

1. Background

- 1.1. Soffico conveyed to the Licensee in a separate license agreement the Orchestra standard software as well as possibly the customizing and expansions as part of Orchestra scenarios as appropriate (hereinafter together "Software").
- 1.2. In addition, the Licensee wishes that soffico will assume the software's continuous ongoing development, that soffico will provide them with the most current version each time, with analyses, and that it removes any errors in inquiries and perform failure analyses.

2. Subject Matter

- 2.1. In accordance with these terms and conditions, soffico shall provide support when the software is used, and services that are required to obtain and restore the software's operational conditions in its respective current version, updates and expansions of software programs (together "maintenance services"), and other services to adapt and continue the development of software programs in accordance with the Licensee 's requirements ("other services").
- 2.2. The subject of the maintenance services owed based on this agreement shall be the current program version as well as the two predecessor versions.
- 2.3. More specifically, soffico shall render the following maintenance services:

○ Telephone hotline:

Soffico shall provide consultation and support in connection with the software's functions to ensure that it works within the specifications' framework and the system requirements described therein. Soffico shall provide the Licensee with a telephone hotline during the availability hours. Three individuals ("Authorised Persons"), whose names the Licensee will provide to soffico in writing, may raise a request via this hotline about the software's handling.

○ Support Portal:

soffico provides the customer with a portal on the World Wide Web that is exclusively accessible to contractual customers. Using this portal Authorised Persons can submit issues or fault reports and track their processing and the feedback from soffico.

○ Failure analysis:

In the event that errors occur when handling or operating the software, the Licensee will inform soffico in case of urgent need for action via telephone or email, otherwise using the Support Portal about any suspected or proven program errors. The Licensee will provide soffico with any information required to analyze the failures.

○ Assistance in the event of failures:

Soffico shall analyze the software parts that are affected by the error. In the event that the analysis reveals that a software failure exists, the Licensee will receive information on the telephone or via email as to how to troubleshoot, or indications as to how to circumvent the failure. Troubleshooting shall be performed by delivering correction programs (patches or service packs). Soffico shall not assume any responsibility for correcting the errors. Any troubleshooting services may be realized at soffico's option by providing circum-

venting, updating or upgrading services, and, according to an agreement with the Licensee, by delivering a new version.

- **Ongoing development and updates:** Soffico shall develop and provide the Licensee with updates or upgrades for the software.

○ Remote maintenance:

At its side, the Licensee created the required technical conditions to enable remote maintenance services. Therefore, soffico is capable and qualified to provide remote services. Soffico will adopt suitable measure so that no third parties will be able to penetrate the Licensee's EDP-system via the remote maintenance equipment. At a minimum, soffico shall implement the security measures as specified by the Licensee.

- 2.4. The maintenance shall also cover the documentation pertaining to the software.

- 2.5. Furthermore, the services comprise the handling of errors or other defects of the software that come to soffico's attention independently from the Licensee's use of the software. Any existing claims for defects by the Licensee shall remain unaffected thereby.

3. Excluded services or services that will be paid separately.

The following shall not be covered by the contractual remuneration and their rendering by soffico shall be compensated for separately:

- Customer service outside of the agreed availability or service hours;
- Services for parts of the software that were modified by programming work that soffico did not perform;
- Services for computer programs or parts thereof that do not belong to the software,
- Services for individual adaptations and expansions as well as later purchases of the software;
- Services, as long as updates or other bug fixes provided by soffico were not installed and the reported error had already been removed in it, unless its installation cannot be expected of the Licensee for reasons it does not have to justify;
- Services for software having a release status, which soffico basically no longer maintains;
- Services that are rendered at soffico's headquarters can be rendered at another location at the Licensee's request; and
- Services that become necessary because the Licensee does not discharge its duty to collaborate.

4. Service hours; availability

- 4.1. The Support Portal to report issues or faults and track their processing is available to the customer 24 hours a day, 7 days a week. The support portal is available via the Internet 98% of the time during the year.
- 4.2. Unless otherwise agreed below for specific services, the service hours are on working days, i.e. Monday through Friday except for legal holidays at the Augsburg location from 09:00 a.m. through 05:00 p.m. CET.

- 4.3. Soffico provides the following levels for the availability of maintenance services:

- **Bronze:** The maintenance level Bronze means that all maintenance services will only be rendered during the service hours. The availability hours for the telephone hotline coincides with the service time for this maintenance level.
- **Silver:** The maintenance level Silver means that the telephone hotline is available for the Licensee Monday through Saturday from 07:00 a.m. through 10:00 p.m. CET (except for legal holidays at the Augsburg location – availability hours). Failure analysis, assistance in case of failures as well as remote maintenance shall be provided during that time only for failures that were classified as Priority 1 according to section 6.2; all other failures will be handled during the regular service hours as per Section 4.1.
- **Gold:** The maintenance level Gold means that the telephone hotline will be available for the Licensee 7 days per week, 24 hours a day (availability hours). Failure analysis, assistance in case of failures, as well as remote maintenance, will be provided during that time only for failures that were classified as Priority 1 according to section 6.2; all other failures will be handled during regular service hours as per Section 4.2.

5. Receiving requests

- 5.1. The Licensee may send requests (failure reports, questions, service requests, suggestions for improvements, hereinafter "tickets") around the clock via the Support Portal or email to orchestra-support@soffico.de as well as on the telephone during the availability hours at +49 821 / 455 901 77 (including call-back service).
- 5.2. The call-back service for reported tickets will be realized by agents commissioned by soffico for trained administrators or defined user groups of the Licensee during regular service hours.
- 5.3. The requests will be received and responded to in German and English during regular service hours.

6. Categorization of tickets

- 6.1. When submitting Tickets via the support portal, Authorised Persons can preselect one of the priority categories described below.
- 6.2. After receipt of an adequately specified description of the issue, the behavior possibly associated with the issue, the affected components of the Software, and any steps that have already been taken, soffico shall classify Tickets not yet classified containing issue reports or adjust the categorization assigned by Authorised Persons in the Support Portal accordingly as follows:

○ Priority 1: Critical failure

A failure causing the breakdown of the entire software or essential parts thereof so that its usage will be completely or nearly completely impossible. The operating procedure is compromised to such an extent that immediate corrective action will be absolutely essential.

Priority 2: Serious failure

The software's function is compromised but it can be used to a limited extent. The failure leads to a significant limitation of its

use, but the Licensee can circumvent it by means of organizational or other means that would be economically reasonable. A concurrent occurrence of several serious failures can lead to a critical failure.

- o **Priority 3: Other failure**
Other failure that does not compromise the software's use or that compromises it only to a negligible extent.

6.3. The categorization shall be realized within four hours at the Licensee's reasonable discretion while adequately considering the effects of the reported failure on the Licensee's business operations. Authorised Persons can view the respective classification of their reports at any time via the Support Portal.

6.4. In the case of Priority 1 fault reports, soffico shall attempt to realize the categorization preferably within one hour.

6.5. In addition, soffico shall inform the Licensee about the fault report's status via email. This shall be realized as follows:

- o hourly for Priority 1 failures
- o daily for Priority 2 failure, and
- o every two to three business days for Priority 3 failures.

7. Response times and ticket handling

7.1. Based on the categorization, soffico shall respond as follows to the Licensee's fault reports within the following deadlines ("response time"):

- o **Priority 1: immediately**
Soffico shall initiate troubleshooting. In the event that a fix will not be possible in the short term, soffico shall provide a provisional solution (e.g. temporary error correction or circumvention) within one business day after the fault report. In the event that soffico will be unable to provide a solution within one business day, a crisis management shall be initiated including the respective management of soffico and the Licensee.
- o **Priority 2: within two hours**
The objective consists in providing the Licensee with a solution (troubleshooting or provisional solution) within three business days.
- o **Priority 3: within one business day after receipt of the fault report**
A statement and a suggestion to troubleshoot will be provided within five business days after receipt of the fault report. In the event that the bug cannot be fixed directly, and no temporary solution can be implemented at a reasonable expense, a solution involving the next update or upgrade will be provided.

7.2. Once the Ticket has been processed by soffico's feedback, it is closed by soffico in the Support Portal. All entries can still be accessed by the Authorised Persons. If necessary, the customer can reopen a closed Ticket, e.g. if the suggested trouble-shooting failed.

8. New program versions

- 8.1. Soffico shall ensure that the software will be adapted to the respective applicable legal requirements, and that a uniform release status will be guaranteed in the system.
- 8.2. Soffico shall collect the requests from all licensees for expansions, modifications, or adaptations over the entire year. A major user

conference shall be arranged once a year. Based on the abundance of suggestions, after prioritizing by the majority of the licensees, a release plan for updates and upgrades shall be prepared.

8.3. Soffico shall provide the Licensee at least twice a calendar year with new program versions (updates or upgrades).

8.4. New program versions must be downward compatible with the prior software versions, including specified interfaces with the software of other software.

8.5. New program versions shall be delivered in machine-readable form. Soffico shall promptly inform the Licensee about the availability of new releases.

9. Other troubleshooting and adaptation services, consultation

9.1. At the Licensee's request and based on a separate order, soffico shall perform other adaptation services, in particular:

- o Changes in the software that are not the subject of the maintenance services; in particular, adaptations to new products and services as well as modified operational procedures of the Licensee;
- o Adaptation of the software to a modified hardware and/or software environment of the Licensee, including new program versions (e.g. new releases, updates/ upgrades) of third party software used in the system;
- o Removal of errors caused by inappropriately operating the software by the Licensee, force majeure, interventions by third parties, or by impacts that were not caused by soffico;
- o Other adaptations, additions, and expansions of the software based on the Licensee's requirement; and
- o Consultation services that go beyond the information provided by the hotline.

9.2. A claim for compensation of soffico requires a written order by the Licensee. In the event that a comprehensive development will be required, the order will also include details regarding the user requirements specification and the functional specification document as well as a time schedule.

9.3. Soffico may refuse rendering other troubleshooting and adaptation services as well as consultation services only if it can be proven that their rendering is unreasonable as part of the operational performance capability.

10. Terms of Use of the Support Portal

10.1. The Support Portal may only be used by Authorised Persons within the scope of this agreement. Subletting to or letting use by third parties is not permitted.

10.2. The customer shall not be granted any further rights, in particular to the infrastructure services provided for the operation of the Support Portal or any infrastructure services provided in the respective data centre.

10.3. If the scope of use is exceeded in breach of contract by the customer or his Authorised Persons or in the event of unauthorized transfer of use, the customer shall, upon request, immediately provide all information available to it to assert claims for use in breach of the contract, in particular the name and address of the users concerned.

10.4. soffico may revoke the customer's access to the Support Portal and/or terminate this contract if the customer significantly exceeds the permitted use or violates regulations for protection against unauthorised use. To this end, soffico may interrupt or block access to the contractual services, yet soffico must generally set the customer a reasonable grace period for remedial action beforehand. The mere revocation of access authorisation shall not be deemed to be a termination of the contract. The revocation of access without termination can only be maintained by soffico for a reasonable period of up to three months.

10.5. The customer shall be entitled to reinstatement of access authorization and access to the support portal if he can prove that he has ceased use in breach of the contract and prevented future use in breach of the contract.

11. Licensee's duty to collaborate

11.1. When demanding the maintenance service, the Licensee shall work closely and efficiently with soffico. For this purpose, the Licensee's personal, organizational, professional, and technical responsibility will be essential, and in particular

- o Orderly documents, documentation and information required to perform the service, particularly about existing systems, devices, computer programs, and computer program parts, which are scheduled to work together with the service to be rendered, and in addition to that, documentation of any changes made in the system environment (hardware and software), and their furnishing to soffico;
- o The provision of the required database, network, and server log files (protocol files);
- o The transmission to soffico upon request of a current database dump, interface scenarios, log files, configuration files etc. (if necessary, the Licensee will render the data anonymous);
- o The furnishing of test data as well as the set up and furnishing of a potentially required test environment;
- o The support of soffico during functional testing and integration tests;
- o The documentation of any software failures or errors in maintenance services that were rendered in a comprehensible manner, which were ascertained during the test or real time operation, and the immediate communication thereof to soffico;
- o The cooperation during the error limitation process, and
- o If necessary, granting soffico, during its regular business hours and to the required extent, access to the company facilities and access to the hardware and software, and the required technical facilities that are required to provide the service. Access shall also be granted outside of the Licensee's regular business hours to the extent to which this will be necessary based the urgency of the respective maintenance service. Soffico shall ensure that the Licensee's business operation will be disrupted as little as possible at the Licensee's premises.

- 11.2. The Licensee shall provide the names of a minimum of three individuals as Authorised Persons to soffico who are employees working at the place of the software's installation. The Licensee shall communicate immediately any changes with respect to the Authorised Persons. The Authorised Persons must be experienced in handling the software. Only the Authorised Persons shall be authorized to submit fault reports.
- 11.3. The customer must protect the access authorisations assigned to him or the Authorised Persons as well as identification and authentication information for the use of the Support Portal from access by third parties and not pass them on to unauthorised persons.
- 11.4. The customer is solely responsible for the content of the data entered in the Support Portal by him and/or the users authorised by him. soffico does not check data entered in this respect.
- 11.5. Before reporting a fault, the Licensee shall perform a system environment analysis within the limits of its resources to ensure that the failure was not caused by system components that are not subject of this agreement.
- 11.6. The Licensee shall install immediately any updates or other measures for purposes of error recovery that soffico provided.
- 11.7. The Licensee warrants a permanent system management of the system environment in which the software is running. The Licensee shall maintain its system environment (hardware and software) on a continuous basis.
- 11.8. It rests on the Licensee to secure its database with the due diligence of a prudent businessman. In particular, it shall perform a complete data backup of all system and application data immediately before each installation and/or other interventions by the Licensor or by any third parties commissioned by them. The data backups must be stored in such manner that the data can be restored at any time.
- 11.9. The Licensee shall procure for soffico the right to use third party systems to the extent to which this will be necessary in order to render maintenance services.
- 11.10. In the event that the Licensee falls behind with respect to meeting its collaboration duties, soffico's duty to perform shall be suspended for the duration of this default, which performance cannot be rendered without this action or which can only be rendered at disproportionately high costs. The Licensee shall reimburse soffico for any additional expenses thus caused in addition to the agreed compensation on the basis of the Licensee's respective applicable day or hourly rates.
- 12. Copyrights and exploitation rights**
- 12.1. To the extent to which soffico hands over computer programs or other copyright-protected works as part of maintenance services that are capable of being protected by copyright, these computer programs as well as the respective exploitation rights granted to the Licensee shall be subject to a separate license agreement of the maintained software.
- 12.2. The following shall apply to any work products created as part of other services, in particular programming, changes and ongoing developments of software programs as well as the specifications and reports created during its development, which are recorded in documents and on data storage devices: upon a payment in full soffico shall grant to the Licensee the three-dimensional, indefinite, unlimited, exclusive, irrevocable right to any and all known types of use of the work products.
- 13. Compensation, payment terms, and offsetting**
- 13.1. The annual blanket compensation for the maintenance services in accordance with this agreement shall be 20% of the list price for the Bronze level, 25% for the Silver level, and 30% for the Gold level.
- 13.2. During the warranty period for purchased software or during a lease agreement term regarding the software, the compensation for the maintenance services shall be decreased by 10%.
- 13.3. soffico shall invoice the maintenance services on an annual basis in advance.
- 13.4. Any services according to section 9 or outside of the subject of the agreement shall be compensated separately. soffico's respective applicable rates shall apply for this purpose. In this case, soffico shall be obliged to render accounts on a monthly basis while indicating all activities and expenses incurred. Proof of the activities and expenditures must be included in the itemization. If work performance is commissioned, it will be invoiced only after acceptance.
- 13.5. All amounts are net amounts to which the respective legal sales tax shall be added.
- 13.6. All payments must be made within 14 days after receipt of the invoice without any deductions.
- 13.7. soffico shall reserve the right to change the compensation by the end of a contract year after a written announcement while complying with a term of six weeks. Such type of change may not exceed the compensation for the 12 months period prior thereto by more than 10%. In the event that the increase in compensation exceeds 10% of the compensation of the previous twelve months period, the Licensee may terminate the agreement in writing with a 2 weeks deadline before the date of the increase.
- 13.8. The Licensee may only offset with uncontested claims or claims that were determined to be legally binding. He shall only be entitled to rights of retention because of uncontested counterclaims or counterclaims that were determined to be legally binding from the respective contractual relationship and in case of gross breach of duty by soffico.
- 14. Material defects and deficiency in title**
- 14.1. To the extent to which updates, upgrades, new program versions, or other purchase items or work performance is provided or rendered to the Licensee as part of this agreement, the material defect claim with respect to the improvements, which do not merely represent an error recovery, shall be determined based on the following paragraphs:
- 14.2. soffico shall provide the Licensee with software that is free from material defects and deficiency in title. Any errors that only cause a negligent reduction of the software's operationality shall be left out of consideration. No material defects shall be those functional impairments, which are the result of the hardware and software environment, faulty operation, external damaged data, computer network failures provided by the Licensee or other reasons stemming from the Licensee's sphere of risks.
- 14.3. soffico shall not provide any guarantees for any software that was modified by the Licensee unless the Licensee proves that the modification for the reported defect was not causal.
- 14.4. In case of material defects, soffico shall give a warranty by means of a supplementary performance according to its choice either by removing the defect or by a substitute delivery. In particular, the supplementary performance may consist in providing a new program status, or by soffico demonstrating options to avoid the defect's effects. The Licensee must adopt a new program status also in cases when this results in acceptable expenditures.
- 14.5. The supplementary performance in case of defects of title shall be realized by soffico providing the Licensee with a legally unobjectionary opportunity for use of the software. In this case soffico may exchange the affected software against software of equal value that corresponds to the contractual provisions, should this be acceptable to the Licensee. In the event that intellectual property rights are asserted against the Licensee, it shall inform soffico immediately in writing. soffico shall, at its option and upon consultation with the Licensee, defend itself against or satisfy the claims. The Licensee may not approve any third party claims of its own accord. soffico shall defend itself against any third party claims at its own expense and shall release the Licensee from any costs and damage associated with the defense against this claim as long as they are not based on a conduct in breach of the Licensee's duty.
- 14.6. In the event of a failed supplementary performance, the Licensee shall be entitled to restrict the right or to terminate the maintenance agreement. Section 15 shall apply for damages.
- 15. Data Protection, Use of Data**
- 15.1. The customer grants soffico the right to duplicate the data to be stored by soffico for the customer for the purpose, insofar as this is necessary for the provision of the services provided under this contract. soffico is also entitled to store the data in an outage system or separate outage data centre.
- 15.2. soffico shall use the Customer's data processed in the Support Portal, which soffico becomes aware of in the course of the fulfilment of this contract, only for the purposes of error analysis and software maintenance.
- 15.3. As a rule, the subject of troubleshooting is the software, not the data created and/or processed with it. If the customer's data must be accessed in order to localise an error or for testing purposes, the customer shall ensure that this is done in compliance with all data protection regulations.
- 15.4. Insofar as soffico can access personal data of the customer or from the customer's area, soffico shall act exclusively as a processor and shall only process and use this data for the fulfilment of the contract. soffico shall observe the customer's instructions for the handling of this data. The customer shall bear any disadvantageous consequences of such instructions for the fulfilment of the contract. If necessary, the customer shall agree further details with soffico regarding the handling of its data in accordance with the requirements of data protection law.

- 15.5. The customer shall remain the controller both generally in the contractual relationship and in terms of data protection law. If soffico processes personal data (including collection and use) in connection with the contract, the customer warrants that soffico is authorised to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify soffico against claims by third parties in the event of a breach.
- 15.6. Between soffico and the customer the latter shall be responsible for the processing (including collection and use) of personal data vis-à-vis the data subject, unless soffico is responsible for any claims of the data subject due to a breach of duty attributable to it. The customer shall responsibly examine, process and respond to any enquiries, applications and claims of the person concerned. This shall also apply in the event of a claim against soffico by the person concerned. soffico shall support the customer within the scope of its obligations.
- 15.7. Soffico shall store that the customer's data exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in another state party to the Agreement on the European Economic Area, unless otherwise agreed.

16. Liability

- 16.1. Soffico shall be liable without limitation for any damage caused deliberately or negligently from injury to life, body, or health by soffico, its legal representatives, or vicarious agents.
- 16.2. Incidentally, soffico shall pay damages or reimburse expenditures of no avail regardless of the reason (e.g. breach of duty, unauthorized activity) only to the following extent:
- In case of malice as well as when accepting a warranty regarding the agreed property in its full amount;
 - In case of gross negligence, in the amount of a typical and foreseeable loss, which could have been avoided, had due diligence been exercised; and
 - In other cases, only in case of a breach of the essential contractual obligations, claims for defects and in case of default, in the amount of a typical and foreseeable loss not exceeding € 10,000 per claim, and of € 50,000 for all losses resulting from this contractual agreement.
- 16.3. The legal liability according to the product liability act shall remain unaffected thereby. Soffico can raise the objection of contributory negligence.
- 16.4. Soffico shall be liable for any data losses not exceeding the amount, which would have been incurred for their recovery, had the data been backed up in an orderly and regular manner.
- 16.5. Any further liability by soffico shall be excluded on its merits.

17. Statute of limitations

- 17.1. Any claims by the Licensee for material defects or defects in title (section 14) shall become time-barred within one year as of delivery. The statutory periods of limitations shall apply in the event that a defect of title exists in the right in rem of a third party, due to which the software may be reclaimed.
- 17.2. For any other claims by the Licensee resulting from the agreement as well as from a debt obligation (§ 311 para. 2 BGB [German Civil

Code]), a statutory period of one year shall apply as of the beginning of the statutory period of limitations. The claims shall be time barred not later than the expiration of the legal time limits (§ 199 para. 3, para. 4, BGB).

- 17.3. The statutory periods shall apply for any personal injuries (including a violation of freedom) as well as in case of malice and gross negligence.

18. Term, termination

- 18.1. The agreement's term shall be 36 months.
- 18.2. The agreement shall be subsequently extended by an additional 12 months at a time unless it was terminated by a party while adhering to a notice period of 3 months by the end of the respective period of agreement.
- 18.3. This shall have no effect on the right for a termination for cause.

19. Amendments to these T&C

- 19.1. Soffico shall be entitled to amend these conditions on just and proper grounds, provided the amendments are limited to an adjustment in this respect. Such grounds are, in particular, new technical requirements or developments, changes in jurisdiction or significant changes in the parties' economic situation. If the contractual balance between the parties would be significantly disturbed by such changes, no amendment will be made.
- 19.2. Upon planning an amendment, soffico shall inform the Licensee in writing at least six weeks before the planned effective date. The Licensee then has the opportunity to object in writing until the time of the planned effective date. To meet the deadline it is sufficient to submit the objection in due time.
- 19.3. If no objection is received, the new terms and conditions shall be deemed approved. In the event of timely and legally valid objection, the earlier conditions shall continue to apply.
- 19.4. Soffico shall inform the Licensee about the consequences of failure to object and the right to terminate the Agreement under separate cover.

20. Miscellaneous

- 20.1. The general terms and conditions of both parties are not applicable for this agreement.
- 20.2. Written form. There are no verbal side agreements or preliminary agreements. Any amendments, additions, or notices of termination to this agreement must be in writing. The written form shall not be maintained by transmitting emails unless they were provided with a qualified electronic signature (§126a, BGB).
- 20.3. Choice of law and jurisdiction. This agreement is subject to the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods shall not govern or otherwise apply to the transactions contemplated under this Agreement. Augsburg shall be the exclusive venue.