject to the export control laws of various countries, in particular the laws of Switzerland. The Customer is obligated not to hand over the Cloud&SaaS, the Documentation, or Cloud materials to a government authority to examine a possible granting of rights of use or other official approval without the prior written consent of Orchestra and not to export the Cloud&SaaS, the Documentation or Cloud materials to countries or to natural or legal persons for whom export bans apply according to concretely applicable export laws. Furthermore, the Customer shall be responsible for compliance with all applicable legal provisions of the country in which Customer's headquarters are located and other countries concerning the use of the Cloud&SaaS, the Documentation, or the Cloud Materials by Customer and its Authorized Users. Orchestra hereby expressly points out that Orchestra can be obligated to restrict, suspend, or terminate the access of the Customer to the Cloud&SaaS, Cloud material, and/or documentation, or other Orchestra materials according to the export control laws of various countries, especially the laws of Switzerland, as well as due to trade sanctions and embargos applicable to Orchestra.
- (3) System notifications and information from Orchestra that relate to the operation, hosting or support of the Cloud&SaaS can also be made available within the Cloud&SaaS, transmitted in the electronic form to the contact person named in the Order Form, or be made available through Orchestra's support portal.

- (4) Concerning the provision and support of the Orchestra services, the provisions of this MSA may be modified, provided that this does not change the substance of the contract, which is material to the equivalence relationship between the parties, and provided that the modification is reasonable to the Customer.
- (5) Without the prior written consent of Orchestra, the Customer can neither assign nor transfer the agreement, contractual rights, or obligations to third parties. Orchestra can transfer the agreement to a company associated with Orchestra at any time without the permission of the customer.
- (6) All other terms and conditions of any kind between the Customer and Orchestra are excluded. If any provision of this document or the related Order Forms is or becomes invalid, the remaining provisions shall not be affected. The parties shall replace the invalid provision with a valid provision that is as close as possible to the contractual content and the economic and legal meaning and purpose of the invalid provision; the same shall apply in the event of a gap in the agreements.
- (7) All contractual and non-contractual claims are governed exclusively by Swiss substantive law (excluding the UN Convention on Contracts for the International Sale of Goods and conflict of laws provisions).
- (8) The ordinary courts of the city of Zurich shall have exclusive jurisdictions for all disputes arising from or in connection with the agreement and/or this MSA.

SIGNATURES

[CLIENT COMPANY NAME]

[STATE/PROVINCE]

Date: [DATE OF SIGNATURE]

Signature

Orchestra Services GmbH

Switzerland, Zürich

Date: [DATE OF SIGNATURE]

Signature