

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 remove 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, whose names the Licensee will provide to soffico in writing, may raise a request via this hotline about the software's handling.
- **Failure analysis:**
In the event that errors occur when handling or operating the software, the Licensee will inform soffico via telephone or email 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 circumventing, 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 and availability hours

- 4.1. 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.
- 4.2. 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 6.1; 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 6.1; all other failures will be handled during regular service hours as per Section 4.1.

5. Receiving requests

- 5.1. The Licensee may send requests (failure reports, questions, service requests, suggestions for improvements, hereinafter "tickets") around the clock via 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 failures

- 6.1. After receipt of an adequately specified failure description, any potential error behavior, affected components of the software, and any steps taken, soffico shall categorize the tickets indicating fault reports 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.
 - **Priority 3: Other failure**
Other failure that does not compromise the software's use or that compromises it only to a negligible extent.
- 6.2. 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. In the case of Priority 1 fault reports, soffico shall attempt to realize the categorization preferably within one hour.
- 6.3. In addition, soffico shall inform the Licensee about the fault report's status via email. This shall be realized as follows:
 - hourly for Priority 1 failures
 - daily for Priority 2 failure, and

- o every two to three business days for Priority 3 failures.

7. Response times and failure 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.

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. Licensee's duty to collaborate

10.1. 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.

10.2. The Licensee shall provide the names of a minimum of three individuals as contact 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 contact partners. The contact partner must be experienced in handling the software. Only the contact partner shall be authorized to submit fault reports.

10.3. 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.

10.4. The Licensee shall install immediately any updates or other measures for purposes of error recovery that soffico provided.

10.5. 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.

10.6. 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.

10.7. 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.

10.8. 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.

11. Copyrights and exploitation rights

11.1. 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.

11.2. 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.

12. Compensation, payment terms, and offsetting

- 12.1. 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.
- 12.2. 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%.
- 12.3. Soffico shall invoice the maintenance services on an annual basis in advance.
- 12.4. 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.
- 12.5. All amounts are net amounts to which the respective legal sales tax shall be added.
- 12.6. All payments must be made within 14 days after receipt of the invoice without any deductions.
- 12.7. 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.
- 12.8. 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.

13. Material defects and deficiency in title

- 13.1. 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:
- 13.2. 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 operability 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.
- 13.3. 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.

- 13.4. 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.
- 13.5. 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.
- 13.6. In the event of a failed supplementary performance, the Licensee shall be entitled to restrict the right or to terminate the maintenance agreement. Section 14 shall apply for damages.

14. Liability

- 14.1. 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.
- 14.2. 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:
 - o In case of malice as well as when accepting a warranty regarding the agreed property in its full amount;
 - o 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
 - o 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.
- 14.3. The legal liability according to the product liability act shall remain unaffected thereby. Soffico can raise the objection of contributory negligence.
- 14.4. 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.
- 14.5. Any further liability by soffico shall be excluded on its merits.

15. Statute of limitations

- 15.1. Any claims by the Licensee for material defects or defects in title (section 13) 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.

- 15.2. 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).
- 15.3. The statutory periods shall apply for any personal injuries (including a violation of freedom) as well as in case of malice and gross negligence.

16. Term, termination

- 16.1. The agreement's term shall be 36 months.
- 16.2. 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.
- 16.3. This shall have no effect on the right for a termination for cause.

17. Amendments to these T&C

- 17.1. 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.
- 17.2. 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.
- 17.3. 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.
- 17.4. Soffico shall inform the Licensee about the consequences of failure to object and the right to terminate the Agreement under separate cover.

18. Miscellaneous

- 18.1. The general terms and conditions of both parties are not applicable for this agreement.
- 18.2. 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).
- 18.3. 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.