

TERMS AND CONDITIONS FOR SOFTWARE-AS-A-SERVICE

Orkestra Technologies Pty Ltd

Effective Date: 11 September 2023

These terms and conditions (hereinafter "**Terms**") govern Your use of www.orkestra.energy, app.orkestra.energy and any related websites or mobile applications (which are together referred to as "**the Platforms**").

The Platforms are owned and operated by Orkestra Technologies Pty Ltd (ACN 649 960 805) t/a Orkestra ("**We**", "**Us**", "**Our**").

When You accept these Terms, they constitute a binding contract between You and Us ("**Agreement**").

In connection with Your use of the Platforms, We may also provide You with access to various other content, documentation, materials, information, goods or services. In these Terms, We refer to all of these items collectively as "**the Items**".

These Terms will govern Your use of all pages of the Platforms, as well as Your use of the Items.

If You continue to use the Platforms, You acknowledge that You have been given the chance to review these Terms. You acknowledge that You understand these Terms and that You agree to be bound by them.

If You do not understand these Terms, if You do not agree to be bound by them, or if You need more time to review and consider them, then You must stop using the Platforms and the Items immediately.

1 DEFINITIONS

In these Terms, the following definitions apply:

"**Account Data**" means data relating specifically to Your Member Account including Identifying Information and any data that is derived from the use of the Services such as volumes, tracking

data, and Service performance data. Except for Identifying Information provided by You, Account Data excludes any Customer Data uploaded by You to the platform.

"Admin" means the Member Account that created the Team (unless demoted by another user) or User that is assigned as an Admin by another User. Note that a team can have multiple admins.

"Agreement" means the binding contract created between Us and You when You accept these Terms.

"Australian Consumer Law" means the Australian Consumer Law which is contained in the Competition and Consumer Act 2010 (Commonwealth).

"Company IP" has the meaning given in the "Intellectual Property" clause of these Terms.

"Content" means any content, writing, images, audio-visual content, or other information published on the Platforms.

"Customer Data" means Your non-public data, non-public data of Your clients, and any other non-public data provided by You to Us to enable the provision of the Services.

"Dispute" means any dispute, controversy or claim arising out of or in relation to these Terms, including any dispute, controversy or claim relating to the existence, validity or termination of these Terms.

"Documentation" means all online documents and information relating to the Platforms and Services published and made available by Orkestra.

"Effective Date" means the date that these Terms come into force.

"Fair Use Policy" means Our fair use policy which is located at <https://app.orquestra.energy/fairusepolicy>.

"Identifying Information" means the information provided by You when registering to use the Items, including but not limited to Your name, billing address, company name, Australian Business Number (ABN), email address, a username and a password.

"Items" means any and all of the Platforms, Services, Content and Materials collectively.

"Materials" means any materials, information or documentation that We may provide to You in connection with Your use of the Services or Platforms including documentation, data, information developed by Us or owned by Us, and other materials which may assist in Your use of Services or Platforms.

"Member Account" means a sub-account registered as members of Your Team. Each subscription can include one Team and multiple Member Accounts. Under the Team, multiple Member Accounts may be created for members of the Team.

"Parties" means both You (the user of the Platform) and Us (the owner of the Platform) collectively.

"Platforms" means the online application which is located at app.orquestra.energy, the website which is located at www.orquestra.energy, our helpdesk which is located at support.orquestra.energy and includes all connected pages, subpages, blogs, forums, all related websites or related mobile applications, and all other connected internet content whatsoever.

"Privacy Policy" means Our privacy policy which is located at <http://app.orquestra.energy/privacypolicy>

"Services" means any or all services provided by or on the Platforms or other Items.

"Service Capacity" means the maximum capacity of Your Service Plan, as set out in the Specifications and our Fair Use Policy.

"Service Plan" has the meaning set out in the "SaaS Services and Support" clause of these Terms.

"Service Price" means the price payable by You in consideration for Your use of the Services, Platforms and other Items, which is further described in the "Service Price" clause of these Terms and is set out in the Specifications.

"Service Term" means the subscription period specified in the Specifications.

"Specifications" means the page(s) on the Platforms and In the Documentation which set out the details of the Service Plan which You are purchasing, Including but not limited to a description of the relevant Services and any applicable Fees.

"Subscription Term" has the meaning given in the "Term and Termination" clause of these Terms.

"Team" means the entity that is registered to Your organisation in the Platforms via which Member Accounts access and store data. Each subscription includes only one Team. Multiple Member Accounts may be part of the Team.

"Terms" means these terms and conditions as may be updated from time to time and published at <http://app.orquestra.energy/termsofservice>, in accordance with clause 18.

"Third Party Goods and Services" means goods and/or services sold by third parties via the Platforms or via Third Party Links which are identified as such.

"Third Party Links" means links or references to websites or applications other than the Platforms, to content other than the Content or to materials other than the Materials, none of which are controlled by Us.

"Us", "We", "Our", "the Company" or "the Owner" refers to Orkestra Technologies Pty Ltd t/a Orkestra and includes any employees, affiliates, agents or other representatives of Orkestra Technologies Pty Ltd t/a Orkestra.

"User" means any user of the Platforms via Your Member Account(s).

"You" or **"Your"** in relation to paid subscriptions refers to the person or organisation named as the "Customer" on the "Billing Information" page during the subscription purchase process; and in relation to free trials refers to the email account holder of the email address provided to Us during the sign up process when creating the Team or Member Account. For the purpose of these Terms, You are a User of the Platforms.

"Your Content" means any Content posted to or added to the Platforms, Content or Materials by You or by somebody authorised by You or doing so on Your behalf.

2 INTERPRETATION

2.1 In these Terms, unless the context otherwise requires, the following rules of interpretation shall apply:

- (a) Words referring to one gender include every other gender.
- (b) Words referring to a singular number include the plural, and words referring to a plural include the singular.
- (c) Words referring to a person or persons includes companies, firms, corporations, organisations and vice versa.
- (d) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

3 HOW IT WORKS

- 3.1 Our Platforms and other Items offer Services related to feasibility analysis for grid-connected energy projects. You need to register an account in order to access the Services, Platforms or other Items.
- 3.2 From time to time We may offer a free trial for the Platforms or other Items. The free trial may be subject to limitations such as restricted features or a limited time period. Any such limitations will be explained in the Specifications at the time of Your registration or renewal.
- 3.3 From time to time We may also offer a range of different Service Plans. The limitations, inclusions or exclusions of any Service Plans will be explained in the Specifications at the time of Your registration or renewal. By registering for or renewing a plan, You agree to such limitations, inclusions and exclusions.

- 3.4 Unless otherwise stated in the Specifications at the time of Your registration, Our subscriptions allow organisations to set up a Team. A Team is administered by an Admin. An Admin may grant Member Accounts to multiple Team members as their Team's subscription permits (as explained in the Specifications at the time of registration or renewal of the subscription).
- 3.5 Unless otherwise stated in the Specifications at the time of Your registration, Your subscription will include three complimentary Member Accounts. If You wish to create additional Member Accounts, an additional fee may apply for each additional Member Account, in such amounts as stated in the Specifications at the time of Your registration or renewal.
- 3.6 Subscriptions may be purchased on a monthly or annual basis.
- 3.7 Your subscription will be automatically renewed on the day Your initial Service Term expires, and You will be charged the Service Price via Your nominated payment method unless You have cancelled in accordance with Our below cancellation terms.
- 3.8 If We are unable to process the applicable Service Price via Your nominated payment method then You will receive a notification email. If You do not provide an alternative payment method before Your Service Term expires, then Your subscription may be terminated.
- 3.9 If You wish to cancel Your subscription, You may do so in accordance with the "Term and Termination" clause below. You should make sure to cancel Your subscription at least one (1) day before the end of Your Service Term, to avoid being charged for a renewal.

4 SAAS SERVICES AND SUPPORT

- 4.1 Subject to these Terms, We will use commercially reasonable efforts to provide You the Services as described in these Terms.
- 4.2 We may offer several different Service plans ("Service Plans"). The Specifications confirm which Service Plans You will receive, and provides details of the features and Pricing of the relevant Service Plans.
- 4.3 The Services will be provided in accordance with the following service levels (in addition to any service levels that are described in the Specifications):
 - (a) We will be available to account and provide technical support to You during business hours (9:00am to 5:00pm Australian Eastern Standard Time (AEST), Monday to Friday excluding public holidays).

- (b) We will attempt to respond to all enquiries from You within 3 hours and, where feasible and commercially practical, resolve them or provide You with an acceptable workaround within two business days of receiving them.
- (c) You may initiate a helpdesk ticket during support hours by emailing support@orquestra.energy.

5 RESTRICTIONS AND RESPONSIBILITIES

- 5.1 You represent, covenant, and warrant that You will use the Services only in compliance with applicable laws and regulations, and any relevant Orkestra policies as published by Us from time to time.
- 5.2 You shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). You shall also be responsible for maintaining the security of Your Equipment and Your account, passwords (including but not limited to administrative and User passwords), uploaded data and files, and for all uses of Your account or the Equipment with or without Your knowledge or consent.
- 5.3 You are responsible for backing up any data that You submit to Us (including but not limited to Customer Data), and You acknowledge that while We take all reasonable precautions, there is a risk that any data submitted to Us could be lost.

6 SERVICE PRICE

- 6.1 The Service Price is described in the Specifications. You agree to pay the Service Price in accordance with this Agreement.
- 6.2 We may offer a free trial from time to time, with no applicable Service Price. If a free trial is available, the details will be published on the Platforms at the time that You subscribe.
- 6.3 Paid Service Plans may be purchased on a monthly or annual basis. From time to time We may offer a range of different Service Plans.
- 6.4 Different Service Prices may apply, depending on the Service Plan purchased by You. Additional fees will apply (either under this or a separate agreement between us) if You also engage Us to provide additional services and/or out of scope services.

- 6.5 If Your use of the Services exceeds the Service Capacity set out in the Specifications and the Fair Use Policy, additional fees may apply, and shall be calculated in the manner set out in the Specifications.
- 6.6 The Specifications set out the total applicable Service Price, taking into account the relevant Service Plan. You agree to pay the Service Price and any additional fees as calculated in accordance with these Terms and the Specifications.
- 6.7 Unless otherwise stated in the Specifications, Our Service Plans will allow You to create up to three Member Accounts at no additional cost. If You wish to create more than three Member Accounts, then additional fees may apply, in such amounts as stated on Our Platforms at the time of Your registration or renewal.
- 6.8 The Service Prices for Our Service Plans are stated in the Specifications at the time that You purchase or renew Your subscription.
- 6.9 We reserve the right to update the Service Prices or applicable charges and to institute new fees and prices at the end of the Initial Service Term as set out in the Specifications, or the current renewal term, upon thirty (30) days prior notice to You (which may be sent by email). By purchasing or renewing a subscription and/or by continuing to use the Services, You agree to the applicable Service Prices as stated at the time of Your registration or renewal.
- 6.10 Where applicable, any goods or services tax, charge, impost or duty payable in respect of these Terms or the supply of any goods or service made under or in respect of these Terms and any other taxes, duties or levies will be paid by You at the then-prevailing rate.

7 PAYMENTS

- 7.1 Payments for Service Prices and any other applicable fees must be made by debit card, credit card or third-party payment processor in advance, or such other method as confirmed by Us in writing.
- 7.2 We may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by the Payment Terms specified in the Specifications. Where no Payment Terms are set out in the Specifications, then within 14 days of the issue date of the invoice. By providing Your debit card, credit card or other payment details, You authorise Us to deduct the Service Price and any other applicable fees from Your account. We do not process any payments on the Platforms or store credit card information on the Platforms. For all transactions on Our Platforms, We use a third-party payment processor with secure payment technology. When purchasing a subscription, You may be required to agree to the third-party payment processor's terms and conditions.

- 7.3 If You believe that We have billed You incorrectly, You must contact Us no later than 60 days after the date that You received the invoice in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Our customer support department.
- 7.4 We may choose to charge on any unpaid amounts an interest charge of 1.5% per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.
- 7.5 If You pay by credit card, transaction fees may apply.

8 TERM AND TERMINATION

- 8.1 Subject to earlier termination as provided below, these Terms remain in effect for the Service Term as set out in the Specifications and shall be automatically renewed for additional periods of the same duration as the Service Term (collectively, the **“Subscription Term”**), unless either party requests termination at least seven (7) days prior to the end of the then current Service Term.
- 8.2 In addition to any other remedies it may have, either party may also terminate these Terms upon seven (7) days’ written notice (or without notice in the case of non-payment), if the other party materially breaches any of the terms or conditions of these Terms and has not remedied the breach within seven (7) days of receipt of a written notice of that breach. You will pay in full for the Services up to and including the last day on which the Services are provided, including the Service Price and any other fees as set out in the Specifications.
- 8.3 Upon any termination, We will make Your Customer Data available to You in a form We deem appropriate for a period of thirty (30) days, but thereafter We may, but are not obligated to, delete stored Customer Data. All sections of these Terms which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.
- 8.4 On request and notwithstanding this clause, You can request Your account and all the data within the account to be deleted including after the termination or expiry of the Agreement.

9 LICENCE TO USE PLATFORMS AND OTHER ITEMS

- 9.1 We may provide You with certain other Items in connection with Your use of the Platforms.

- 9.2 Upon Your acceptance of these Terms and payment of any applicable Service Price, We grant You a licence to use the Platforms and other Items solely subject to these Terms. The licence created under these Terms is non-exclusive, limited, non-transferable, worldwide and irrevocable during the Term of the Agreement except if there is a breach of these Terms.
- 9.3 You may not use the Platforms or other Items for any purpose other than in accordance with the licence that is provided under this clause, and this licence to use the Platforms and other Items terminates upon Your cessation of use of the Items or upon termination of the Agreement.

10 SALE OF GOODS/SERVICES

- 10.1 We may sell Services or may allow third parties to sell Services on the Platforms. If this occurs, then some specific exclusions of liability will apply, as described in the "Exclusion of Liability" clause of these Terms.
- 10.2 Please refer to any of Our additional terms and conditions for sale of services as applicable.

11 YOUR AGREEMENT AND REPRESENTATIONS

- 11.1 By continuing to use the Platforms and other Items You represent, warrant, and acknowledge that:
- (a) You have had the chance to review and consider the Agreement, You understand the Agreement, and You agree to be bound by the Agreement. If You do not understand the Agreement or do not agree to be bound by it then You must stop using the Items immediately. We only agree to provide use of the Platforms and other Items to You if You agree to be bound by this Agreement.
 - (b) You have full legal authority and capacity to enter this Agreement.
 - (c) You will comply with all of the Terms.
 - (d) You are at least 18 years old.
 - (e) All information You provide is true, correct, complete and up-to-date. It is Your responsibility to inform Us of any changes to that information, and You may do this at any time by updating Your details on Our Platforms.

- (f) In the event that You submit any content or data to Us (including but not limited to Customer Data), You have the full legal authority to submit that content and data.
 - (g) In the event that You submit any content or data to Us (including but not limited to Customer Data), You are responsible for backing up that data.
 - (h) You will not use the Items for any illicit, unlawful, fraudulent, inappropriate, offensive or otherwise illegal activities.
 - (i) You will not transmit any viruses, malware, worms, etc. of any kind and You will not upload, post, host or transmit unsolicited material or messages via the Items.
- 11.2 You must not share Your password or login details with any other person and must not authorise others to use Your account except by creating a Member Account in accordance with these Terms.
- 11.3 You must not assign or otherwise transfer Your account to any other person without Our consent.
- 11.4 You acknowledge, agree and warrant that if You create a Team, You are responsible for all Member Accounts under that Team. Any breach of these Terms by a User of one of Your Member Accounts shall be deemed a breach of these Terms by You. You hereby indemnify Us for any such breaches of these Terms by a User of one of Your Member Accounts.

12 REFUNDS, WARRANTIES AND DISCLAIMER

- 12.1 We do not offer any refunds for change of mind.
- 12.2 Certain legislation including the Australian Consumer Law ("**ACL**"), the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer You with rights, warranties, guarantees and remedies relating to the provision of the Services which cannot be excluded, restricted or modified ("**Statutory Rights**").
- 12.3 Our liability to You is limited to Your Statutory Rights. All other conditions and warranties implied by custom, law or statute are expressly excluded by these Terms.
- 12.4 To the extent Our liability for breach of Statutory Rights cannot be excluded by law, Our liability to You will be limited, at Our option, to the re-supply of the Items; or payment of the cost of having those Items re-supplied to You; or a refund of the fees paid by You for the Items.

- 12.5 We shall take all reasonable steps consistent with prevailing industry standards to maintain the Items in a manner which minimises errors and interruptions and We shall provide the Items in a professional and proper manner. Items may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Us or by third-party providers, or because of other causes beyond Our reasonable control, but We shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption, and We shall use reasonable efforts to ensure that any scheduled service disruption occurs outside of business hours. However, We do not warrant that the Items will be uninterrupted or error free; nor do We make any warranty as to the results that may be obtained from use of the Items.
- 12.6 While all due care has been taken, We do not warrant that the operation of the Items will be uninterrupted or error free or that any third-party components of the Items, will be accurate or error free or that the Items will be compatible with any application, program or software not specifically identified as compatible by Us.
- 12.7 We warrant that the Services:
- (a) will conform in all material respects with the Documentation; and
 - (b) when used in accordance with the Documentation and this Agreement, will comply with all applicable laws.
- 12.8 Our obligation and Your exclusive remedy during the Term of this Agreement if the Services do not conform in all material respects with the Documentation or comply with all applicable laws in accordance with clause 12.7 are limited, at Our absolute discretion, to:
- (a) at Our own expense, using all reasonable endeavours to rectify any non-conformance of the Services by repair (by way of a patch, workaround, correction or otherwise) within a reasonable period of time; or
 - (b) refunding You the Service Prices paid if, in Our reasonable opinion, We are unable to rectify such non-conformance within a reasonable timescale or at an economic cost, and terminating this Agreement.
- 12.9 You acknowledge and accept that it is Your sole responsibility to ensure that:
- (a) the Items meet Your requirements;
 - (b) the Items are appropriate for Your specific circumstances and use of the Items is permissible under the laws and regulations of Your jurisdiction.
- 12.10 We will not be liable for any failure of the Items to provide any function not described in the Documentation (provided online as part of the Services), the Specifications or any failure attributable to:

- (a) any modification to the Items other than by Us or Our authorised representatives;
- (b) accident, abuse or misapplication of Items by You;
- (c) use of the Items with other software or equipment without Our written consent;
- (d) use of other than the latest, unaltered current release of the Items; or
- (e) use other than in accordance with this Agreement.

12.11 If You terminate Your subscription before the end of Your Service Term, You will maintain full access to Your chosen Service Plan until the end of the Service Term for which You have paid.

12.12 If You swap from a monthly plan to an annual plan at any time during Your subscription, any unused credit from Your monthly plan will be credited towards Your annual plan.

12.13 If You swap from an annual plan to a monthly plan at any time during Your subscription, any unused credit from Your annual plan will be credited towards Your account on a pro-rata basis. Your monthly subscription will be debited against Your account while it remains in credit.

13 CONFIDENTIALITY

13.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (referred to as “Proprietary Information” of the Disclosing Party).

13.2 Proprietary Information of Orkestra includes non-public information regarding features, functionality and performance of the Service. Your Proprietary Information includes the Customer Data.

13.3 The Receiving Party agrees:

- (a) to keep such Proprietary Information confidential;
- (b) to take reasonable precautions to protect such Proprietary Information from loss or unauthorised modification or disclosure, and
- (c) not to use (except in performance of the Services or as otherwise permitted in this Agreement) or divulge to any third person any such Proprietary Information.

- 13.4 The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document:
- (a) is or becomes generally available to the public (other than through a breach of this clause); or
 - (b) was in its possession or known by it prior to receipt from the Disclosing Party; or
 - (c) was rightfully disclosed to it without restriction by a third party; or
 - (d) was independently developed without use of any Proprietary Information of the Disclosing Party; or
 - (e) is required to be disclosed by law.

14 EXCLUSION OF LIABILITY

- 14.1 Subject to the “Refunds, Warranties and Disclaimer” clause of these Terms, You acknowledge and agree that the Items are provided to help You streamline Your feasibility analysis relating to the energy market, but it is Your responsibility to cross check any results or analysis that We provide to You via the Items. We endeavour to ensure that the Items are operating efficiently and are producing accurate and up-to-date information, results and analysis, but from time-to-time errors or inaccuracies may occur. You should not rely on the accuracy of any information that You access via the Items, but should cross check any inputs, results and analysis contained therein before making any important decisions such as (but not limited to) financial or business decisions. In the event that You do rely on the accuracy of any information that You access via the Items, You do so at Your own risk.
- 14.2 To the maximum extent permitted by law, and other than to the extent stated otherwise in these Terms, We hereby expressly exclude any liability in relation to the accuracy, completeness, performance, reliability, timeliness, quality, merchantability, safety, legality or suitability for a particular purpose of the Items.
- 14.3 To the maximum extent permitted by law, We hereby expressly exclude any liability in relation to loss of data, interruption to Your business or any damages which are incidental to or arise from such loss of data or interruption to business.
- 14.4 To the maximum extent permitted by law, We will not be liable for any damage, loss, cost or expense including legal costs and expenses, whether direct or indirect, incurred by You in connection with Your use of the Items in breach of this Agreement.

- 14.5 Your liability to Us for any damage, loss, cost or expense including reasonable legal costs and expenses, incurred by Us in connection with Your breach of this Agreement is limited to the fees paid by You under this Agreement, except in relation to any breach by You of clauses 9 (*Licence to Use Platforms and Other Items*), 11 (*Your Agreement and Representations*), 13 (*Confidentiality*), 17 (*Acceptable Use*), 23 (*Intellectual Property*) or 27 (*Reverse Engineering and Security*) and 29 (*Fair Use Policy*). Notwithstanding the foregoing, your liability to Us under any indemnity set out in this Agreement, including but limited to the indemnities set out in clause 16 (*Indemnity*) and clause 23.8 (*Intellectual Property*), is unlimited.
- 14.6 For Third Party Goods and Services:
- (a) You acknowledge and agree that We have no control over those Third Party Goods and Services and that You purchase such Third Party Goods and Services at Your own risk.
 - (b) You acknowledge and agree that We assume no liability and provide no warranties or guarantees regarding the accuracy, completeness, performance, reliability, timeliness, quality, merchantability, safety, legality or suitability for a particular purpose of Third Party Goods and Services.
 - (c) For any claim You may have against the third party provider of the Third Party Goods and Services (such as the manufacturer or vendor) You agree to pursue that claim directly with that third party provider of the Third Party Goods and Services and not with Us.
 - (d) To the maximum extent permitted by law, You hereby release Us from any claim related to Third Party Goods and Services including any and all warranty and Platforms liability claims.

15 NO PROFESSIONAL ADVICE

- 15.1 The information provided via the Items is for information purposes only. It does not address Your specific circumstances. It is not professional advice.
- 15.2 You acknowledge and agree that any information provided via the Items is not professional advice, whether legal, accounting, medical, financial, engineering or other professional advice.
- 15.3 You acknowledge and agree that no fiduciary relationship has been created between Us and You.
- 15.4 You acknowledge and agree that it is Your responsibility to evaluate all information that is provided via the Items in consultation with Your own professional adviser or advisers as appropriate.

16 INDEMNITY

- 16.1 You hereby indemnify Us (which also includes any of Our employees, affiliates, agents or other representatives) and You agree to defend Us and to hold Us harmless in relation to any and all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) which may arise from or relate to Your misuse of the Items, any unlawful act by You, or any breach by You of clause 9 (*Licence to Use Platforms and Other Items*), 11 (*Your Agreement and Representations*), 13 (*Confidentiality*), 17 (*Acceptable Use*), 23 (*Intellectual Property*) or 27 (*Reverse Engineering and Security*) and 29 (*Fair Use Policy*). You agree that We may select Our own legal representation and may participate in Our own legal proceedings if We choose.
- 16.2 You hereby indemnify Us (which also includes any of Our employees, affiliates, agents or other representatives) and You agree to defend Us and to hold Us harmless in relation to any and all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) which may arise from or relate to any misuse of the Items, any unlawful act, or any breach of clause 9 (*Licence to Use Platforms and Other Items*), 11 (*Your Agreement and Representations*), 13 (*Confidentiality*), 17 (*Acceptable Use*), 23 (*Intellectual Property*) or 27 (*Reverse Engineering and Security*) and 29 (*Fair Use Policy*) committed by a User of one of Your Member Accounts.
- 16.3 We hereby indemnify You (which also includes any of Your employees, affiliates, agents or other representatives) and We agree to defend You and hold You harmless in relation to any and all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) which may arise from or relate to any claim by a third party that any Item infringes that third party's Intellectual Property Rights.

17 ACCEPTABLE USE

- 17.1 You agree not to use the Items for any unlawful purpose or any purpose prohibited under this clause. You agree not to use the Items in any way that could damage the Items, or Our general business.
- 17.2 You further agree not to use the Items:
- (a) to harass, abuse, or threaten any other person or to otherwise violate any other person's legal rights;
 - (b) to violate any intellectual property rights of Us or of any third party;

- (c) to upload or otherwise disseminate any computer viruses or other software that may damage the property of another;
 - (d) to commit any kind of fraud;
 - (e) to engage in or create any unlawful gambling, sweepstakes or pyramid schemes;
 - (f) to publish or distribute any obscene or defamatory material;
 - (g) to publish or distribute any material that incites violence, hatred or discrimination towards any person, group or community;
 - (h) to unlawfully gather information about others.
- 17.3 You acknowledge and agree that You are responsible for ensuring that Your Team members use the Platforms and the other Items in accordance with these Terms and You will take all reasonable steps to monitor the use of Your Member Accounts and to ensure that they are used in accordance with these Terms.
- 17.4 Unauthorised use by You of the Items may be a criminal offence and may give rise to a claim for damages.

18 VARIATION OF TERMS

- 18.1 You hereby acknowledge and agree that these Terms may be varied or amended from time to time in Our sole discretion.
- 18.2 In the event that we vary or amend these Terms, we will notify you in writing that this has occurred. If You continue to use the Platforms after being notified of any such variation or amendment You will be deemed to have confirmed and agreed to the new Terms as varied or amended.
- 18.3 You agree to routinely monitor these Terms and to refer to the Effective Date posted at the top of these Terms in order to monitor any modifications or variations. You further agree to clear Your cache when doing so in order to avoid accessing a prior version of these Terms.
- 18.4 In the event that You fail to monitor any modifications to or variations of these Terms, You agree that such failure shall be considered an affirmative waiver of Your right to review the modified or varied Terms.

19 THIRD PARTY LINKS

- 19.1 You hereby acknowledge that We may from time to time include links or references to other websites, other content or other materials (hereinafter "Third Party Links"), none of which are controlled by Us.
- 19.2 You hereby acknowledge that these Third Party Links are provided for Your information only and that We do not make any representations, warranties or guarantees as to the accuracy, completeness, performance, reliability, timeliness, quality or suitability for a particular purpose of these Third Party Links. We do not endorse, approve or support these Third Party Links. You use the Third Party Links at Your own risk.

20 AFFILIATE MARKETING AND ADVERTISING

- 20.1 Through the Platforms and other Items, We may engage in affiliate marketing whereby We receive a commission on or a percentage of proceeds of sales of Third Party Goods and Services that occur through Our Platforms and other Items.
- 20.2 Through the Platforms and other Items, We may accept advertising and sponsorships from commercial businesses whereby third parties pay Us to advertise on the Platforms or through Our other Items, or We may receive other forms of advertising compensation.

21 MARKETING AND PROMOTIONAL MATERIALS

- 21.1 You authorise Us to use Your business name and logo for Our own business promotional, marketing and advertising purposes including but not limited to by using Your business name and/or logo on Our Platforms, in press releases, or in other promotional or marketing materials ("Promotional Materials").
- 21.2 If You do not wish to have Your business name and logo used in Our Promotional Materials, You may inform Us in writing of such refusal (email is sufficient), and upon being notified of such refusal We will remove any reference to Your business from Our Platforms and any other online Promotional Materials which We control. Will not use Your business name or logo in any future Promotional Materials unless again authorised by You.
- 21.3 In the event that, before being notified of Your refusal, We have already published or distributed Promotional Materials which include Your business name and/or logo ("Existing Promotional Materials"), and We no longer control these Existing

Promotional Materials (for example, because they were published on a third party website, or appeared in a newspaper which has already been distributed), You agree that Your business name and/or logo may continue to appear in these Existing Promotional Materials.

22 CHANGES TO PLATFORM

- 22.1 You acknowledge and agree that We may, in Our sole discretion, vary, alter, amend, change or update the Content, Materials or the Platforms at any time.
- 22.2 We will notify You of any material variations, alterations, amendments, changes or updates as soon as reasonably practicable.
- 22.3 If You reasonably believe that any such variation, alteration, amendment, change or update materially affects Your use of the Platforms or any other Items, You may notify Us and, if We are not able to resolve the issue to Your reasonable satisfaction prior to it becoming effective, You may terminate the Agreement with immediate effect by notice in writing to Us.
- 22.4 You acknowledge, agree and accept that the Platforms may be unavailable from time to time (whether it is unavailable due to maintenance or for any other reason).
- 22.5 You acknowledge, agree and accept that We take no responsibility for, and to the maximum extent permitted by law We shall not be liable in any way for the Items being temporarily unavailable, whether due to reasons within Our control or not.

23 INTELLECTUAL PROPERTY

- 23.1 The Items contain intellectual property that is owned by Us and/or that is licensed to Us. This includes, but is not limited to, the contents, layout, design, colours, appearance, graphics and imagery of the Platforms, Content, Materials and Goods as well as all copyrights, trademarks, trade secrets, patents and other intellectual property contained in the Items, excluding any Customer Data (hereinafter "Company IP").
- 23.2 You hereby acknowledge and agree that, as between Us and You, We own all Company IP and that nothing in these Terms amounts to a transfer of any Company IP from Us to You.
- 23.3 You hereby acknowledge and agree not to use Company IP for any unlawful or infringing purpose.

- 23.4 You hereby acknowledge and agree not to reproduce or distribute Company IP in any way (other than as permitted by this Agreement), including electronically or via registration of any new trademarks, trade names, service marks or Uniform Resource Locators (URLs) without express written permission from Us.
- 23.5 You shall own all right, title and interest in and to Your Customer and Account Data, as well as any data that is based on or derived from the Customer Data and Account Data provided to You as part of the Services.
- 23.6 Subject to clause 23.5, We shall own and retain all right, title and interest in and to:
- (a) the Services, all improvements, enhancements or modifications thereto;
 - (b) any software, applications, inventions or other technology developed in connection with the Services or support; and
 - (c) all intellectual property rights related to any of the foregoing.
- 23.7 Notwithstanding anything to the contrary, We shall have the right to collect and analyse data and other information relating to the provision, use and performance of the Platforms and other Items, Services and related systems and technologies (including, without limitation, Account Data and information concerning Customer Data and data derived therefrom). We will be free (during and after the term) to use such information and data to improve and enhance the Services, Platforms and other Items and for other development, diagnostic and corrective purposes in connection with the Services and Our other offerings, and We may disclose such data solely in aggregate or other de-identified form in connection with Our business.
- 23.8 In the event that You provide Us with data relating to third parties such as Your clients or customers ("Third Party Data"), You warrant and represent that You have full legal authority to provide such Third Party Data to Us, and You indemnify Us and keep Us indemnified against all claims by any third party in relation to the Third Party Data.
- 23.9 No rights or licences are granted except as expressly set out in these Terms.
- 23.10 All of the provisions of this clause in relation to "Intellectual property" shall survive any termination of the Agreement.

24 REGISTRATION

- 24.1 You may be asked to register with Us in order to create a Team so that You can access the Platforms or other Items and create Member Accounts. Your Team members may also be asked to register with Us in order to create a Member Account.

- 24.2 If You register with Us, You may be asked to provide personal details such as Your name, email address, billing address, company name and Australian Business Number ("**Billing Information**"). You will also choose a username and a password ("**Registration Information**"). This Registration Information will allow You to access the Platforms and other Items.
- 24.3 You acknowledge that You are responsible for ensuring the accuracy of any Identifying Information including Your Billing Information and Your Registration Information that You provide as part of the registration process.
- 24.4 You agree that You will not share Your Registration Information with any third party and if You discover that Your Registration Information has been compromised, You agree to notify Us immediately in writing.
- 24.5 You acknowledge that You are responsible for maintaining the safety and security of Your Identifying Information as well as keeping Us informed of any changes to Your Identifying Information.
- 24.6 You acknowledge that providing false or misleading information, or using the Items to further fraud or unlawful activity is grounds for immediate termination of these Terms.

25 PRIVACY

- 25.1 Through Your use of the Platforms or other Items, You may provide Us with some of Your personal information. By using the Platforms or Items, You authorise Us to use Your personal information in Australia and any other country where We operate for the purpose of Us performing Our obligations under this Agreement.
- 25.2 We take Our privacy obligations very seriously. We will handle any personal information You provide to Us in accordance with all applicable privacy laws, including the *Privacy Act 1988* (Cth).
- 25.3 Please refer to Our Privacy Policy for further information about what information We collect, how We use it and store it, and Your rights in relation to it.

26 DATA HOSTING

- 26.1 We will store Customer Data for active accounts for as long as the account remains active. Active accounts are accounts that are on a monthly or annual paid subscription.

- 26.2 We reserve the right to delete Customer Data in inactive accounts after twelve (12) months of the account being inactive.
- 26.3 Result files are very resource intensive. We will store the results file for a given simulation for a minimum twelve (12) months after creation, after which time the file may be deleted. You will be able to rerun the simulations to recreate the results file if they require.
- 26.4 We host Your Customer Data in Australia inside Amazon Web Services. Some data relating to Customer Data may transit and be stored temporarily outside of Australia for logging and monitoring purposes. Our data host may be updated or changed from time to time. It is Your responsibility to ensure that Our data hosting meets Your individual requirements.
- 26.5 Account Data may transit and be stored outside of Australia and provided to third parties for the sole purposes of billing, monitoring and other activities intended to improve the performance of Our Services.
- 26.6 Please refer to Our Privacy Policy for further information about how We handle Your data.

27 REVERSE ENGINEERING AND SECURITY

You agree not to:

- (a) reverse engineer, or attempt to reverse engineer or disassemble any code or software from or on the Items; and
- (b) violate the security of the Items through any unauthorised access, circumvention of encryption or other security tools, data mining or interference with any host, User or network.

28 EMAIL POLICY

- 28.1 You and We are prohibited from using the Items for the purpose of gathering email addresses and/or personal information from people, companies or other organisations and/or for sending bulk emails or unsolicited emails.
- 28.2 Subject to clause 28.1, You agree that We may use Your email to provide You information about the Services, updates and changes to the Services, Us and third party offers solely in relation to the Services that may be sent directly to You or in bulk.

29 FAIR USE POLICY

- 29.1 Our Fair Use Policy sets out some rules regarding fair use limits when You are using the Items.
- 29.2 You agree to comply with Our Fair Use Policy.

30 GENERAL PROVISIONS

- 30.1 **Australian Consumer Law:** You may have certain rights, warranties, guarantees and remedies under the *Australian Consumer Law*, which is contained in the *Competition and Consumer Act 2010 (Cth)*, and these rights, warranties, guarantees and remedies may not be restricted, modified or excluded by Us. Our liability to You is governed solely by these Terms and the *Australian Consumer Law*.
- 30.2 **Applicable law:** Your use of the Platforms and the Items is subject to the laws of Victoria, Australia and each party submits to the jurisdiction of the courts of Victoria, Australia.
- 30.3 **Written communication:** In relation to any correspondence or notification which is required under these Terms to be provided in writing from one party to the other party:
 - (a) such notice is properly given if given to the other party:
 - (i) by email to an email address that the other party has nominated, acknowledged or used in connection with the use of the Platforms or other Items.
 - (ii) by post to a postal address the other party has nominated, acknowledged or used in connection with the use of the Platforms or other Items.
 - (b) such notice is taken to be received:
 - (i) if sent by email, when the email becomes capable of being retrieved by the recipient at the relevant email address.
 - (ii) if sent by prepaid post within Australia, five (5) days after the date of posting.
 - (iii) if sent by prepaid post to or from an address outside Australia, twenty one (21) days after the date of posting.

- 30.4 **No assignment:** You must not assign, sub-licence or otherwise deal in any way with Your rights under these Terms without Our prior written consent.
- 30.5 **Severability:** If any clause or sub-clause of these Terms is held to be invalid or unenforceable, it is to be read down or severed such that the remaining clauses and sub-clauses will be enforced to the maximum extent possible. In such circumstances, the remainder of these Terms shall continue in full force and effect.
- 30.6 **No waiver:** In the event that We fail to enforce any provision of these Terms, this shall not constitute a waiver of any future enforcement of that provision or of any other provision. Waiver of any clause or sub-clause of these Terms will not constitute a waiver of any other clause or sub-clause.
- 30.7 **Headings for convenience only:** Headings of clauses and sub-clauses under these Terms are for convenience only. Headings shall not affect the meaning of any provision of these Terms.
- 30.8 **Parties must take all reasonable steps:** Each party must, at its own expense, take all reasonable steps and do all that is reasonably necessary to give full effect to these Terms and the events contemplated by them.
- 30.9 **Separate agreements:** You may have other legal agreements with Us. Those other legal agreements are separate from and are in addition to these Terms. These Terms do not alter, amend, revise or replace the terms of any other legal agreements You may have with Us.

31 CONTACT US

You can contact Us about these Terms using the following details:

Email: support@orquestra.energy

Post: 54 Summerhill Road, West Hobart, Tasmania Australia 7000

By registering to use the Platforms and/or Services, You agree to be bound by these Terms.