

GENERAL TERMS AND CONDITIONS

Version 2.0
28 February 2025

1. SCOPE OF THESE GTC

- (a) These general terms and conditions (the "**GTC**") shall govern the Customer's access to and use of the Cloud Service and other Tools provided by Adastra Sustainability SA, Route de Chevrier 18, 1244 Choulex, Switzerland ("**Service Provider**"), to Customer as set forth in the respective Order.
- (b) Service Provider reserves the right to modify these GTC from time to time. It will provide Customer notice of any modification.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these GTC:

"**Affiliate**" means any entity which, directly or indirectly, controls, is controlled by or is under common control with another entity, and for the purposes of this definition, "**control**" (including, with correlative meanings, the terms "controlled by" or "under common control") means the power to direct or cause the direction (through the election or appointment of the persons who direct) of the management and policies of any entity, whether through the ownership of securities, by contract or otherwise.

"**Agreement**" means these GTC and the Order regarding the subscription to the Cloud Service entered into between the Parties in accordance with Clause 2.

"**Available**" has the meaning assigned to such term in Clause 6.2.1(a), and "**Availability**" shall be read correspondingly.

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open for the transaction of banking business in Geneva, Switzerland, if the term "Business Day(s)" is used in relation to the Service Provider, or at the corporate seat of the Customer, if the term "Business Day(s)" is used in relation to Customer, respectively.

"**CC BY-NC**" means the Creative Commons license of the same designation, also referred to as "Attribution-NonCommercial 4.0 International", as found [here](#).

"**Cloud Service**" means the cloud offerings Orbae and Orbae Pro of the Service Provider, which calculate the environmental impacts of land conversion in agricultural value chains for any commodity and geography, at any level of traceability (i.e. the Environmental Data). The term "Cloud Service" shall include all Environmental Data, Third-Party Data and Derivative Data provided to the Customer through it (unless otherwise stated in these GTC), all releases, and all other updates, upgrades, bug-fixes, improvements, modifications, and derivative works thereto made available by Service Provider to Customer. Orbae and Orbae Pro have a different set of features and are subject to different license terms, as set out below.

"**Confidential Information**" means all information and data, and all documents and other tangible materials and things which record it, relating to or used in a Party's business, whether or not owned by a Party or any of its Affiliates, which is not generally known to the public or to the other Party or its competitors, and was disclosed by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"). Confidential Information does not include any information that:

- (a) is in or comes into the public domain other than as a result of a disclosure by the Receiving Party;
- (b) was known to the Receiving Party or was in its possession prior to it being furnished by or on behalf of the Disclosing Party, unless furnished by the Disclosing Party during a request for proposal and/or in the negotiations phase leading up to the conclusion of these GTC;
- (c) becomes available to the Receiving Party from a source other than the Disclosing Party, without such disclosure being a breach of confidentiality; or
- (d) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

"**Consulting Services**" has the meaning assigned to such term in Clause 4(f).

"**Customer**" means the Party to the Order indicated to be the customer.

"**Customer Data**" means all information and data provided by or on behalf of the Customer to the Service Provider by way of using the Cloud Service. All Customer Data shall be Confidential Information.

"**Derivative Data**" means any data derived from Environmental Data or Third-Party Data by the Cloud Service and/or any Tool.

"**E-Signature**" means an electronic signature that is that is provided using an e-signature service provider such as DocuSign or Skribble.

"**Environmental Data**" means the jurisdictional direct land use change (jdLUC) data, in the form of emission factors per kilogram of product or total emissions per jurisdiction, including all of the underlying data, in particular the different types of land use change emissions (i.e. from forest, grassland, pastureland and peatland) and the different sources of land use change emissions (i.e. from different carbon pools), and any other downloadable data, provided to the Customer through the Cloud Service or any Tool, excluding Third-Party Data.

"**Fees**" shall mean the fees or other charges for the Services performed by Service Provider pursuant to the Agreement

"**Force Majeure Event**" has the meaning assigned to such term in Clause 16.

"**General Support Request**" means any request of the Customer that is made towards the Service Provider that does not relate to an Incident.

"**Incident**" means any unavailability of the Cloud Service and any erroneous behavior of the Cloud Service's functionality.

"**Intellectual Property**" means any trademarks, trade names, business names, brand names, domain names, service marks, copyrights, including any performing, author or moral rights, designs, inventions, patents, franchises, formulas, processes, know-how, technology and related goodwill, and any patent applications, patent registrations, issued patents, continuations in part, divisional applications or analogous rights or license rights therefore, and all other intellectual or industrial property.

"**Intellectual Property Rights**" means any and all rights in and to Intellectual Property.

"**Interconnection Point**" means the interface of the router connecting the data center used by the Service Provider for the hosting of the Cloud Service to the Internet.

"**License**" has the meaning assigned to such term in Clause 3.1(a).

"**Maintenance Window**" has the meaning assigned to such term in Clause 4(e).

"**Minimum Term**" means the minimum term of the Agreement set out in the Order.

"**Nominated User**" means a User of the Customer who has been agreed between the Parties may contact the Service Provider's service desk.

"**Order**" means an order regarding the subscription to the Cloud Service and/or other Tools, Consulting Services and/or Support Services entered into between the Parties in accordance with Clause 2. For clarity, the term "Order" shall include only bilaterally agreed orders, and shall exclude purchase orders or similar documents created by the Customer.

"**Permitted Affiliates**" shall be Affiliates of the Customer who may access the Cloud Service pursuant to the Order.

"**Permitted Contractors**" means suppliers and consultants of the Customer who may access the Cloud Service pursuant to the Order.

"**Recurring Fee**" means the recurring fee owed by the Customer to the Service Provider for the making available of the Cloud Service.

"**Update**" means any change to the Cloud Service that the Service Provider provides to all of its customers.

"**Service Hours**" means Monday-Friday, 08:00-18:00 CET, excluding public holidays in the Canton of Geneva, Switzerland.

"**Service Provider**" has the meaning assigned to such term in Clause 1(a).

"**Service Provider's Worker**" shall mean any director, officer, employee, agent, representative, contractor or subcontractor of, or under the control and direction, of the Service Provider or an Affiliate of the Service Provider.

"**Services**" means any services to be provided by the Service Provider to the Customer under the Agreement.

"**Severity Levels**" or "**Levels**" have the meaning assigned to such terms in Clause 6.1.

"**Support Services**" has the meaning assigned to such term in Clause 4(f).

"**Third-Party Data**" means data licensed to the Service Provider by a third party and provided to the Customer through the Orbae Pro Cloud Service or any other Tool or Service; Third-Party Data can be identified by the Customer using the documentation provided by the Service Provider.

"**Tool**" means any other software tools provided by the Service Provider under an Order, including Excel-based tools.

"**Tax**" means any tax, duty, or levy imposed by any governmental body.

"**User**" means a named, human user of the Cloud Service, who has an individual login for the Cloud Service.

"**VAT**" means any consumption and use, goods and services, harmonized sales, value-added, sales and other similar Taxes that ultimately are levied on Services.

1.2 Interpretation

- (a) Any term denoting the singular shall be interpreted to also denote the plural and vice versa.
- (b) Any reference to a "**Clause**" shall be deemed to be a reference to a clause of these GTC unless the circumstances provide otherwise.
- (c) "**Including**" shall be deemed to mean "including (without limitation)".

2. ORDERING PROCESS

- (a) The Agreement is concluded by:
 - (i) the Customer placing an Order for any Services (other than the Orbae Cloud Service). The Order form to be used by the Customer is prepared by Service Provider; or
 - (ii) the Customer creating an account for the Orbae Cloud Service.
- (b) The Agreement shall be subject to and incorporate these GTC.
- (c) The Agreement to have been concluded, on the earlier of:
 - (i) Customer having placed an Order with Service Provider (e-mail or E-Signatures being sufficient);
 - (ii) an account for the Cloud Service having been opened for the Customer; or
 - (iii) any act by Customer consistent with placing or having placed the Order, including the usage of the Cloud Service.
- (d) These GTC apply to the Agreement to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, purchase order, or course of dealing.

3. LICENSE

3.1 License Grant

- (a) The Service Provider grants the Customer a right to use the Environmental Data provided through the Cloud Service and/or any Tools for the commodity(ies), country(ies) and calendar year(s) as provided by the Cloud Service and/or any Tools on the data the Customer enters into the Cloud Service (the "**License**"). The Cloud Service is made available by the Service Provider to the Customer as a SaaS solution.
- (b) The Customer may only permit its Permitted Affiliates and its Permitted Affiliates' employees as well as its Permitted Contractors and its Permitted Contractors' employees to access the Cloud Service and any Tools on its behalf, which use shall always be subject to the terms of these GTC, if expressly set out in the Order. The Customer shall be responsible and liable for its Permitted Affiliates' and its Permitted Contractors' use of the Cloud Service and the Tools, and any breach of the terms of these GTC by the Permitted Affiliates or Permitted Contractors of the Customer shall be deemed to be the Customer's breaches thereof.
- (c) The Cloud Service may be accessed using the Cloud Service's web interface.

3.2 License Terms and Restrictions with respect to the Cloud Service and the Tools

- (a) The License is a non-exclusive, non-transferable, non-sublicensable right to use the Cloud Service and any Tools as provided by the Service Provider for the Customer's own business purposes.
- (b) The License shall begin on the effective date of the Agreement (as set out in the Order) and shall expire upon the termination of the Agreement. Notwithstanding the foregoing, the Customer shall have the right to continue to use the Environmental Data downloaded by it from the Cloud Service before the termination of this Agreement for an indefinite amount of time, it being understood that the Environmental Data shall remain subject to the terms and conditions of the License.
- (c) Customer shall not permit any third parties (except for the Permitted Affiliates) to access and/or use the Cloud Service and any Tools or otherwise make the Cloud Service or such Tools available to any such third parties or use the Cloud Service or any Tools on behalf of any such third parties without the Service Provider's prior written consent.
- (d) Except as explicitly permitted by these GTC, the Customer shall not (i) modify, translate, disassemble, create derivative works of the Cloud Service or any Tool or copy the Cloud Service or any Tool; (ii) rent, lend, transfer, distribute or grant any rights in the Cloud Service or any Tool in any form to any person; (iii) publish any benchmark or performance

tests run on the Cloud Service or any Tool or any portion thereof; or (iv) remove any proprietary notices, labels or markings on the Cloud Service or any Tool.

- (e) The Service Provider shall have the right to analyze the Customer's usage of the Cloud Service in order to prevent unauthorized usage and to take any and all measures necessary or useful to prevent or terminate any unauthorized usage. For the avoidance of doubt, no personal information of end-users will be accessed by the Service Provider.
- (f) The Customer shall be and remain responsible and liable for the usage of the Cloud Service or any Tools by its Permitted Affiliates and Permitted Contractors, and it shall ensure that such Permitted Affiliates and Permitted Contractors adhere to the restrictions relating to the usage of the Cloud Service set out in these GTC.

3.3 License to the Environmental Data

- (a) All Environmental Data made available through the Cloud Service or any Tools shall be subject to CC BY-NC, it being understood that as opposed to CC BY-NC, the following commercial uses shall be permitted:

- (i) Customer's business strategy and operations; and
- (ii) Provision of consultancy or advisory services with respect to third parties' business strategy and operations,

each including and limited to the following target work products:

- (iii) corporate footprints;
- (iv) product footprints and life cycle assessments;
- (v) climate roadmaps;
- (vi) greenhouse gas reporting;
- (vii) CSR or ESG reporting;
- (viii) supplier engagement programs;
- (ix) procurement strategies;
- (x) investment strategies; and
- (xi) internal and external communications.

- (b) For clarity, Environmental Data must not be used under any circumstance for any commercial use other than those explicitly permitted above, including use in commercial databases, tools, services or software.

3.4 License to the Third-Party Data and any Derivative Data

Third-Party Data and Derivative Data may:

- (a) be used for the Customer's internal business purposes;
- (b) be used for the additional commercial purposes set out in Clause 3.3(a);
- (c) not be used for any other commercial purpose;
- (d) not be copied for, published or otherwise made available to any third-party;
- (e) not be integrated into other bodies of data such as public or commercial databases, tools, services or software.

4. SERVICES

- (a) The Service Provider shall provide the Cloud Service to the Customer as a SaaS solution accessible over the Internet. Subject to the Service Levels set out in Clause 6, the Cloud Service will be operated on a continuous (i.e. 24 hours x 7 days) basis.
- (b) The Service Provider shall not be responsible for the availability of the connection between the Interconnection Point and Customer's network or clients.
- (c) The Cloud Service shall be accessible to Customer in its then current version. The Service Provider may update the Cloud Service (including the underlying datasets of the Cloud Service and therefore the Environmental Data) to new versions at its discretion and make those updates available to Customer under the Agreement, it being understood that all Updates of the Cloud Service generally available to customers of the Service Provider, including new releases thereof, save for new modules generally distributed by the Service Provider as chargeable additions to the Cloud Service, shall automatically be available to the Customer at no additional charge. Updates shall be notified to Customer reasonably in advance.
- (d) The Service Provider reserves the right to amend the Cloud Service. Such amendments will not materially decrease the scope of operation or functionality of the Cloud Service (to the extent such functionality is in practice used by the Customer) except as specifically agreed by Customer.
- (e) The Service Provider shall notify the Customer reasonably in advance of planned outages of the Cloud Service (each a "**Maintenance Window**") during which the Cloud Service will be unavailable. Maintenance Windows will be notified in advance. The Service Provider reserves the right to use shorter announcement periods should this be unavoidable due to technical or security reasons.

- (f) The Service Provider shall provide to the Customer the Consulting Services set forth in any Order in accordance with these GTC (the "**Consulting Services**").
- (g) The Service Provider shall provide support to nominated users of the Customer set out in the Order (the "**Support Services**").
- (h) As part of the Support Services, the Service Provider shall render the following Services:
 - (i) continuously monitor for Severity Level 1 Incidents and disruptions of the access to the Cloud Service in its sphere of responsibility;
 - (ii) receive Incident reports from the Customer;
 - (iii) analyze and remedy all Incidents reported by the Customer or recognized by the Service Provider's monitoring tools in line with the Service Levels, it being understood that a reasonable workaround shall be acceptable as a temporary remedy.
- (i) Incidents must be reported by the Customer by using the ticket system made available by the Service Provider, which may be operated by a third party, using the dedicated support form. Service Provider reserves the right to change the ticket system at any time with reasonable advance notice to the Customer. Only nominated users of the Customer may submit Incident reports.
- (j) All Incident reports shall be accompanied by a reasonably detailed description of the steps leading to the Incident and a Severity Level classification. Support requests which do not have a Severity Level classification applied to it will be deemed a General Support Request and not an Incident. The Service Provider shall have the right to correct the Severity Level of an Incident if the Severity Level set by the Customer that is evidently incorrect.
- (a) Should an analysis of Incidents reported by the Customer show that such Incidents are not due to the Cloud Service or the operation thereof by the Service Provider, then the Customer shall remunerate the Service Provider's respective analysis efforts on a time and materials basis at the then-current rates of the Service Provider. The same shall apply in case an Incident reported by the Customer cannot be reproduced by the Service Provider.
- (b) Aside from the Support Services, the Service Provider shall have no obligation under the Agreement to render any support or other similar services with respect to the Cloud Service. Any such services shall be rendered solely based on a separate written agreement.

5. SERVICE PROVIDER'S RESPONSIBILITIES

5.1 Handling of Customer Data

- (a) The Service Provider shall:
- (i) store Customer Data in data centers located in Switzerland or in the European Union (the "**Data Centre Location(s)**");
 - (ii) not store any Customer Data outside the data centers without Customer's express prior written consent, it being understood that the Service Provider's Workers located outside of the Data Centre Location may have access to Customer Data when rendering Services under the Agreement. Notwithstanding the foregoing, it is understood that:
 - (iii) monitoring logs may be stored temporarily outside of the Data Centre Location; and
 - (iv) Service Provider Workers may have to temporarily download certain datasets in order to fix errors arising in the usage of the Cloud Service (i.e. for debugging purposes) or for product development analysis purposes, which temporary storage of data shall be deleted promptly once the respective issue has been fixed or analysis made. Prior to performing a download of Customer Data the Service Provider will inform the Customer about the download;
 - (v) the Service Provider has the ability to log into the Cloud Service as Customer Users, which is necessary, and shall also only be used, for the analysis and remedy of Incidents;
 - (vi) upon request by the Customer, provide the customer with a downloadable file containing all Customer Data in machine-readable format;
- (b) The Service Provider will only use Customer Data as necessary to perform the Services and will not use the Customer Data for any other purpose.
- (c) The Service Provider will use industry best practices in handling Customer Data, operating a secure data center and in providing the Services. The Service Provider will use encryption of the Customer Data in transit. In no event will the Service Provider use data protection practices that are less stringent than what a prudent service provider would use in comparable circumstances.
- (d) If the Service Provider becomes aware that any Customer Data within the Service Provider's possession, whether pursuant to providing the Services or otherwise, has been, or reasonably may have been, misappropriated or otherwise accessed, used or disclosed contrary to Applicable Privacy Laws or these GTC (collectively, a "**Data Breach**"), Service

Provider shall promptly notify Customer of the Data Breach and provide all reasonable assistance to Customer in responding to the Data Breach, and reasonably co-operate with the Customer in any remedial actions and provisions of notice to any affected parties. The Service Provider shall bear its own costs and efforts if the Data Breach is due to negligence or intent on the part of the Service Provider (including its employees, officers and its subcontractors).

5.2 Subcontractors

- (a) The Service Provider may subcontract any part of its Service provision under the Agreement (e.g. by usage of a third-party cloud platform vendor or hosting provider) and/or otherwise use third party vendors to render its Services under the Agreement without the prior consent of Customer.
- (b) The current subcontractors used by the Service Provider are set out at <https://adastra.eco/privacy>
- (c) The Service Provider shall be and remain wholly liable for the acts and omissions of any subcontractors as if such acts and omissions had been made by the Service Provider.

6. SERVICE LEVELS

6.1 Severity Levels

In these GTC, the following Severity Levels shall apply:

- (a) Level 1: The Cloud Service cannot be accessed or cannot be used as a whole.
- (b) Level 2: Issues that cause a material degradation of one or more business critical functionalities of the Cloud Service but do not impact the overall operation of the Cloud Service.
- (c) Level 3: Irregularity on parts of the Cloud Service, which affects or disables one or multiple non-business critical functionalities of the Cloud Service.

6.2 Definition of Service Levels

The provision of the Cloud Service and the other Services of the Service Provider shall be subject to the following service levels (collectively, the "**Service Levels**"):

6.2.1 Availability

- (a) The Cloud Service shall be deemed "**Available**" if it is up and running on the Service Provider's infrastructure, the router that connects the Service Provider's infrastructure to the Internet is reachable from outside the data center where the Cloud Service is hosted and no Level 1 Incident is prevailing.

- (b) The Availability of the Cloud Service shall be calculated based on the following formula:

$$a = \frac{t - (dt - w)}{t} \cdot 100$$

where:

- a: Availability in the relevant calendar quarter [%]
- t: Time in the relevant calendar quarter [cumulated, in minutes]
- dt: Downtime of the Cloud Service in the relevant calendar quarter [cumulated, in minutes]
- w: Actual downtime resulting from Maintenance Windows during the relevant calendar quarter [cumulated, in minutes]
- (c) Downtimes due to Force Majeure Events shall be excluded from the above calculation. For the purposes of the calculation of the Availability, the Cloud Service shall be deemed available during such downtimes.
- (d) Times during which the Service Provider is waiting for Customer responses, Customer testing activities or the fulfilment of other Customer tasks shall be deducted from the effective downtime.
- (e) The Service Provider warrants an Availability of the Cloud Service of 99%.

6.2.2 Reaction Times

- (a) The time elapsed between an Incident becoming known to the Service Provider and the Service Provider starting analysis on the cause of the defect or disruption (the "**Reaction Time**") shall be measured by the Service Provider.
- (b) The Service Provider shall in case of defects in the Cloud Service or disruptions of Customer's access to the Cloud Service adhere to the following Reaction Times:
- (i) Level 1: 2 hour;
 - (ii) Level 2: 4 hours;
 - (iii) Level 3: 48 hours.
- (c) Reaction Times shall start once notice regarding an Incident has been received by the Service Provider or Service Provider otherwise becomes aware of an Incident. In case of Incident notices delivered outside of Service Hours, the respective Reaction Time shall begin at the beginning of the following block of Service Hours.
- (d) Reaction Times shall end once the Service Provider has started to analyze the cause for the defect or disruption.

- (e) Reaction Times shall only run during Service Hours.
- (f) It is vital that the Customer submits every Incident report via the Service Provider's support communication channels set out in Clause 4(i). If an Incident is not notified in this way, the Reaction Time do not apply.
- (g) For clarity: Any other requests submitted by the Customer shall not be deemed Incidents, instead they shall be deemed General Support Request and shall not be subject to the Reaction Times set out above.

6.3 Service Levels Reporting

The Service Provider shall track the time in the relevant calendar quarter, the Maintenance Windows and the downtime of the Cloud Service and provide the resulting Availability to the Customer on a quarterly basis if requested by the Customer.

7. USAGE OF THE CLOUD SERVICE BY CUSTOMER

- (a) Use of the Cloud Service shall be at the sole discretion of the Customer, and such use and reliance on the Environmental Data shall be at the Customer's own risk, which includes the correctness and completeness of all Customer Data and the resulting correctness and completeness of all Environmental Data.
- (b) The Customer shall hold the Service Provider harmless from any claims of any of its clients and/or any third party resulting from the Customer's usage of the Cloud Service, and shall fully indemnify the Service Provider against any such claim.

8. RESPONSIBILITIES OF CUSTOMER

- (a) The Customer shall use the Cloud Service solely in accordance with the restrictions set out in these GTC and/or any other contractual documents applicable between the parties.
- (b) The Customer shall promptly notify the Service Provider after becoming aware of any Incident.
- (c) The Customer shall be responsible for the provision of any and all Customer Data necessary for the usage of the Cloud Service, and for their correctness and completeness.
- (d) Furthermore, the Customer shall:
 - (i) provide the Service Provider with such information, co-operation, assistance, facilities and resources as reasonably required and requested by the Service Provider to enable it to perform the Services;

- (ii) provide, operate and maintain all equipment, software, communication devices and services necessary for the Customer to use the Cloud Service, including in particular an up-to-date version of the supported browser(s);
- (iii) safekeeping of User credentials (e.g. passwords) related to the Service;
- (iv) act reasonably and in good faith and give prompt attention to any matter raised by the Service Provider, particularly relating to Customer's obligations and/or the performance of the Services;
- (v) implement reasonable and appropriate business continuity and disaster recovery measures to mitigate against any reasonably foreseeable risks;
- (vi) notify the Service Provider promptly of any concerns or issues that Customer has with the Services provided by the Service Provider.

9. FEES, INVOICES AND PAYMENT

9.1 Orbae

No fees shall be owed for the Orbae Cloud Service.

9.2 Orbae Pro, Tools and other Services

Customer shall owe the Service Provider the fees set out in the Order.

9.2.1 Amendment of Fees

The Service Provider may increase the its fees once a contractual year with effect as of the beginning of the following contractual year, such increase not to exceed the effective rate of inflation (as measured by the consumer price index (*Landesindex der Konsumentenpreise*) published by the Swiss Federal Statistical Office (*Bundesamt für Statistik*)) plus 5% in any given year. The Service Provider shall announce such Fee increase to the Customer three months in advance, whereupon the Customer shall have the right to terminate the Agreement as of the effective date of such Fee increase by giving one month prior written notice.

9.3 Invoicing and payment terms

9.3.1 Invoices

- (a) Invoices shall be due for payment after thirty (30) days from the receipt thereof.
- (b) Payments to Service Provider under the Agreement shall be made in the currency set out in the Order.

9.3.2 VAT

All Fees and rates are quoted excluding VAT and Taxes.

9.3.3 Taxes

- (a) Subject to Clause 9.3.3(b), in the event that Customer is obliged by local law to withhold withholding Taxes due to cross-border billing, the Customer will pay the charge to the Service Provider less of the required withholding or deduction and shall remit the amount so deducted or withheld to the relevant Tax authority.
- (b) If any withholding or deduction is required pursuant to Clause 9.3.3(a), the Customer shall pay to Service Provider such additional amount as will ensure that Service Provider receives the same total amount that it would have received if no such withholding or deduction had been required.

9.3.4 Payment Default

- (a) Customer shall automatically be in default with any payment not received by the Service Provider within thirty (30) days of receipt of the respective invoice.
- (b) Service Provider shall notify Customer with a default notice and provide ten (10) Business Days to cure the default.
- (c) Should Customer be in default with any payment, then the Service Provider may, after having delivered to Customer the default notice in accordance with Clause 9.3.4(b) above and having waited for the late payment curing period provided for by Clause 9.3.4(b) to end, block Customer's access to the Cloud Service. Such blocking of Customer's access shall not constitute a waiver of, or otherwise remove, Customer's obligations to pay the respective Fees.
- (d) Customer shall owe to the Service Provider default interest of 5% p.a. on any payment with which it is in default.

10. **CONFIDENTIALITY**

- (a) The Receiving Party shall keep the Disclosing Party's Confidential Information confidential, and will not, except as set forth in the following paragraph, disclose any of the Disclosing Party's Confidential Information in any manner whatsoever. The Receiving Party has no rights to the Disclosing Party's Confidential Information, except the limited right to use such Confidential Information in connection with the Services. The Receiving Party may only use the Disclosing Party's Confidential Information for purposes directly related to the Services.
- (b) Notwithstanding Clause 10(a), the Receiving Party may disclose the Disclosing Party's Confidential Information only:
 - (i) with the prior written consent of the Disclosing Party;

- (ii) to its employees, contractors or subcontractors solely for the purpose of assisting the Receiving Party in connection with the Services, but, with respect to subcontractors, only if such subcontractor has been informed of the confidential nature of the Confidential Information and is obligated to maintain its confidentiality upon terms similar to those set out herein; or
 - (iii) as required by applicable law or legal process, in which event the Receiving Party shall – if legally permissible – give the Disclosing Party prompt notice thereof so that the Disclosing Party may seek a protective order and/or waive the provisions of this Clause 9.3.4; provided that in the absence of such order or waiver, if the Receiving Party, in the opinion of its counsel, a copy of which will be provided to the Disclosing Party upon request, would stand liable for contempt or suffer other censure or penalty for failure to disclose, the Receiving Party may disclose such Confidential Information as is legally required without liability hereunder.
- (c) Both Parties agree to keep the terms of the Agreement confidential and will not disclose such terms except to its employees or agents that need to know or to a third party in connection with actual or potential financing or the sale of all or substantially all of a Party's business related to the Agreement, whether by sale of assets, sale of stock, merger, or otherwise, provided that such third party has entered into a non-disclosure obligation no less stringent than the present.
- (d) Upon termination of the Agreement or at any time upon request by the Disclosing Party for any reason, the Receiving Party will promptly destroy, cause to be destroyed or deliver to the Disclosing Party all documents (and all copies thereof) and electronic data, regardless of format or medium, furnished to Receiving Party by or on behalf of the Disclosing Party and which contain, in whole or in part, Confidential Information. The Receiving Party continues to be bound by its obligations of confidentiality and non-use hereunder notwithstanding the return or destruction of Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain Confidential Information to the extent that it is required for compliance with applicable laws or its obligations pursuant to this Agreement. Notwithstanding the foregoing, the Customer may retain any data produced by the Cloud Service, without the data being updated by the Service Provider.
- (e) The obligations set out in this Clause 10 shall survive the termination or expiry of the Agreement.

11. DATA PROTECTION

- (a) Service Provider shall comply (and, if applicable, cause its subcontractors to comply) with all applicable privacy and data protection laws (collectively, "**Applicable Privacy Laws**").

The Service Provider acknowledges that the Customer is required to comply with the Applicable Privacy Laws, and Service Provider shall not, by its act, its omission or any other means, cause Customer to be in violation of Applicable Privacy Laws.

- (b) To the extent that Service Provider obtains any personal data subject to Applicable Privacy Laws ("**Personal Data**") in connection with the Agreement, Service Provider shall make no use of such personal information except solely as required and only to the extent required, to perform the Services.
- (c) As of the date of the Agreement, it is not foreseen for the Service Provider to process any Personal Data on behalf of the Customer. Should the Service Provider in the future act as a processor of personal data for the Customer, then the Parties will enter into separate data processing and data export agreements, as required.

12. INTELLECTUAL PROPERTY

- (a) Any and all Intellectual Property Rights pertaining to the Cloud Service (including, for the avoidance of doubt, the Environmental Data, Derivative Data and the Third-Party Data) and to Services performed under the Agreement including the data produced by the Cloud Service not based on Customer Data shall remain the sole property of the Service Provider and/or its third-party licensors and service providers.
- (b) The Customer, or its third-party licensors, respectively, shall retain all Intellectual Property Rights in its Intellectual Property and all information, Customer Data, including all data produced by the Cloud Service based on Customer Data, materials, and other data furnished by the Customer to the Service Provider.

13. WARRANTIES

- (a) While aspiring to offer non-stop Availability of the Cloud Service, the Service Provider cannot represent or warrant that the Cloud Service will be Available at all times. The Service Provider does however warrant that the Cloud Service will be Available in accordance with the Service Levels set out in these GTC.
- (b) The Customer is aware that the Environmental Data is based on data provided by third parties and calculated using scientific methods and models, all of which are subject to continuous change. The Service Provider warrants that the Environmental Data is based on data sources that are disclosed in full transparency and is calculated using well documented scientific methods and models, current at the time of calculation.
- (c) The Service Provider warrants that to its knowledge, the Services and the Cloud Service and the use of such by Customer do not and will not infringe any Intellectual Property Rights of any third party.

- (d) The Service Provider warrants that it will perform the Consulting Services in a diligent and workmanlike manner and use its professional skill, diligence and care.
- (e) These GTC exhaustively sets out the applicable rights and remedies of the Customer in case of a breach of any of the above warranties.
- (f) Any further warranty shall be excluded.

14. THIRD-PARTY RIGHTS INDEMNITY

- (a) Service Provider shall indemnify and hold the Customer harmless from and against all claims related to, arising out of or in connection with any claim by a third party that Customer's use of the Cloud Service infringes any Intellectual Property Right. In the event that a final court decision has determined that an infringement of third-party rights took place, or if Customer is, due to an interim or final court decision, hindered from using the Cloud Service, Service Provider shall, at its option and expense:
 - (i) procure for Customer the right to continue using the infringing Cloud Service;
 - (ii) modify the Cloud Service to make it non-infringing; or
 - (iii) replace the Cloud Service with a non-infringing Cloud Service having equivalent functionality.
- (b) The indemnity in Clause 14(a) above shall not be applicable where any infringement is the result of:
 - (i) the combination of the Cloud Service with any third-party product not supplied by Service Provider;
 - (ii) the use of the Cloud Service in a manner not contemplated by these GTC.
- (c) With regard to Clause 14(a) above, Customer shall:
 - (i) promptly notify Service Provider after receipt of summons or the commencement of any claim, action of other proceeding by a third party;
 - (ii) keep the Service Provider fully informed with respect thereto;
 - (iii) provide reasonable assistance to Service Provider;
 - (iv) abstain from making any representations, admissions or concessions to or agreements with the third-party claimant concerning the claim; and
 - (v) leave the conduct of negotiations and litigation in connection with such claim to the Service Provider, with Customer reserving the right to receive at its own cost advice from legal counsel of Customer's choosing.

- (d) Service Provider reserves the right to undertake the steps described in Clause 14(a) as a precautionary measure in order to avoid a possible infringement, and may block Maintenance Windows in order to provide updated versions of the Cloud Service.
- (e) Clause 15 (Limitation of Liability) shall also apply to the indemnities set out in this Clause 14.

15. LIMITATION OF LIABILITY

- (a) Each Party shall be liable without limitation for any damages arising as a result of gross negligence or intent.
- (b) No Party shall be liable for lost profits, lost savings, indirect or consequential damages.
- (c) Each Party's liability shall be limited to the total of the Fees paid to the Service Provider under the Agreement in the 12 months prior to the event giving rise to the liability.

16. FORCE MAJEURE

A Party will be excused from delays in delivery and performance of contractual obligations under the Agreement caused by acts or omissions that are beyond the reasonable control and without the fault or negligence of said Party including delays caused by acts of God or of the public enemy, fires, floods, explosions, epidemics, pandemics quarantine restrictions, lawful acts of public authorities, freight embargoes, interruptions or disruptions of the public transportation, electric or communication infrastructure, civil insurrection or war (each a "**Force Majeure Event**"). The suspension of performance shall be of no greater scope and of no longer duration than is required by the relevant Force Majeure Event. Notwithstanding any other provisions of this section, should the Force Majeure Event hinder a Party from the performance of its obligations for more than one (1) month, the non-affected Party may terminate the Agreement immediately upon written notice to the affected Party.

17. TERM AND TERMINATION

17.1 Term

17.1.1 Orbae

- (a) The Agreement shall enter into force once the Customer's account is successfully created.
- (b) The Agreement shall be entered into for an indefinite amount of time.

17.1.2 Orbae Pro (and any Tools)

- (a) The Agreement shall enter into force on the effective date set out in the Order.

- (b) If the Order provides for a fixed term, then the Agreement it may not be terminated for convenience before, and shall automatically terminate upon, the lapse of the fixed term.
- (c) If the Order provides for a Minimum Term, then the following shall apply:
 - (i) The Agreement shall be entered into for the Minimum Term set out in the Order.
 - (ii) The Agreement shall, after expiry of the Minimum Term (if any), automatically pro-long for subsequent one-year periods (each an "**Extension Term**") unless and until terminated in accordance with its terms.
- (d) If the Order does not provide for a Minimum Term, then the following shall apply:
 - (i) The Agreement shall be entered into for an indefinite amount of time.
 - (ii) The Agreement may be terminated at any time in accordance with these GTC.

17.2 Ordinary termination

17.2.1 Orbae

Each Party may terminate the Agreement for convenience at any time.

17.2.2 Orbae Pro

- (a) If the Order provides for a Minimum Term, then the following shall apply:

Each Party may terminate the Agreement for convenience as per the end of the Minimum Term (if any) or any Extension Term by giving 60 days' (termination by the Service Provider) or 30 days' (termination by the Customer), respectively, prior written notice.
- (b) If the Order does not provide for a Minimum Term, then the following shall apply:

Each Party may terminate the Agreement for convenience as per the end of a calendar month by giving 60 days' (termination by the Service Provider) or 30 days' (termination by the Customer), respectively, prior written notice.

17.3 Termination for cause

- (a) If a Party (the "**Non-Defaulting Party**") reasonably believes that the other Party is in default of any of its material obligations under the Agreement, the Non-Defaulting Party may notify the other Party (the "**Defaulting Party**") in writing of the alleged defaults.
- (b) The Defaulting Party shall, within thirty (30) days of the date of receipt of written notice, (if capable of remedy) remedy such defaults. If the alleged defaults are not cured in this thirty (30) day period, the Non-Defaulting Party may terminate the Agreement without adhering to a notice period by delivery of a written termination notice to the Defaulting Party.

- (c) A Party may terminate the Agreement immediately upon written notice to the other Party if the other Party ceases to conduct business in the normal course, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, proceedings seeking relief, reorganization or rearrangement under any laws relating to insolvency, are instituted by or against the other Party, a receiver, liquidator, or trustee is appointed in respect of any property or assets of the other Party or an order is made for the liquidation, dissolution or winding up of the other Party.

17.4 Consequences of Termination

Upon termination of the Agreement:

- (a) Customer shall pay to Service Provider, within thirty (30) days of such termination, all amounts owed under the Agreement; and
- (b) each Party shall immediately return to the other Party all Confidential Information and Intellectual Property and all copies, portions and abstracts thereof, that are in its possession or under its control, all as provided for, and within the limits set out, in Clause 10(d).

18. VARIOUS PROVISIONS

18.1 Hierarchy

- (a) In case of conflicts between the Order, its Schedules and these GTC the following hierarchy shall apply (documents set out higher in the following list shall prevail over documents set out lower):
 - (i) the Order;
 - (ii) the Schedules to the Order;
 - (iii) these GTC.
- (b) In case of conflict between terms set out in documents of the same hierarchy level, the terms set out in the document agreed upon later than the other document(s) shall prevail (application of the lex posterior rule).

18.2 Severability

Each provision of these GTC shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of these GTC shall in no way affect the validity or enforceability of any other provision hereof. If any provision of these GTC is determined to be invalid, illegal or unenforceable, the remaining provisions of these GTC remain in full force and effect if both the economic and legal substance of the

transactions that are contemplated in these GTC are not affected in any manner adverse to any Party.

18.3 Non-Waiver

The waiver of a breach of the Agreement or the failure of a Party to exercise any right under the Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under the Agreement. The failure of either Party to enforce at any time any of the provisions of the Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

18.4 Assignment

The Parties shall not assign the Agreement or any of the rights or obligations under the Agreement to any third party without the prior written consent of the other Party. Notwithstanding the foregoing, the Customer may assign the Agreement and any rights and obligations under the Agreement to an Affiliate without the prior written consent of the Service Provider.

18.5 Amendments

No alteration, amendment, waiver, cancellation or any other change in any term or condition of the Agreement shall be valid or binding on either Party unless agreed in writing.

18.6 Governing Law and Jurisdiction

- (a) The Agreement shall be subject to the ordinary laws of Switzerland excluding their conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention).
- (b) The ordinary courts of Zurich, Switzerland, shall have exclusive jurisdiction with respect to any and all disputes arising out of or in connection with the Agreement.