ORKESTRA APP
SUBSCRIPTION TERMS

These Subscription Terms (“Terms”) and all Order Forms issued in connection herewith create a legal agreement between Orkestra Inc. (“Orkestra,” “us,” or “we”) and the entity or person accessing the Service (as defined below) (“Customer,” or “you”). BY ACCEPTING THE TERMS OR USING THE SERVICE, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS AND ALL ORDER FORMS (collectively the “Agreement”).

I. ACCESS AND USE OF THE SERVICE.

A. Service. The Orkestra application augments your Salesforce® data structure, creates activatable customer journey maps in your Salesforce ® Marketing Cloud (“SFMC”) instance and connects your data and reporting to core Salesforce® instance (“Service”) or SFMC.

B. Right to Use Service. The use levels by which we measure, price and offer the Service are posted on our website (“Use Tiers”). You may use the Service only as permitted in these Terms and subject to the terms of the Use Tier set forth in an Order Form. We grant you a limited right to use the Service only for your internal business purposes. If you permit your employees/contractors (collectively your “Users”) to use the Service through your Account, you warrant that you have the authority to bind those Users to the terms of this Agreement, and you will be liable if your Users do not comply with the Agreement.

C. Limitations on Use. By using the Service, you agree on behalf of yourself and your Users not to (i) modify, prepare derivative works of, or reverse engineer, the Service; (ii) knowingly or negligently use the Service in a way that abuses or disrupts our networks, user accounts, or the Service; (iii) transmit through the Service any obscene, offensive, pornographic, fraudulent, deceptive, defamatory, harassing, abusive, hateful, or unlawful material; (iv) use the Service in violation of our policies, applicable laws or regulations; (v) harvest, collect, or gather user data; or (vi) transmit through the Service any material, including Customer Data (defined below) that may infringe the intellectual property or other rights of third parties.

D. Changes to Service; Additional Services. We reserve the right to enhance or modify features of the Service but will not materially reduce the core functionality or discontinue the Service unless we provide you with prior written notice. We may offer additional functionality to our standard Service or premium feature improvements for an additional cost. Any additional Service you order will be subject to these Terms.

E. Proprietary Rights and Orkestra Marks. You acknowledge that we or our licensors retain all right, title and interest in the Service, and our name, logo or other trademarks marks (together, the “Orkestra Marks”), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part the Orkestra Marks or which is similar to any of them.
II. FEES AND PAYMENT.

A. Fees and Payment. You agree to timely pay the fees set forth on the applicable Order Form in United States dollars. Unless otherwise specified on the applicable Order Form, all fees shall be due and payable in advance, within thirty (30) days of the date of your receipt of Orkestra’s invoice. All payments not made when due shall be subject to late charges on a pro-rated daily basis equal to the lesser of: (i) one and one-half percent (1.5%) per month of the overdue amount, or (ii) the maximum amount permitted under applicable Law. Customer shall reimburse Orkestra for all fees and expenses, including reasonable attorneys’ fees, incurred to collect amounts owed by Customer. Unless otherwise set forth herein, all payments you make to us for access to the Service are final. You are responsible for all fees and charges imposed by Salesforce® for your access and use of any of their products or services. You are responsible for providing accurate and current billing, contact and payment information to us. We reserve the right to update the price for Service at any time after your Initial Term (as defined below). We will notify you of any price changes by publishing on our website, and sending an email to the address last designated on your Account. If you do not cancel your subscription by thirty (30) days prior to the end of the then-current billing cycle, the price changes will become effective as of the next billing cycle.

B. Disputes; Delinquent Accounts. You must notify us of any fee dispute within fifteen (15) days of receipt of an invoice, and once resolved, you agree to pay those fees within fifteen (15) days. We may also suspend or terminate your Account if you do not pay undisputed fees when due, and you agree to reimburse us for all reasonable costs and expenses incurred in collecting delinquent amounts.

III. TERM AND TERMINATION.

A. Term. Your initial subscription term shall be three (3) years (“Initial Term”) and will automatically renew for additional three (3)-year terms (“Renewal Terms”) (collectively, the “Term”) unless you terminate no later than thirty (30) days prior to the end of the then-current Term. You may terminate at any time during the Term by uninstalling the Service; provided, however, that no refunds will be made for remaining days within the then-current Term.

B. Termination for Cause. Either party may terminate the Agreement (i) if the other party breaches its material obligations and fails to cure within five (5) days of receipt of written notice, or (ii) if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business; provided, however, that we may suspend or terminate your Account immediately in the event of your breach of Sections I.C, IV or V.

C. Effect of Termination. If the Agreement is terminated for any reason, you must immediately discontinue all use of the Service. Termination will not affect any claim arising prior to the effective termination date. If we discontinue Service in accordance with Section I.D above, your access to the Service will be terminated immediately, and you will be refunded for remaining days within the then-current Term. You agree to pay for any use of the Service past the date of expiration or termination.

D. Survival. The provisions of Sections VI (Disclaimers; Limitation of Liability), VII (Indemnification), and VIII (Additional Terms) will survive any termination of the Agreement.
IV. CUSTOMER DATA AND ACCOUNTS.

A. Your Customer Data. “Customer Data” means electronic data and information submitted to the Service by you. You retain all rights to your Customer Data. You represent and warrant that (i) you have the right to submit the Customer Data onto the Service and use the Customer Data as contemplated by the Service, (ii) none of the Customer Data infringes on the rights of any third party, including any intellectual property right, or right of privacy or publicity; (iii) none of the Customer Data contains any obscene, offensive, pornographic, fraudulent, deceptive, defamatory, harassing, abusive, hateful, or unlawful material. You agree to comply with all legal duties applicable to you as a data controller by virtue of the submission of your Customer Data within the Service, and we will have no liability in connection therewith. Orkestra shall have no obligation to maintain any Customer Data obtained during the Term or beyond the Term of this Agreement.

B. License by Customer to Use Customer Data. You grant Orkestra a worldwide, perpetual, sublicensable right and license to process, copy, and make derivative works of the Customer Data, for commercial purposes; including, but not limited to, as necessary for Orkestra to provide the Service in accordance with this Agreement, and to share anonymous, aggregated Customer Data third parties. Subject to the limited licenses granted herein, Orkestra acquires no right, title or interest from you under this Agreement in or to any Customer Data.

C. Your Accounts. In order to access the Service, you will be required to create an account (“Account”). You are solely responsible for all use of the Service by you and your Users. We do not send emails asking for your usernames or passwords, and to keep your Account secure, you should keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or Account. We may suspend your Account or terminate the Agreement if you or your Users are using the Service in a manner that is likely to cause harm to the Service. You agree to notify us immediately in the event that any unauthorized access to the Service, or other security breach, occurs through your Account.

V. EXPORT LAWS. The Service may be subject to export laws and regulations of the United States and other jurisdictions. You represent and warrant that you are not named on any U.S. government denied-party list. You further agree that you will not permit any User to access or use the Service in or by a national of a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

VI. DISCLAIMERS; LIMITATION OF LIABILITY.

A. Disclaimers. ORKESTRA PROVIDES THE SERVICE “AS-IS,” AND DOES NOT MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, ORKESTRA DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE.

Limitation of Liability. ORKESTRA SHALL HAVE NO OBLIGATION OR LIABILITY RELATED IN ANY WAY TO ANY SALESFORCE® SERVICES OR PRODUCTS, CUSTOMER’S USE OR INABILITY TO USE SUCH SERVICES OR PRODUCTS, OR ANY ACT OR OMISSION BY SALESFORCE®. ORKESTRA'S AGGREGATE LIABILITY
ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE
AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE
INCIDENT GIVING RISE TO LIABILITY. THE ABOVE LIMITATIONS WILL APPLY
WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE
THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION NEGLIGENCE.

B. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY
HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR LOST
REVENUES OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER
OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND
REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION
 NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF
SUCH DAMAGES.

C. Timeliness of Claims. CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES
THAT ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT OR RELATING
TO THE SERVICE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE
OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION SHALL BE
PERMANENTLY BARRED.

VII. INDEMNIFICATION. You agree to indemnify and hold Orkestra harmless from and against any and
all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and
costs) arising out of any third party claim in connection with your use of the Service or your breach or
alleged breach of any term, condition, obligation, representation or warranty in this Agreement.

VIII. ADDITIONAL TERMS

A. General Terms. If any term of this Agreement is deemed unenforceable, this will not affect any
other terms. Both parties are independent contractors and nothing in this Agreement creates a
partnership, agency, fiduciary, or employment relationship between the parties. No person or
entity not a party to the Agreement will be a third party beneficiary. Failure to enforce any right
under the Agreement will not waive that right. Unless otherwise specified, remedies are
cumulative. No party will be responsible for any delay or failure to perform under the Agreement
due to force majeure events; including, but not limited to, natural disasters, terrorist activities,
activities of third party service providers, labor disputes, acts of government, and other acts
beyond a party’s reasonable control. You hereby waive any and all defenses you may have based
on the electronic form of this Agreement and the lack of signing by the parties hereto to execute
this Agreement.

B. Security Emergencies. If we reasonably determine that the security of the Service may be
compromised due to hacking attempts, denial of service attacks, or other malicious activities, we
may temporarily suspend the Service and we will take action to promptly resolve any security
issues. We will notify you of any suspension or other action taken for security reasons.

C. Assignment. You may not assign your rights or delegate your duties under the Agreement either
in whole or in part without our prior written consent.

D. Notices. Notices to Orkestra should be sent to us at legal@orkestraine.com and we will send
notices to you at the email address last designated on your Account. Notice is deemed given
when the return receipt is received by the sender.
E. **Governing Law.** The Agreement will be governed accordance with the laws of the state of Delaware, USA, without regard to its conflicts of laws rules.

F. **Mandatory Arbitration.**
   i. If you and Orkestra are unable to resolve a dispute, controversy or claim related to this Agreement (“Dispute”) through informal negotiations within thirty (30) days, either you or Orkestra may elect to have the Dispute finally and exclusively resolved by binding arbitration. The arbitration will be commenced and conducted under the Streamlined Arbitration Rules and Procedures (the “Rules”) of JAMS, which is available at the JAMS website www.jamsadr.com. Your arbitration fees and your share of arbitrator compensation will be governed by the Rules. The arbitration shall be conducted in person in Dover, Delaware, or through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The decision of the arbitrator shall be binding and final.