

Orkes Cloud Services Agreement

PLEASE READ THIS Orkes Cloud Services Agreement (“Agreement”). BY USING OR DISTRIBUTING THE SERVICES (DEFINED BELOW) (“Software”), YOU AND ANY ENTITY YOU REPRESENT (“Customer” or “you”) AGREE TO BE BOUND BY THIS AGREEMENT WITH ORKES, INC., A DELAWARE CORPORATION (“Orkes”). IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN DO NOT USE OR DISTRIBUTE THE SERVICES.

By agreeing to this Agreement, you represent that you have full power, capacity and authority to accept the terms of this Agreement. If you are accepting the terms of this Agreement on behalf of an employer or another entity, you and such employer or other entity represent that you have full legal authority to bind such employer or other entity to this Agreement.

This Agreement governs Customer’s use of the Services unless the particular Services are subject to a separate written agreement between Customer and Orkes that is signed by Orkes.

Orkes and Customer may be referred to in this Agreement individually as a “Party” or collectively as “Parties.”

1.

Definitions

1. “Customer Content” means all information, including without limitation all Personal Data, records, files and data entered into, received, processed or stored by or for Customer through the Services including materials posted on or through the Services by Customer Users.

2. “Customer Users” means Customer’s personnel or others interacting with the Services for administration and other use on behalf of Customer.

3. “Personal Data” means any information that identifies, relates to or describes an individual.

2.

Services

1. The Services. This Agreement governs the use of services provided by Orkes (collectively, the “Service” or “Services”). Subject to the terms and conditions of this Agreement, Orkes will use commercially reasonable efforts to make the Services purchased by Customer available, and Customer agrees to receive and pay for such Services.

2. Maintenance. Orkes reserves the right to take down applicable servers hosting the Services and/or access to the Services to conduct maintenance.

3. Support Services and Service Level Agreement. The Services may include support services (“Support Services”) to the extent offered (at no out-of-pocket cost) or purchased by Customer. Support Services are subject to Orkes’ policy applicable to the respective Support Services purchased by Customer. The Services are subject to the applicable service level agreement provided by Orkes at: [Orkes Service Level Agreement](#)

4. License. Subject to the terms and conditions of this Agreement, Orkes grants to Customer a limited, revocable, nonexclusive, non-assignable, non-transferable license and right to access and use the purchased Services and software that Orkes provides to Customer for use in connection with the Services (“Software”) solely in the scope for which Customer has paid for the Services hereunder. The Software is subject to all the limitations and other requirements of this Agreement regarding the Services. Customer shall not use the Services or the Software outside the scope of this license. Customer’s right to use Services is limited to those specific Services purchased by Customer and is subject to the terms and conditions of this Agreement (including without limitation Article 3 (Customer Use Restrictions and

Responsibilities) and Article 5 (Proprietary Rights)). The Software is licensed and not sold. Notwithstanding the foregoing, if Orkes provides another license for the Software, such license shall apply.

5. Customer Cloud License. If an Orkes order form provides that Customer will host the Services on Customer's designated cloud environment ("Customer Cloud"), then the license of Section 2.4 (License) includes the right of Customer to host the respective Software that Orkes provides for the purchased Services and Software solely on the Customer Cloud ("Customer Cloud License"). Customer shall promptly delete all copies of the Services and Software on the Customer Cloud following the Term (defined below).

6. Evaluation License. If Customer obtains an evaluation license for the Services, Customer will have the same license rights as described in Section 2.4 (License) above, except that Customer may use the Services and Software solely for the purpose of internal evaluation and testing of the Services in a non-production environment for the thirty (30) day period following the initial date Orkes provides Customer access of the Service ("Evaluation Period"). Such access to the Services pursuant to an evaluation license is provided "AS IS", without any warranty or indemnification obligation by Orkes of any kind, and without any service level commitment whatsoever by Orkes. Customer will not have any access to any Customer Content on the Service or any access to the Service following the Evaluation Period.

7. Third Party Services. Orkes may host or provide certain third-party services or software on or through the Service ("Third Party Services"). Unless otherwise agreed by Orkes in writing, Customer uses Third Party Services at Customer's own risk, without warranties, obligations and liabilities on behalf of Orkes. The remedies of Customer with respect to any Third Party Services will be limited to whatever remedies may be available from the third party provider of the Third Party Services.

3.

Customer Use Restrictions and Responsibilities

1. Restrictions. Customer will not, in whole or in part, (a) modify, adapt, translate, reverse engineer, make alterations to, decompile, disassemble or make derivative works of the Services; (b) copy, rent, loan, sub-license, lease, distribute or attempt to grant any rights to the Services to third parties other than providing access to Customer Users in accordance with this Agreement; (c) use the Services for any illegal, unauthorized or injurious purpose; (d) use or permit use of the Services outside of the scope purchased by Customer or outside the scope of or in violation of the terms of this Agreement or Orkes policies; (e) interfere with the proper operation of the Services; or (f) circumvent, disable or interfere with any security-related features of the Services or features that enforce limitations on use of the Services.

2. Use by Customer Users. Customer is responsible for the acts and omissions of the Customer Users and shall ensure that Customer Users comply with the applicable terms and conditions of this Agreement.

3. Registration Information and Login Credentials. Customer shall provide accurate registration information (e.g., Customer name, contact information etc.) and shall update such information promptly upon any change. Customer will adopt and maintain security precautions for use of any login credentials for the Services (e.g., user IDs, passwords) to prevent disclosure and use by unauthorized persons, and Customer will promptly notify Orkes upon becoming aware that the security or integrity of any login credentials has been compromised. Customer is entirely responsible for maintaining the confidentiality of Customer's login credentials (including those of Customer Users) and for any and all activities that occur in

association with Customer's account and use of the Services, whether or not authorized by Customer.

4. Customer Cloud Access; Customer Cloud Settings. If Customer holds a Customer Cloud License, Customer shall provide to Orkes all necessary login credentials and access to the Customer Cloud to enable Orkes to install, update and delete (as applicable) the Services and Software and to provide Support Services to Customer. In addition, Customer will provide all information pertaining to the settings and parameters of the Customer Cloud ("Customer Cloud Settings") reasonably requested by Orkes and Customer will promptly notify Orkes of any changes to the foregoing. Customer shall use the Orkes-specified settings for the portion of the Customer Cloud that runs the Software ("Orkes-Specified Cloud Settings").

5. Privacy and Security. As between Customer and Orkes, Customer is solely responsible for (a) obtaining any authorizations, consents, releases and permissions that are necessary or desirable for Customer's processing, use, re-use and/or dissemination of Customer Content accessible through the Services, (b) ensuring that its use, re-use and dissemination of such Customer Content is in compliance with applicable laws and (c) using and configuring its use of the Services as needed to comply with user data access and deletion requests. Customer will maintain and publish a privacy policy for Customer Users and the public that complies with applicable law and allows Orkes to collect and process Customer Content transmitted through the Services. It is Customer's, and not Orkes', responsibility to protect Customer's Content, including without limitation, by implementing and maintaining reasonable data protection protocols.

4.

Fees and Payment

Customer agrees to pay all applicable fees and charges for the Services. All such fees and charges shall be paid in full in advance of commencement of the applicable Services or renewal thereof. Customer will pay other charges invoiced within thirty (30) days of invoice by Orkes. Unpaid fees and charges are subject to interest of one and one-half percent (1.5%) per month, or the maximum interest rate permitted by law, whichever is lower, plus reasonable cost of collection. All applicable fees and charges for the Services are exclusive of taxes and Customer shall pay any taxes required to be paid by Customer under applicable law relating to Services provided to Customer other than taxes based on Orkes' net income. If Customer makes payment by credit card, Customer agrees to be bound by the payment processing terms of Orkes' third-party credit card processor and authorizes Orkes to provide Customer's credit card information to such third-party credit card processor.

5.

Proprietary Rights

1. Services Ownership. Orkes (and its licensors, as applicable) retains all right, title and interest in and to the Services including, without limitation, all technology and information (other than Customer Content) received by or developed by Orkes in connection with the offering or operation of the Services. Except as expressly provided herein, Orkes and its licensors do not grant Customer (or Customer Users) any express or implied rights to the Services. For the avoidance of doubt, Orkes' ownership of the Services includes ownership of all Software.

2. Customer Content. Except as provided in this Section 5.2 (Customer Content), Orkes does not claim any ownership rights in any Customer Content, and Customer acknowledges and agrees that Orkes does not have responsibility to review Customer Content and that Orkes has no control rights over Customer Content. Customer hereby grants to Orkes a non-exclusive, worldwide, royalty-free, fully-paid-up, right and license to copy, distribute, display and use the Customer Content to perform Orkes' obligations under this Agreement, to perform and improve the Services, and as required to comply with law.

3. Prohibited Use. Customer agrees not to use, facilitate or allow any third party to use the Services:

- for any illegal or fraudulent activity;
- to violate the rights of others;
- to threaten, incite, promote, or actively encourage violence, terrorism, or other serious harm;
- for any content or activity that promotes child sexual exploitation or abuse;
- to violate the security, integrity, or availability of any user, network, computer or communications system, software application, or network or computing device; or
- to distribute, publish, send, or facilitate the sending of unsolicited mass email or other messages, promotions, advertising, or solicitations.

Orkes may investigate any suspected violation of this Section 5.3 (Prohibited Use), and remove or disable access to any materials in violation of this Section 5.3 (Prohibited Use). Customer agrees to cooperate with Orkes to remedy any violation of this Section 5.3 (Prohibited Use), as such remediation plan is determined by Orkes in its sole discretion.

4. Feedback and Usage Data. Customers are not obligated to provide Orkes Feedback (defined below) other than as necessary to receive support regarding defaults in the Services. To the extent that Orkes receives from Customer (including from any Customer User) any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Services or any other Orkes products or services ("Feedback"), Customer hereby grants to Orkes a non-exclusive, perpetual, irrevocable, non-terminable, worldwide, royalty-free, fully-paid-up, sublicensable right and license to copy, distribute, display and create derivative works of and otherwise use such Feedback without restriction, including to improve the Services and to develop, market, offer, sell and provide other products and services. Orkes may collect (including under the Customer Cloud License, if applicable) data regarding Customer's use of the Services as well as telemetry data ("Usage Data"). Orkes has and Customer grants Orkes the right to use perpetual, irrevocable, non-terminable, worldwide, royalty-free, fully-paid-up, sublicensable right and license to use the Usage Data to including to improve the Services and to develop, market, offer, sell and provide other products and services.

6.

Confidential Information

1. "Confidential Information" means: (a) tangible disclosures marked as "Confidential," "Proprietary," or that bear any other appropriate notice indicating the confidential nature of such information, and (b) information disclosed orally or visually that is identified as "Confidential" by a disclosing Party at the time of disclosure. The non-public aspects of the

Services, including its source code, underlying algorithms and associated technology, are Orkes Confidential Information regardless of whether marked and are hereby identified as confidential.

2. General. Each Party receiving Confidential Information ("**Receiving Party**") agrees to retain in strict confidence, and use only for matters related to this Agreement, all Confidential Information disclosed by another Party ("**Disclosing Party**").

3. Exclusions. The obligations regarding Confidential Information do not apply to information that: (a) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) the Receiving Party can demonstrate to have had rightfully in its possession and without restriction prior to disclosure hereunder; (c) is independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information, as can be shown by the written records of the Receiving Party; (d) is lawfully obtained, without restriction, from a third party who has the right to make such disclosure; or (e) is released for publication by the Disclosing Party in writing.

4. Protection of Confidential Information. Each Party agrees to protect the other's Confidential Information to the same extent that it protects its own confidential information of a similar nature and will take reasonable precautions to prevent any unauthorized disclosure or use of Confidential Information to third parties. The Receiving Party is responsible for compliance with and any breach of this Agreement by its contractors and must have, prior to providing Confidential Information of the Disclosing Party to any contractor, a written confidentiality agreement protecting such Confidential Information from unauthorized disclosure or improper use.

5. Authorized Disclosures. Notwithstanding anything to the contrary in this Article 6 (Confidential Information), the Receiving Party may disclose Confidential Information of the Disclosing Party as required to be disclosed by applicable law.

7.

Warranty

1. Limited Warranty. Unless otherwise specified in Orkes' order form or agreement that references this Agreement, Orkes warrants to Customer that during the term of the Services ("**Warranty Period**"), the Services will be performed in a professional and workperson-like manner with personnel that are trained to provide such Services.

2. Warranty Remedy. If during the Warranty Period, Customer reports substantial non-conformance with the above Services warranty, Orkes shall, as Customer's sole and exclusive remedy, make commercially reasonable efforts to correctly reperform the respective Service. Customer shall provide Orkes notice during the Warranty Period identifying any non-conformity to Software Warranty and shall provide detail as requested by Orkes to identify the nature of the non-conformity and conditions under which it appears.

3. Exclusions. Orkes provides no warranty for the following or nor shall Orkes have any liability or claim arising from any of the following: (i) software and equipment of Customer or any third party (including any Third Party Services or the Customer Cloud); (ii) directions, designs, plans or specifications furnished by or on behalf of Customer (including any Customer Cloud Settings); (iii) unauthorized use, or use of the Services in violation of this Agreement or other terms with Orkes; (iv) Customer's failure to comply with applicable law, or failure to obtain any authorizations, consents, releases or permissions that are necessary for Customer's use of the Services provided by Orkes; (v) any data provided by Customer or third party; (vi) the business activities of Customer or third party through the use of the Services; (vii) modification of the Services made other than by Orkes;

(viii) failure of Customer to use an updated or modified Services provided by Orkes, including those provided to avoid error or infringement; or (ix) use of the Services after termination of this Agreement (collectively, “**Exclusions**”).

4. Customer Responsibility. Customer represents and warrants that (a) Customer has the authority to enter into this Agreement and (b) Customer’s use of the Services will comply with all applicable law. Customer is solely responsible for any issues arising from any Exclusion. Customer, and not Orkes, is solely responsible for any warranties and covenants Customer makes in connection with the Customer’s products and services as well as the Services and any results thereof, and any resulting claims from any customers or other third party. Without limiting the foregoing, Customer is responsible for verifying and validating the suitability and reliability of the Services for all of Customer’s use thereof. Further, Customer must take prudent steps to protect against failures when the Services or results thereof is incorporated in a system or application, including providing back-up and shut-down mechanisms.

5. Warranty Disclaimer. THE FOREGOING LIMITED WARRANTIES AND REMEDIES PROVIDED BY ORKES ARE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ORKES DISCLAIMS ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES, SOFTWARE OR ANY OTHER MATERIALS OR ACTIVITIES PROVIDED BY ORKES HEREUNDER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.

Limitations of Liability

1. IN NO EVENT WILL ORKES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY SERVICES, INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF THE ALLEGEDLY LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2. IN NO EVENT WILL THE TOTAL LIABILITY OF ORKES IN THE AGGREGATE OVER THE TERM OF THIS AGREEMENT FOR ALL CLAIMS, CAUSES OF ACTION OR LIABILITY ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND/OR THE SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE (COLLECTIVELY, “CLAIMS**”), EXCEED THE TOTAL FEES PAID BY CUSTOMER TO ORKES FOR THE SERVICES THAT GAVE RISE TO THE CLAIMS IN THE TWELVE (12) MONTHS BEFORE THE LIABILITY AROSE.**

3. Allocation of Risk. The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of essential purpose of any limited remedy. Customer and Orkes each acknowledge and agree that the limitation of liability provisions of this Section 8.3 (Allocation of Risk) reflect an informed, voluntary allocation between them of the risk associated with Customer’s use and receipt of the Services and, but for this provision, Orkes would not have made the Services available to Customer at the prices contemplated under this Agreement.

4. **Applicable Law.** The warranty disclaimer and limitations of liability set forth in this Agreement shall not apply to the extent prohibited by law, or to the extent that statutory rights cannot be excluded, limited or waived, in which case the disclaimer or limitation shall be modified to disclaim and/or limit in accordance with applicable law.

5. **Force Majeure.** Except with respect to any payment obligations, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, natural disasters, epidemics, pandemics, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party (each, a “**Force Majeure Event**”).

9.

Indemnification

1. **Orkes Indemnity.** Orkes shall defend any action brought against Customer to the extent that it is based upon a claim that the Services, as provided by Orkes to Customer under this Agreement and used within the scope of this Agreement, infringe any copyright or misappropriate any trade secret of a third party under the laws of the United States (an “**Indemnity Claim**”), and shall pay any costs, damages and reasonable attorneys’ fees attributable to such claim that are awarded against Customer. Notwithstanding the foregoing, Orkes shall have no liability for any claim of any kind to the extent it results from any Exclusion.

2. **Sole Remedy.** The foregoing provisions of this Article 9 (Indemnification) set forth Orkes’ sole and exclusive obligations, and customer’s sole and exclusive remedies, with respect to infringement of intellectual property rights of any kind.

3. **Customer Indemnity.** Customer agrees to indemnify and hold Orkes and its directors, employees, agents, members and distributors harmless from any cost, liability or loss relating to any Exclusion(s).

4. **Indemnification Procedure.** The indemnified Party agrees to: (i) promptly notify the indemnifying Party of the claim; (ii) provide the indemnifying Party with reasonable information and assistance, at the indemnifying Party’s expense, to defend or settle such claim; and (iii) tender the indemnifying Party control of the defense or settlement of such claim, subject to the indemnifying Party promptly doing so and providing reasonable assurance of its continuing ability to do so. The indemnified Party reserves the right to retain counsel and to participate in the defense and settlement of any such claim, which participation shall be at the indemnified Party’s expense so long as the indemnifying Party is carrying out its duty to defend.

10.

Audit

Customer shall retain records regarding use of the Service. Orkes and its auditors have the right to inspect such records to verify compliance the Agreement. In the event that the audit reveals non-compliance, Customer shall pay the cost of the audit.

11.

Modifications to the Agreement and Other Changes; Privacy Policy

1. **Modifications to the Agreement.** Orkes may change the Agreement by posting a revised version of the Agreement on the Orkes website, providing Customer notice in accordance with Section 13.7 (Notices) or receiving Customer’s online acceptance of a revised version provided via the Orkes website. The modified terms will be effective upon the posting, notice or online acceptance respectively. Orkes will not increase pricing applicable to an Order Term during the Order Term (defined below), though Orkes may increase pricing after the Order Term or

outside of the scope of the Order Term. By continuing to use the Services after the date of modification, Customer agrees to be bound by the modified terms.

2. **Other Changes.** In the event Orkes makes any material changes or updates to its commitments regarding security, confidentiality or availability, Orkes will endeavor to provide the changes or updates on the Orkes website or by providing Customer notice in accordance with Section 13.7 (Notices).

3. **Orkes Privacy Policy.** Orkes' privacy policy on the Orkes website discloses how Orkes handles, protects and uses Personal Data.

12.

Term and Termination

1. **Term of Agreement.** This Agreement shall continue in effect until terminated as provided herein ("**Term**").

2. **Termination for Convenience.** Either Party may terminate the Agreement for convenience at any time by providing the other Party at least thirty (30) days advance written notice or notification of such termination; **provided, however,** if the Customer has committed to subscribe to the Services for at least a minimum period (e.g., a one (1) or three (3) year commitment period, instead of "on demand" usage without an express time commitment) ("**Order Term**"), neither Party may terminate the Agreement for convenience during such period.

3. **Termination for Cause.** Either Party may, by giving written notice to the other Party, terminate this Agreement if the other Party commits a material breach of this Agreement, and fails to cure such breach within thirty (30) days after receipt of written notice of breach from the other Party.

4. **Termination for Bankruptcy or Other Circumstances.** A Party may terminate this Agreement if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

5. **Right to Suspend the Services.** Orkes reserves the right, but not the obligation, to immediately suspend Customer's or Customer Users' ability to access and use the Services if Orkes has reason to believe that Customer's or Customer Users' use of the Services is or is likely to become non-compliant with this Agreement (including for non-payment) or applicable law, or the subject of a lawsuit or material dispute.

6. **Customer Content.** Without further notice to Customer, Orkes may (but is not required to) destroy any Customer Content that still resides on Orkes' systems thirty (30) days after the termination or expiration of this Agreement.

7. **Effect of Termination or Expiration.** Orkes is not liable for any loss or damage caused by termination of the Service upon termination or expiration of the Agreement.

8. **Survival.** The following provisions will survive any termination or expiration of this Agreement: Article 1 (Definitions), Article 4 (Fees and Payments) (with respect to fees and other charges applicable to the Term of this Agreement), Article 5 (Proprietary Rights), Article 6 (Confidential Information), 7.4 (Customer Responsibility), 7.5 (Warranty Disclaimer), Article 8 (Limitations of Liability), Article 9 (Indemnification), Article 10 (Audit), Article 12 (Term and Termination) and Article 13 (General).

13.

General

1. **Assignment, Successors.** No right or license under this Agreement may be assigned or transferred by either Party, except that Orkes may transfer or assign this Agreement to any affiliate, to any successor entity, or to an acquirer of all or substantially all of the business, stock or assets of Orkes relevant to this Agreement. Any assignment, transfer or delegation in contradiction of this provision will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and assigns of Customer and Orkes.

2. **Publicity.** Orkes may make reasonable use of Customer's name in Orkes' promotional and marketing documentation identifying Customer as a user of the Services.

3. **Force Majeure.** Notwithstanding any other provision of this Agreement, no Party to this Agreement will be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance (except for the payment of money) due to any cause beyond the reasonable control of, and without fault or negligence by, such Party or its officers, directors, employees, agents or contractors.

4. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, USA and the laws of the United States applicable therein without reference to conflict of law or choice of law principles that would cause the application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Agreement. Those who choose to access the Services from outside of California do so on their own initiative and are responsible for compliance with local laws if and to the extent local laws are applicable.

5. **Jurisdiction and Venue.** The Parties agree to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California for any and all disputes, controversies or claims arising under, relating to or in connection with this Agreement, in any manner whatsoever, whether in contract, tort, under statute or otherwise, and including any dispute regarding the existence, validity or enforceability of the this Agreement.

6. **Statute of Limitations.** Regardless of applicable law to the contrary or the applicable dispute resolution process, any claim or cause of action arising out of or related to use of the Services or under this Agreement must be filed within one (1) year after such claim or cause of action arose.

7. **Notices.** All notices required or permitted under this Agreement shall be in writing, addressed in each case to the address identified below.

To Orkes: To the address provided on Orkes' website or such other address as may be specified by Orkes in writing to Customer.

To Customer: To the address provided by Customer during registration for the Service. Orkes may provide notice to the email or physical address provided during registration at Orkes' discretion.

8. **Export.** Customer shall not export or re-export, directly or indirectly, any Services or technology disclosed hereunder or direct product thereof to any destination prohibited or restricted by the applicable export control regulations, without the prior authorization from the appropriate governmental authorities.

9. **Commercial Item Software.** Any use, modification, reproduction, release, performance, display or disclosure of the Services by the U.S. or other government shall be governed solely by this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

10. **Independent Contractors.** This Agreement does not create a partnership or joint venture between the Parties.

11. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Orkes and Customer with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, agreements and undertakings between the Parties with respect to such matters. No inconsistent or additional terms or conditions in any document provided by Customer, including any billing instrument, purchase orders, RFPs, bills of lading or the like shall apply to this Agreement or the activities hereunder, and any such additional terms or conditions are hereby rejected. Except as provided in Article 11 (Modifications to the Agreement and Other Changes; Privacy Policy), this Agreement may be amended only by an instrument in writing executed by the Parties or their permitted assignees.

12. Waiver. Neither Party will be treated as having waived any rights by not exercising or delaying the exercise of any right under this Agreement.