

Orchestra Platform Agreement

PLEASE READ CAREFULLY BEFORE ACCESSING OR USING THE PLATFORM OR ANY OF THE SERVICES:

This agreement (the "**Agreement**") is a legal agreement between you (the "**Customer**") and Orchestra Technologies Limited of 63-66 Hatton Garden, Fifth Floor, Suite 23, London, England, EC1N 8LE ("**Orchestra**") for access to and use of the Services (as defined below).

IMPORTANT NOTICE:

- BY CLICKING ON THE "ACCEPT" BUTTON OR SIGNING AN ORDER FORM, YOU AGREE TO THE TERMS OF THIS AGREEMENT WHICH WILL BE BINDING ON YOU. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 12.
- WHERE YOU ARE ACTING ON BEHALF OF AN ORGANISATION, YOU REPRESENT THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ORGANISATION AND THIS AGREEMENT WILL BE BETWEEN ORCHESTRA AND SUCH ORGANISATION.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT CLICK ON THE "ACCEPT" BUTTON OR SIGN AN ORDER FORM AND YOU MAY NOT ACCESS OR USE THE SERVICES.

You should print a copy of this Agreement for future reference.

BACKGROUND

- (A) Orchestra has developed a cloud-deployed and fully managed software solution which it makes available to its customers via the internet for the purpose of data orchestration and observability.
- (B) The Customer wishes to use Orchestra's Services in its business operations.
- (C) Orchestra has agreed to provide, and the Customer has agreed to take and pay for, if applicable, Orchestra's Services subject to the terms and conditions of this Agreement, as amended from time to time.

AGREED TERMS

1. Interpretation

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

Authorised Users: those employees, agents and independent contractors of the Customer and sub-contractors of the Customer solely for the purpose of providing services to the Customer, who are authorised by the Customer to use the Services, as further described in clause 2.2(b).

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.1.

Customer Data: the data inputted by the Customer, Authorised Users, or Orchestra on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Product: any grouping, collection or set of Pipelines as defined in the Platform.

Effective Date: the date of acceptance of these terms by the Customer.

EU/UK Data Protection Law: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (the "**EU GDPR**"); (ii) the EU GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (the "**UK GDPR**"); (iii) the EU e-Privacy Directive (Directive 2002/58/EC); and (iv) any and all applicable national data protection laws made under, pursuant to or that apply in conjunction with any of (i), (ii) or (iii); in each case as may be amended or superseded from time to time.

Fair Use Policy: the Orchestra policy for Free Subscriptions or Paid Subscriptions outlining acceptable and unacceptable use of the Services.

Fees: the fees payable by the Customer to Orchestra for the Subscriptions as applicable, as set out in the Order Form.

Free Subscription: a Subscription which is provided at no charge to the Customer.

Initial Subscription Term: the period described in clause 13.1.

Order Form: means an order for Services as agreed by the Parties in writing in the form specified by Orchestra.

Paid Subscription: any Subscription other than a Free Subscription.

Pipeline: any grouping, collection or set of Tasks as defined in the Platform.

Platform: Orchestra's online platform which allows users to carry out data orchestration, data observability, data governance and data operations.

Renewal Period: the period described in clause 13.1.

Services: the provision of the Platform by Orchestra to the Customer under this Agreement.

Subscription Term: has the meaning given in clause 13.1.

Subscriptions: the subscription purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and access the Platform in accordance with this Agreement and as set out in an Order Form, if applicable.

Task: a single set of or a single pre-defined operation(s) executable in the Customer's infrastructure via the Platform.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or

part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 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 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 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.
- 1.8 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.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 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. Subscriptions

- 2.1 Subject to compliance with this Agreement (including payment of the Fees), Orchestra hereby grants to the Customer a limited, non-exclusive, non-transferable, revocable right and licence, without the right to grant sublicences, to permit the Authorised Users to access and use the Services during the Subscription Term solely for the Customer's internal business operations or as otherwise agreed between the parties and subject to any other restrictions set out in an Order Form.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - (a) the Customer will not exceed the limit of Pipelines, Data Products, Authorised Users and Tasks as set out in an Order Form or Fair Use Policy (as applicable);

- (b) it will not allow or suffer any individual account to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- (c) each Authorised User shall keep a secure password for their use of the Services, and that each Authorised User shall keep their password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Orchestra within 5 (five) Business Days of Orchestra's written request at any time or times;
- (e) it shall permit Orchestra or Orchestra's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Orchestra's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Orchestra's other rights, the Customer shall promptly disable such passwords and Orchestra shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Fees to Orchestra, then without prejudice to Orchestra's other rights, the Customer shall pay to Orchestra an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form together with interest in accordance with clause 8.3(b) within 10 (ten) Business Days of the date of the relevant audit;
- (h) it shall supervise and control use of the Services and ensure they are used by their employees only in accordance with the terms of this Agreement; and
- (i) it shall comply with all applicable technology control or export laws and regulations.

2.3 The Customer shall not, and shall ensure that its 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 Orchestra reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause and/or remove such infringing content from the Orchestra systems.

2.4 The Customer shall not and shall ensure that its 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 Platform 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 Services;
- (b) access all or any part of the Services in order to build a product or service which competes with the Services;
- (c) use the Services to provide services to third parties unless as agreed between the parties and set out on an Order Form;
- (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users;
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Services or Orchestra's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Orchestra.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Services and Order Forms

3.1 Orchestra shall, during the Subscription Term, provide the Services to the Customer on, and subject to, the terms of this Agreement.

3.2 When a Customer wishes to subscribe to a Paid Subscription, they shall enter into an Order Form with Orchestra. Orchestra shall not be obliged to provide Services for a Paid Subscription unless an Order Form has been agreed and signed between the parties. Any Customer provided terms (whether on a Purchase Order or otherwise) shall not be incorporated into this Agreement. The Order Form may include, but is not limited to, information concerning order details, products, Pipeline and Task limits, billing, service levels,

any applicable Orchestra policies and any other terms or conditions as may be agreed between the parties. If there is any ambiguity or inconsistency in or between this Agreement and the Order Form, the terms of the Order Form shall take precedence.

3.3 Orchestra shall supply support services for Paid Subscriptions but shall be under no obligation to provide support services to Free Subscriptions. Such support for Paid Subscriptions shall be detailed in the Order Form.

3.4 Each Subscription shall be subject to a Fair Use Policy and the Customer agrees not to use the Services beyond the use set out in such Policy. If the Customer has subscribed to a Free Subscription, the Fair Use Policy attached at Schedule 1 (as amended from time to time) shall apply. If the Customer has subscribed to a Paid Subscription, the Fair Use Policy attached to the Order Form shall apply.

4. Data protection

4.1 The parties acknowledge that the use of the Services does not require the inclusion of any personal data (as defined in EU/UK Data Protection Law) and that the Customer shall not, and shall ensure that its Authorised Users are instructed not to, configure metadata to include personal data. If Authorised Users do include personal data in the metadata used by the Services, Orchestra's data processing agreement set out at <https://getorchestra.io/data-processing-agreement> will apply.

5. Third party providers

5.1 The Customer acknowledges that the Services connects and ingests information from third-party provider systems in order to orchestrate, trigger and monitor operations in such third-party provider systems and make data available for analysis. The Customer acknowledges that it uses the Services solely at its own risk and that the Customer is solely responsible for ensuring that it has all necessary licences, consents, and permissions necessary for this connection and ingest and that Orchestra is not responsible for any issues (whether in the Customer's systems or any third-party systems) arising from the use of the Services with or any data provided from the third party provider systems. Orchestra makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party systems, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third party system is between the Customer and the relevant third party, and not Orchestra. Orchestra recommends that the Customer refers to the third party's system terms and conditions and privacy policy prior to using the relevant third-party system. Orchestra does not endorse or approve any third-party system nor the content of any of the third-party system made available via the Services.

5.2 In no event shall Orchestra, its employees, agents or sub-contractors be liable for any third-party provider's failure or delay in the performance of its obligations to Orchestra or the Customer. Orchestra shall not be in breach of this Agreement upon such failure or delay by a third-party provider.

6. Orchestra's obligations

- 6.1 Orchestra shall perform the Services for a Paid Subscription substantially in accordance with the Order Form and with reasonable skill and care.
- 6.2 Orchestra's obligations at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Orchestra's instructions, or modification or alteration of the Services by any party other than Orchestra or Orchestra's duly authorised contractors or agents. If the Paid Subscription do not conform with the terms of clause 7.1, Orchestra will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3 Orchestra may make amends to the Services from time to time provided that such amendments do not materially reduce the core functionality of the Paid Subscription.
- 6.4 Orchestra:
- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - (iii) the Services will be free from Vulnerabilities or Viruses.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.5 This Agreement shall not prevent Orchestra 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.
- 6.6 Orchestra warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7. Customer's obligations

- 7.1 The Customer shall:
- (a) provide Orchestra with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Orchestra;
- to the extent required 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, Orchestra may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Orchestra, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Orchestra from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Orchestra's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 The Customer acknowledges that the Service is made available for the purpose of data orchestration, data observability and data operations and is not a solution for the storage of data. The Customer shall take appropriate steps to back-up and archive Customer Data in order to protect Customer Data in the event of any loss or damage encountered whilst using the Service.

7.3 The Customer shall own all rights, title and interest in and to all of the Customer Data that is not personal data (as defined in EU/UK Data Protection Law) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. The Customer hereby licenses Orchestra to use the Customer Data for:

- (a) the proper performance of the Services, including the provision of the Documents;
- (b) the purposes set out in our Privacy Notice available at [Privacy | Orchestra \(getorchestra.io\)](https://getorchestra.io/privacy); and
- (c) all other purposes relevant to the proper exercise of our rights and obligations under this Agreement.

7.4 The Customer further licenses Orchestra to use Customer Data in an aggregated and anonymised form for Orchestra's own internal business purposes.

8. Charges and payment

8.1 For Paid Subscriptions, the Customer shall pay the Fees to Orchestra for the Subscription in accordance with the Order Form.

- 8.2 The Customer shall pay each invoice within 30 (thirty) days after the date of such invoice (the **Payment Period**), unless otherwise stated on the Order Form.
- 8.3 If Orchestra has not received payment within the Payment Period, and without prejudice to any other rights and remedies of Orchestra:
- (a) Orchestra may, without liability to the Customer, immediately suspend all or part of the Services and Orchestra shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% (four percent.) over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4 All amounts and fees stated or referred to in this Agreement or the Order Form:
- (a) are, subject to clause 12.3(c), non-cancellable and non-refundable, except as expressly provided otherwise herein; and
 - (b) are exclusive of value added tax, which shall be added to Orchestra's invoice(s) at the appropriate rate.
- 8.5 If, at any time whilst subscribed to a Paid Subscription, the Customer exceeds the limit of Pipelines, Data Products, Authorised Users and/or Tasks specified on the Order Form, Orchestra shall charge the Customer, and the Customer shall be liable to pay such amounts as set out on the Order Form.
- 8.6 If, at any time whilst using the Services, the Customer uses the Services outside of the applicable Fair Use Policy, Orchestra may charge the Customer, and the Customer shall be liable to pay a sum as determined by Orchestra but which shall be based on the then current rates for such overage.
- 8.7 Orchestra shall be entitled to increase the Fees upon 90 (ninety) days' prior notice to the Customer.

9. Proprietary rights

- 9.1 The Customer acknowledges and agrees that Orchestra and/or its licensors own all intellectual property rights in the Services and Platform. 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.

10. Confidentiality

- 10.1 Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives after the date of this Agreement in connection with this Agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:

- (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (b) any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
- (i) details of the Services, and the results of any performance tests of the Services, shall constitute Orchestra Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

10.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

10.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 10.

10.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 10.5 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 (including, without limitation, the London Stock Exchange) 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 10.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 10.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 10.8 On termination or expiry of this Agreement, each party may request that the other party:
 - (a) destroy or return to the requesting party all documents and materials (and any copies) containing, reflecting, incorporating or based on the requesting party's Confidential Information; and
 - (b) erase all the requesting party's Confidential Information (excluding Customer Data which may be erased in accordance with clause 13.4(c)) from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable).
- 10.9 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.
- 10.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 10.11 The above provisions of this clause 10 shall survive for a period of five years from termination or expiry of this Agreement.

11. Indemnity

- 11.1 The Customer shall defend, indemnify and hold harmless Orchestra against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, including from the connection of

third party provider systems or from any content provided by Orchestra or third party providers, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Orchestra provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

11.2 If the Customer has subscribed to a Paid Subscription and subject to there being no undisputed and outstanding payments due to be paid by the Customer, Orchestra shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this Agreement infringes any copyright or trade mark, and shall indemnify the Customer for any amounts awarded against the Customer in final judgment or settlement of such claims, provided that:

- (a) Orchestra is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Orchestra in the defence and settlement of such claim, at Orchestra's expense; and
- (c) Orchestra is given sole authority to defend or settle the claim.

Such indemnity shall be limited to claims against the intellectual property that exists in the Platform and the Services and shall not include any claims relating to Customer Data that infringes any copyright or trade mark.

11.3 In the defence or settlement of any claim, Orchestra 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 at least 2 (two) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4 In no event shall Orchestra, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged infringement under clause 11.2 is based on:

- (a) a modification of the Services by anyone other than Orchestra;
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Orchestra;
- (c) the Customer's use of the Services after notice of the alleged or actual infringement from Orchestra or any appropriate authority; or
- (d) the Customer's breach of this Agreement.

11.5 The foregoing and clause 12.3(c) state the Customer's sole and exclusive rights and remedies, and Orchestra's (including Orchestra's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any copyright or trade mark.

12. Limitation of liability

12.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Orchestra shall have no liability for any damage or costs incurred caused by errors or omissions in any Customer Data, information, instructions or scripts provided to Orchestra by the Customer in connection with the Services, or any actions taken by Orchestra 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 are provided to the Customer on an "as is" and "as available" basis.

12.2 Nothing in this Agreement excludes either party's liability:

- (a) for death or personal injury caused by Orchestra's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded or limited under applicable law.

12.3 Subject to clause 12.1 and clause 12.2:

- (a) the parties shall have no liability to each other for any loss of profits, loss of revenue, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss (whether direct or indirect), or for any special, indirect or consequential loss, costs, damages, charges or expenses;
- (b) Orchestra shall have no liability for any losses, damages or costs incurred that are caused by (i) Orchestra triggering, ingesting or running data tools in the Customer's infrastructure or any third party provider systems connected to the Customer's infrastructure in error, (ii) Orchestra connecting to third party provider systems as required by the Customer, (iii) Orchestra reaching any quotas in third-party systems; or (iii) Orchestra triggering an operation in any other Customer system (including third-party services).
- (c) the parties' total aggregate liability to each other (including in respect of the indemnity at clause 11.2), under and in connection with this Agreement shall not exceed the following caps:
 - (i) if the Customer has subscribed to a Paid Subscription, 100% (one hundred percent) of the total Fees paid or payable in the 12 (twelve) months preceding the date of the first incident giving rise to a claim of liability; or
 - (ii) If the Customer has subscribed to a Free Subscription, the cap will be £500 (five hundred pounds sterling).

12.4 References to liability in this clause 12 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Orchestra's Intellectual Property Rights or for their indemnity obligations under clause 11.1.

13. Term, suspension and termination

13.1 For Customers with Paid Subscriptions, this Agreement shall commence on the start date set out in the Order Form and shall continue until the end date set out in the Order Form (the **Initial Subscription Term**) and, thereafter, this Agreement shall be automatically renewed for successive periods as set out on the Order Form (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 (sixty) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; 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**.

13.2 For Customers with Free Subscriptions, this Agreement shall commence on the Effective Date and shall continue until terminated with immediate effect by either party providing written notice to the other party.

13.3 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 within the Payment Period;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so; or
- (c) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 13.2(c).

13.4 On termination or expiry of this Agreement for any reason:

- (a) all licences and access granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) the Customer may request that Orchestra destroy or otherwise dispose of any of the Customer Data in its possession; and
- (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.

13.5 Without prejudice to any other rights and remedies of Orchestra, Orchestra may with immediate effect and without liability to the Customer, suspend all or part of the Services and Orchestra shall be under no obligation to provide any or all of the Services if the Authorised User breaches clause 2.2, 2.3, 2.5, 4.1, 7.1, the Fair Use Policy and/or uses the Services outside of the agreed scope. Orchestra may also suspend individual Authorised User accounts and prevent that individual user from accessing the Services if an individual breaches clause 2.2, 2.3, 2.5, 4.1, 7.1, the Fair Use Policy and/or uses the Services outside of the agreed scope.

14. Force majeure

Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 180 (one hundred and eighty) days, Orchestra may terminate this Agreement by giving 14 (fourteen) days' written notice to the Customer.

15. Conflict

15.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

16. Variation

16.1 Subject to clause 6.3, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18. 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.

19. Severance

19.1 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.

19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1 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.

20. Entire Agreement

20.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous and contemporaneous Agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

20.2 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.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

21.1 The Customer shall not, without the prior written consent of Orchestra, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

21.2 Orchestra may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

22. 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).

23. Third party rights

23.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

24. Notices

24.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be sent by email to the following addresses (or an address substituted in writing by the party to be served):

- (i) Customer: the email address provided on sign-up to the Service.
- (ii) Orchestra: legal@getorchestra.io

(b) Any notice sent by email shall be deemed to have been received, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

24.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. 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 interpreted in accordance with the law of England and Wales.

26. 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 – Orchestra Fair Use Policy for Free Subscriptions.

1. Purpose

The purpose of this Fair Use Policy is to ensure the fair and responsible use of the Orchestra platform by all free users. This policy outlines the acceptable and unacceptable use of our services to maintain a positive and secure environment for all users.

2. Acceptable Use

2.1 Legitimate Business Purpose: Free users are expected to use Orchestra for legitimate business purposes related to their subscription.

2.2 Compliance with Laws: Free users must comply with all applicable laws and regulations while using Orchestra.

2.3 Authorized Access: Free users should only access Orchestra using authorized methods and should not attempt to gain unauthorized access to any data or features.

2.4 Responsible Resource Usage: Free users should use Orchestra resources responsibly. Specific limits on resource usage are outlined below:

- 1 pipeline
- 10 tasks
- 5 pipeline runs per day

2.5 Our free user tier is designed for usage by a single user in a single data team.

3. Unacceptable Use

3.1 Unauthorized Access: Free users are prohibited from attempting to access, use, or tamper with accounts, data, or any part of Orchestra without proper authorization.

3.2 Abuse of Resources: Free users must not engage in activities that could result in excessive use of Orchestra resources, as outlined in sections 2.4 and 2.5.

3.3 Malicious Activities: Free users must not use Orchestra for any malicious activities, including but not limited to spreading malware, hacking, or any other activities that could harm the product or other users.

3.4 Violation of Privacy: Free users must respect the privacy of others and not engage in any activities that violate the privacy rights of individuals.

4. Enforcement

4.1 Investigation: Orchestra reserves the right to investigate any suspected violation of this Fair Use Policy.

4.2 Actions: In case of a violation, Orchestra may take appropriate actions, including but not limited to issuing warnings, suspending accounts, or terminating subscriptions, depending on the severity of the violation.

5. Changes to the Fair Use Policy

Orchestra reserves the right to modify this Fair Use Policy at any time. Free users will be notified of any changes, and continued use of the Orchestra platform after changes constitute acceptance of the revised policy.

6. Contact Information

For any questions or concerns regarding this Fair Use Policy, please contact Orchestra at support@getorchestra.io.