

Orbita SaaS Evaluation Agreement

This Services Agreement ("Agreement") is made this day of "date" ("Effective Date") between **Orbita, Inc.**, with a principal office at 77 Sleeper Street, 2nd Floor, Boston, MA 02210 ("**Orbita**"), **CUSTOMER NAME**, with a principal office located at **ADDRESS OF CUSTOMER** ("**Customer**").

WHEREAS, Orbita is engaged in the business of providing Software as a Services; and

WHEREAS, Customer desires to retain Orbita's services described in each applicable Order Document referencing this agreement;

THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties have agreed and do agree as follows:

1. DEFINITIONS.

- 1.1. **"Competitor"** means any software or SaaS provider with an offering related to conversational AI or virtual assistants.
- 1.2. **"Evaluation Materials"** means the parts of Orbita's SaaS offering that Customer subscribes for under one or more Order Document for an evaluation subscription (the **"SaaS Service"**), and any software that Orbita provides to Customer for use with the SaaS Service (including as a result of implementation activities) (**"Software"**), and any documentation or other materials that Orbita provides to Customer under this agreement.
- 1.3. **"Order Document"** means any mutually agreed order form or statement of work that references these terms, including any Orbita on-line registration form that references these terms.
- 1.4. **"Permitted Contractors"** means Customer's contractors and consultants that are subject to written agreements to ensure compliance with Customer's obligations under this agreement, and that do not work for or advise a Competitor.
- 1.5. **"Scope of Use"** means solely for use by **Customer's internal personnel and Permitted Contractors, for non-production, non-commercial, testing purposes with testing data that is not real personal information or personal health information**. Scope of Use may be further limited in the applicable Order Document.
- 1.6. **"Term"** means the period stated in the applicable Order Document, subject to section 11 (Term and Termination).

2. SAAS SERVICE

- 2.1. **Access to SaaS Service.** Orbita agrees to provide the SaaS Service to Customer during the Term, solely for the Scope of Use and subject to the terms of this agreement.
- 2.2. **Software License.** If any Orbita Software is required for use of the SaaS Service, including any software developed by Orbita during integration activities, Orbita hereby grants to Customer a limited, non-exclusive, non-transferrable and non-sublicensable (except as expressly permitted in this agreement) right and license to install and use such software, solely as provided by Orbita, for the limited purpose of using the SaaS Service pursuant to in this agreement.
- 2.3. **Restrictions.** Customer shall not directly or indirectly:
 - 2.3.1. reverse engineer, de-compile, disassemble, translate or otherwise attempt to discover the source code or underlying ideas or algorithms in the Evaluation Materials;
 - 2.3.2. modify any software used in or with the Evaluation Materials, except to the limited extent contemplated by developer toolkits provided by Orbita, if any;
 - 2.3.3. remove or suppress any intellectual property notices, disclaimers or warnings displayed or transmitted via the Evaluation Materials;
 - 2.3.4. access or use any portion of the Evaluation Materials, or permit the use thereof, on a timeshare or service bureau basis (except to the extent expressly contemplated in the Scope of Use and within Customer's ordinary course of business);
 - 2.3.5. sublicense or otherwise distribute or resell the results of any portion of the Evaluation Materials to any third party other than as contemplated by the Scope of Use and within Customer's ordinary course of business;

- 2.3.6. use the Evaluation Materials for purposes of: (i) benchmarking or competitive analysis; (ii) developing, using or providing a competing or alternate solution; or (iii) any other purpose that is to Orbita's detriment or commercial disadvantage;
- 2.3.7. knowingly use any Evaluation Materials which have been modified or enhanced in contravention of the foregoing;
- 2.3.8. disclose any Evaluation Materials available to any Competitor; or
- 2.3.9. disclose to Orbita or use with the SaaS Service any personal information (other than the limited business contact information required for managing this relationship) or personal health information.
- 2.4. **Acceptable Use Policy.** Customer shall, at all times, comply with Orbita's acceptable use policy available here: <https://orbita.ai/orbita-acceptable-use-policy>.
- 2.5. **Responsibility for End Users.** Customer shall implement sufficient policies, procedures or agreements to ensure compliance with Customer's obligations in this agreement by all persons who have access to Evaluation Materials as a result of this agreement. Customer shall promptly notify Orbita in writing upon its discovery of any unauthorized use of the Evaluation Materials or infringement of Orbita's proprietary rights therein.

3. OWNERSHIP

- 3.1. **Evaluation Materials.** As between Orbita and Customer, and notwithstanding any other terms herein, Orbita or its licensors retain and exclusively own all right, title and interest in and to the Evaluation Materials, and any improvements, modifications, feedback, or suggestions made by any party regarding the Evaluation Materials; and Customer has only the limited rights expressly granted in this agreement.
- 3.2. **Customer Data.** As between Orbita and Customer, Customer retains all right, title and interest that it may have in and to (a) any non-public information provided by Customer to Orbita to enable the provision of the SaaS Service or the Professional Services ("**Customer Data**"). Customer hereby grants to Orbita a limited, non-exclusive, revocable license to perform, or have its agents perform, only those acts with respect to the Customer Data as are necessary for Orbita to provide the SaaS Service and the Professional Services on behalf of Customer pursuant to this agreement. Orbita shall not use Customer Data for any other purpose.
- 3.3. **SaaS Resulting Data.** As between Orbita and Customer, Customer exclusively owns all right, title and interest in and to any data that is generated by Orbita specifically by performing the SaaS Service on the Customer Data ("**Resulting Data**").
- 3.4. **SaaS Performance Data.** Orbita may compile, and shall exclusively own, performance data about traffic patterns, platform performance, and other data about the usage and operation of the SaaS Service (which may include information concerning Customer Data and data derived therefrom) ("**Performance Data**"), except that if Performance Data will be shared with any third-party it must be in an aggregated and de-identified form that does not include any references to Customer or any confidential information of Customer.
- 3.5. **No Other Transfer of Ownership Rights.** Except for the express rights granted herein, neither party gains by virtue of access to, or use of, the SaaS Service pursuant to this agreement any rights of ownership of any intellectual property of the other party or of any third-party.

4. CONFIDENTIALITY

- 4.1. **Definition of Confidential Information.** Subject to exclusions agreed upon in writing, "**Confidential Information**" means all information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") that (a) is provided in writing and marked as confidential, or (b) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes the terms and conditions of this agreement, and Disclosing Party's business and marketing plans, customer lists, business processes, and technical information and product designs regarding its products or services.
- 4.2. **Confidentiality.** Subject to section 5.4 (Exceptions), Receiving Party shall not disclose or use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written permission. This obligation continues until Discloser's information is no longer Confidential Information.
- 4.3. **Protection.** Subject to section 5.4 (Exceptions), each party shall protect the confidentiality of the other party's Confidential Information in the same manner that it protects its own confidential information of like kind, but in no event may either party exercise less than reasonable care in protecting such Confidential Information. This obligation continues until Discloser's information is no longer Confidential Information.

4.4. **Exceptions.** Receiving Party is not obligated to the confidentiality obligations of this agreement as to information that it can demonstrate: (i) becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) was received from a third party without breach of any obligation owed to Disclosing Party.

4.5. **Compelled Disclosure.** If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

5. PRIVACY AND DATA SECURITY

5.1. **No PI or PHI.** For purposes of this evaluation subscription or limited scope Professional Services engagement, Customer shall not provide to Orbita any real personal information or personal health information.

6. REPRESENTATIONS & WARRANTIES

6.1. **Malware.** (i) Orbita shall not create any computer code designed to interfere with the normal operation of Customer's software, hardware or other equipment; and (ii) Orbita shall use industry standard malware testing before delivery of Software.

6.2. **Disclaimer of Warranties.** Except for the express warranties in this agreement, the parties disclaim any and all other express or implied warranties. All evaluation materials are provided "as is", and Orbita specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement, and all warranties arising from course of dealing, usage, or trade practice. Orbita makes no warranty of any kind that the evaluation materials, or any products or results of their use, will meet the requirements of Customer or any other person, operate without interruption, achieve any intended result, be compatible or work with any software, system, or other services, or be error free.

7. **LIMITATION OF LIABILITY.** Except to the extent that liability arises out of (i) a breach by a party of its confidentiality obligations, (ii) indemnification, or (iii) infringement or misappropriation of Orbita's intellectual property rights: (A) neither party will under any circumstances be liable to the other for incidental, consequential, special or punitive damages arising out of this Agreement or its termination or expiration, and (B) each party's maximum liability arising out of or related to this Agreement, regardless of legal theory (whether in contract, tort or otherwise), shall not exceed the sum of fees paid or payable by Customer under the applicable Order Document over the 12 months immediately preceding the event giving rise to the cause of action. Each party hereby waives any claim that these exclusions may deprive it of an adequate remedy.

8. **INDEMNIFICATION.** Customer agrees to indemnify Orbita for any damages or expenses in connection with any third-party action resulting from Customer's breach of section 6.1 (No PI or PHI), section 2.4 (Acceptable Use Policy), or use of the Evaluation Materials outside the permitted Scope of Use.

9. FEES AND PAYMENT

9.1. **Fees and Expenses.** Customer will pay the fees and expenses stated in the applicable Order Document. Travel expenses, if any, will be incurred in accordance with Orbita's Travel & Expense Policy.

9.2. **Payment Timing.** Unless the parties agree to different terms in the Order Document, Customer will pay all undisputed invoices within **30 days** after receipt. Customer shall pay a late fee of 1.5% per month, or the maximum rate permitted by law, whichever is lower, for any fees not paid when due.

9.3. **Non-Refundable.** Fees are non-refundable.

9.4. **Taxes.** Fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer pays all Taxes, excluding only taxes based on Orbita's income. If Orbita has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides in advance a valid tax exemption certificate authorized by the appropriate taxing authority.

10. TERM AND TERMINATION

- 10.1. **Term.** This agreement starts as of the date of the Order Document, and expires **30 days** later unless (a) the parties agree to a different expiration date in the Order Document, (b) the parties agree in writing to extend the expiration date, or (c) Orbita unilaterally extends the term with no new obligations on Customer.
- 10.2. **Termination for Cause.** Either party may terminate for cause in the event of a material breach that is not remedied within **15 business days** of notice if remedy is possible, or immediately upon notice if remedy is not possible.
- 10.3. **Effect of Termination.** Upon termination:
- 10.3.1. Customer shall immediately stop all use of the Evaluation Materials;
 - 10.3.2. All fees and expenses accrued immediately become due and payable; and
 - 10.3.3. The terms in this agreement regarding the following matters survive termination: confidentiality, SaaS Service restrictions and responsibility for end users, ownership, disclaimer of warranties, limitation of liability, no solicitation of staff, payment, and General.

11. GENERAL

- 11.1. **Assignment.** Customer shall not assign this Agreement to any other party without Orbita's prior written consent.
- 11.2. **Relationship; Independent Contractors.** The parties are independent contractors. Neither party is an agent, employer, employee or representative of the other.
- 11.3. **No solicitation of Staff.** During the term of this agreement and for **12 months** after, each party shall refrain from hiring, using or knowingly soliciting, the services of any employee or consultant of the other party, or attempting to do so, either directly or indirectly, without the other party's prior written consent.
- 11.4. **Notices.** All notices will be in writing and given by personal delivery, by mail, by commercial same day or overnight courier, or by e-mail, to the recipient's address set forth in the Order Document to the attention of "General Counsel". Notice is deemed given on (i) the date of personal delivery; (ii) the fifth business day after mailing, (iii) the next business day after delivery to an overnight courier (unless the return receipt or the courier's records evidence a later delivery); or (iv) upon affirmative acknowledgement of email receipt (automated confirmation is not sufficient).
- 11.5. **Force Majeure.** Neither party is liable for any failure to perform hereunder if such failure is caused by fire, embargo, strike, war, epidemic, quarantine restrictions, failure of public utilities, or any other circumstance reasonably beyond its control.
- 11.6. **Interpretation.**
- 11.6.1. **Choice of Law.** The validity and construction of this agreement are governed by the laws of Massachusetts, excluding their conflicts-of-laws principles.
 - 11.6.2. **Entire Agreement.** These General Terms, together with the applicable Order Document, and any other terms incorporated here by reference, state the entire agreement of the parties about the subject matter of this agreement, and supersede all previous agreements, communications, and understandings relating to that subject matter.
 - 11.6.3. **Document Priorities.** These General Terms shall govern in the event of any conflict between these General Terms and the Order Document, except to the limited extent that (i) the specific term in these General Terms contemplates that the parties may agree to a different term in the Order Document, or (ii) the parties agree to additional or superseding terms in the Order Document in a section titled "Additional Legal Terms".
 - 11.6.4. **Changes. Waiver.** Any change to this agreement requires written agreement, except that a waiver requires only written consent from the waiving party. Pre-printed or boiler-plate terms on any purchase order do not apply to this agreement. Failure by a party to enforce any of its rights under this agreement is not a waiver; and the waiver of any breach shall not act as a waiver of subsequent breaches.

11.6.5. **Severability.** If any provision (or portion of a provision) is held to be invalid, illegal or unenforceable, such provision (or portion) shall be deemed severed from this agreement and the balance of this agreement shall remain in full force and effect.

11.6.6. **Headings.** Paragraph headings are included for convenience only.

11.7. **Dispute Resolution.** Each party hereby irrevocably and unconditionally agrees that any controversy or claim that cannot be resolved by the parties through good faith negotiation, or with the assistance of a mediator, shall be settled by arbitration administered by the American Arbitration Association in the Commonwealth of Massachusetts, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to an award of reasonable attorney fees at the arbitrator(s)' discretion.

11.8. **Equitable Relief.** A breach or threatened breach of any of obligations relating to intellectual property or confidentiality would cause irreparable harm for which monetary damages would not be adequate and, in the event of such breach or threatened breach, the party whose confidential information or intellectual property is implicated will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

11.9. **Execution.** The Order Document may be executed in counterparts, by facsimile or electronically (including by Customer marking a check-box indicating agreement to these terms through Orbita's on-line registration mechanism). Where Customer is an entity, the individual agreeing to these terms further represents that they are authorized to agree on behalf of Customer.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written:

Orbita, Inc.

Company

By:

By:

Name:

Name:

Title:

Title: