

TERMS AND CONDITIONS (PURCHASE OF SERVICES OF THE SUPPLIER)

1 DEFINITIONS

In this Agreement, the following words shall have the following meanings:

"Agreement" means together the Purchase Order and these Terms and Conditions.

"Bribery Laws" means laws relating to bribery or corruption.

"Compensation" means the total sum to be paid by the Customer as stated on the Purchase Order.

"Confidential Information" means any information relating to the Customer's and/or any member of the Kantar Group's directors, officers and employees, budgets, prices, order book, methodologies, questionnaires accounts, finances, parent and subsidiary companies, Customer Data and its customers and clients.

"Customer" means the Kantar operating entity named on the Purchase Order.

"Customer Data" means any data (including any personal data relating to staff, customers/clients or suppliers of the Customer or its clients), documents, text, drawings, diagrams, specifications, images (together with any database made up of these) supplied or made available to the Supplier by or on behalf of the Customer or its clients, or which the Supplier is required to generate, process, store or transmit pursuant to this Agreement.

"Data Protection Legislation" means the European Data Protection Directive (95/46/EC) and the European Privacy and Electronic Communications Directive (as amended from time to time) and any legislation implementing those Directives in any country, the EU Data Protection Directive and GDPR and any other applicable (national) legislation in relation to data protection.

"Deliverables" means all goods, items, equipment and materials to be supplied as part of the Services of the Supplier.

"EU DATA Protection Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data.

"Force Majeure" means an occurrence beyond the control and without the fault or negligence of the party affected and which that party is unable to prevent or provide against by the exercise of reasonable diligence.

"GDPR" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

"Goods" means the goods specified in the Purchase Order (PO).

"Insolvency Event" means the relevant party is unable to pay its debts as they fall due, or an order is made or a resolution is passed for the winding up of that party, or the relevant party has a receiver or administrator appointed of the whole or any part of its assets or undertaking, or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding up or administration order, or makes an arrangement with creditors, or is subject to any bankruptcy process or proceeding, or the relevant party undergoes a process that is similar or equivalent to any of the foregoing in any jurisdiction.

"Intellectual Property Rights" means all patents, rights to inventions, copyright and related rights, moral rights, database rights, semiconductor topography rights, utility models, rights in designs, trademarks, service marks, trade names, domain names, rights in goodwill, rights in undisclosed or confidential information, and other similar or equivalent rights or forms of protection as may now or in the future exist anywhere in the world.

"Personal Data" has the meaning given in Schedule 1.

"Purchase Order" means the purchase order attached to these Terms and Conditions or any other form of written communication which references the Purchase Order number and to which these Terms and Conditions shall apply (PO).

"Services (of the Supplier)" means the services specified in the Purchase Order or in other written notifications referring to the order (e.g. by specification of the Purchase Order number) which the Supplier has to provide.

"Supplier" means the legal entity or natural person identified in the Purchase Order.

"Supplier Personnel" means all personnel required to perform the Services of the Supplier.

2 THE CONTRACT

2.1 These Conditions govern the Contract to the entire exclusion of all other terms or conditions and supersede all previous agreements relating to the same subject matter. Any additional terms and conditions provided by the Supplier to the Customer shall be invalid and shall not form part of the Contract, unless specifically agreed to in writing by the Customer's authorised representative. To the extent there is any conflict or inconsistency between these Conditions and the information in the PO, these Conditions shall take priority. Each party acknowledges that it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

2.2 Deviating general terms and conditions of the Supplier do not apply. This also applies if the Customer does not separately object to their validity in individual cases. These terms and conditions shall also apply if the Customer, in the knowledge of conflicting or deviating terms and conditions of the Supplier, unconditionally accepts the Supplier's delivery / service.

3 SUPPLY OF GOODS AND SERVICES

3.1 The Supplier shall supply the Goods and Services and perform its other obligations under this Contract in accordance with best industry practice and this Contract. The Supplier shall ensure that Supplier Personnel are suitably qualified, adequately trained and capable of performing the tasks and responsibilities assigned to them and that they comply with any workplace policies in effect at the Delivery Site and at any premises used or occupied by the Customer where the Services are performed.

3.2 The Supplier shall:

- (a) deliver the Goods to the Delivery Site during normal business hours on or before the Delivery Date. Time shall be of the essence of delivery; and
- (b) ensure that a packing list referencing the applicable PO number accompanies all shipments and that all boxes, packages, shipping memoranda, invoices and correspondence reference the applicable PO number.

- 3.3 The Supplier shall comply with the Customer's Code of Business Conduct for Suppliers, available at <https://www.kantar.com/-/media/project/kantar/global/kantar-supplier-code-of-conduct-english-gb.pdf> and Information Security Requirements, available at <https://www3.kantar.com/supplier-security-obligations..> He must oblige its supply chain to comply with at least equivalent measures. These obligations constitute an essential contractual obligation; a failure to comply with constitute a material breach of this agreement.

4 SUPPLIER'S UNDERTAKINGS

The Supplier warrants, represents and undertakes that: (a) it has full right, title and authority to sell the Goods and provide the Services in accordance with this Contract; (b) it sells the Goods free from all liens, charges and encumbrances; (c) the Goods will be brand new and unused on delivery and will conform to this Contract, any samples provided to the Customer by the Supplier and any description or specification referred to in the PO or made generally available to the public; (d) without limiting (c) of this Clause, the Goods and Services will be of satisfactory quality, fit for any purpose made known to the Supplier in the PO or otherwise agreed on, and will be free from all defects in materials, design and workmanship; (e) the Goods and Services will conform with all standards referred to in the PO or on the relevant Goods or in any packaging or documentation supplied with the Goods; and (f) the Goods and Services have been or will be produced, provided and sold in compliance with all applicable laws.

5 COMPENSATION

- 5.1 The price for Goods and Services includes all charges for packaging, insurance, carriage and delivery. The price is exclusive of sales or similar taxes, which shall be invoiced at the prevailing rate at the time the invoice is submitted, and if the Supplier is a re-seller of a Product, the Supplier shall pass on to the Customer any discount that the manufacturer makes available to the Supplier in relation to that Product, and the Supplier shall not apply any mark-up.
- 5.2 The Supplier acknowledges and agrees to use the Coupa or Candex portals, or any other invoicing platform as instructed by Customer from time to time ("Invoicing Portals"), for the initiation, negotiation and execution of contracts and submission of invoices related to the Goods, Services or Deliverables.
- 5.3 The Supplier shall submit any invoices due hereunder exclusively through the Invoicing Portals. The Supplier shall be solely responsible for managing its own accounts with respect to the Invoicing Platforms, adhering to any guidelines and procedures outlined by Customer or the Invoicing Portal owner, and ensuring that relevant Supplier Personnel are adequately trained with respect to use of the Invoicing Portal.
- 5.4 The Supplier may invoice or – if contractually agreed upon – partially invoice the Customer for Goods and Services following Delivery or partial Delivery respectively.
- 5.5 The invoice shall be considered received by the Customer on the date that it is successfully uploaded to the Invoicing Platform, and such date shall serve as the starting point for calculating payment time-lines.
- 5.6 Subject to Clause 5.7:
- the Customer shall pay the Supplier's invoice on the Customer's next payment run following a date that is sixty (60) days after the end of the month in which a valid invoice specifying the correct PO number is received; and
 - the Supplier may charge interest on any undisputed overdue sum at the rate of 4% above the base rate per annum from the date payment was due until the date of actual payment, whether before or after judgment. The Parties agree this is a substantial remedy for late payment, which should apply in place of any statutory rate of interest on late payments. Furthermore § 288 (5) of the German Civil Code (Bürgerliches Gesetzbuch) is agreed to be inapplicable to the extent admissible by law.

- 5.7 The Customer may:

- withhold payment for any item on the Supplier's invoice that the Customer reasonably disputes; and
- set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under this Contract.

6 CUSTOMER'S REMEDIES

- 6.1 If there is a breach of Clause 4, whether or not the Customer has accepted the Goods or Services, the Customer may, by notice in writing to the Supplier:
- reject the relevant Goods or Services and (at the Customer's discretion) all other Goods delivered by the Supplier under the same PO, and Clause 6.3 shall apply; or
 - require the Supplier to repair or replace the relevant Goods or remedy the relevant Services at the Supplier's cost so that they conform with this Contract, in which case the Supplier shall do so as soon as reasonably practicable and in any event within 5 Business Days after the Supplier's receipt of written notice under this Clause 6.2.
- 6.2 If the Customer rejects any Goods or Services under this Contract or at law:
- if the Customer has paid for the rejected Goods or Services, then within 5 Business Days after the Supplier's receipt of written notice of rejection, the Supplier shall refund the Customer the Price and all other sums paid under this Contract for those Goods and/or Services;
 - the Supplier shall not invoice the Customer for the rejected Goods or Services and the Customer shall not be liable to pay for them;
 - the Customer shall either make the rejected Goods available for collection by the Supplier at the Supplier's cost, or return the Goods to the Supplier at the Supplier's cost, and the Supplier shall indemnify the Customer against all reasonable storage costs incurred by the Customer pending collection or return of the rejected Goods;
 - risk in the rejected Goods shall rest with the Supplier from the date of the Supplier's receipt of the Customer's written notice of rejection; and
 - if the Customer buys goods or services in substitution for those rejected by the Customer, the Supplier shall indemnify the Customer from and against the difference between (i) the total Price that would have been payable under this Contract for the rejected Goods and Services, and (ii) the price actually paid by the Customer for substitute goods and services, unless the price in (ii) is lower than the price in (i).

7 TERM AND TERMINATION

- 7.1 This Agreement shall start upon signature of all parties and shall continue for 2 (two) years, unless terminated earlier in accordance with this Agreement or law. Termination or expiry of this Agreement shall not in itself affect the continuation of any SOW or PO or vice versa.
- 7.2 The Customer may terminate this Agreement, in whole or (with a proportionate reduction in the Compensation) in part, at any time:
- for convenience on fourteen (14) days' written notice to the Supplier; or
 - immediately if the Supplier is in material breach of this Agreement or
 - immediately if an order is made or a resolution is passed for the winding up of the Supplier, or the Supplier has a receiver or administrator appointed of any part of its assets, or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or a court to make a winding up or administration order, or makes an arrangement with creditors or if the Supplier is unable to pay its debts as and when they fall due.

- 7.3 Statutory rights of termination shall remain unaffected.
- 7.4 In case of termination, the Supplier shall receive the proportionate Compensation for the Services fully performed and usable for the Client until the effective date of the termination. Any further claim to Compensation of the Supplier is excluded. If the Supplier is responsible for the important reason in case of a termination by the Client without notice, the Supplier shall additionally be liable to compensate the Client for damage incurred as a result of termination, including any consequential damage.
- 7.5 A possible premature termination by the Client without notice and without giving a reason is possible at any time up to a maximum of 14 days before the agreed activity commences, without the Client incurring cancellation costs or having to compensate the contractual partner for expenses.
- 7.6 Upon expiry or termination of this Agreement or of any part of the Services of the Supplier, the Supplier will deliver all Confidential Information to the Customer and liaise with the Customer and/or third party to ensure a complete handover.
- 7.7 Expiry or termination of this Agreement shall be without prejudice to any rights accrued up to the date of termination or any provisions which expressly or impliedly survive termination.

8 AUDIT

The Supplier shall keep and maintain at its principal place of business true and accurate written books and records in connection with the Services of the Supplier (including but not limited to timesheets, claims records, invoices, expenses, costs, credit notes) in accordance with generally accepted accounting and document retention principles during this Agreement and for the term prescribed by the applicable statutory law thereafter and permit the Customer and/or its client or the Customer's authorised representative to inspect such records upon reasonable written notice for the purposes of assessing compliance with this Agreement (including, without limitation, the restrictions set out in Clause 13). If, as a result of an audit, the Customer discovers any overpayment in relation to the Services of the Supplier or any other non-compliance with the terms of this Agreement, the Supplier shall promptly rectify such non-compliance at its own cost and refund to the Customer the full amount of any overpayment and the costs of the relevant audit.

9 LIABILITY AND INDEMNITY

- 9.1 Nothing in this Agreement shall exclude or limit either party's liability in respect of any claims:
- (a) for death or personal injury or
 - (b) based on a wilful or grossly negligent breach of duty of one party or its representatives, agents or vicarious agents, or
 - (c) resulting from any fraud including fraudulent misrepresentation made by such party; or
 - (d) for which liability may not otherwise lawfully be limited or excluded; or
 - (e) for any indemnity provided by the Supplier to the Customer under this Agreement; or
 - (f) for any breach by the Supplier of Clauses 11 to 13 inclusive or 15.1; or
 - (g) for any deliberate or wilful default by the Supplier.
- 9.2 Subject to Clause 9.1, the Customer shall not be liable for any indirect, special or consequential losses or any loss of profits (whether direct or indirect), loss of goodwill, loss of business, loss of revenue or loss of anticipated savings.
- 9.3 The Supplier shall indemnify the Customer against all losses, costs, liabilities, damages, expenses, claims and proceedings incurred and/or suffered by the Customer arising out of or in connection with:
- (a) any breach of this Agreement; or
 - (b) any loss of or damage to property of the Customer during the provision of the Services of the Supplier; or

- (c) any negligent act or omission by the Supplier, the Supplier Personnel and/or subcontractors or their employees in connection with this Agreement; or
- (d) any claim that the use of the Deliverables and/or Services of the Supplier infringes the Intellectual Property Rights of any third party.

- 9.4 Subject to Clause 9.1 and according to Clause 9.2, the Customer's total aggregate liability arising from or related to this Agreement shall not exceed an amount equal to the Compensation paid or payable to the Supplier by the Customer under this Agreement in the twelve (12) months preceding the event that triggered such liability.
- 9.5 Subject to Clause 9.1, the Supplier's total aggregate liability arising from or related to this Agreement (shall not exceed €10,000,000 (ten million euros) per claim.

10 INSURANCE

- 10.1 The Supplier shall take out and maintain with a reputable third party insurer insurance to cover the Supplier's obligations and liabilities under this Agreement and:
- (a) in respect of its public liability, to a minimum value of € 1,000,000 for any one event and unlimited in the relevant insurance period;
 - (b) in respect of its employer's liability, with a coverage level of at least €5,000,000 for any one event and unlimited in the relevant insurance period unless the Supplier is already subject to mandatory insurance with an insurance company, employer's liability insurance association or other public-law insurance carrier in accordance with the legal provisions applicable in Supplier's jurisdiction;
 - (c) in respect of its professional indemnity liability, to a minimum value of €1,000,000 for any one event and unlimited in the relevant insurance period.
- 10.2 Notwithstanding Clause 10.1, the Supplier undertakes to ensure adequate insurance cover and, if reasonably necessary, to subsequently take out additional insurance cover where appropriate.

11 DATA PROTECTION

- 11.1 If the provision of the Services of the Supplier requires the processing of personal data by the Supplier on behalf of the Customer, the Supplier will:
- (a) comply with the Data Protection Legislation;
 - (b) act only on the instructions of the Customer as data controller;
 - (c) comply with Schedule 1 (Data Protection Addendum);
 - (d) at all times take all appropriate technical, operational, managerial, organisational measures in accordance with prevailing practices of care, skill, professionalism and diligence to safeguard against unauthorised or unlawful processing of personal data and against any unauthorised or unlawful accidental loss, destruction of, or damage to, personal data and ensure the security of such personal data;
 - (e) shall not delete, transfer, remove or otherwise process any of the Customer's data, except in accordance with the Customer's instructions or the terms of this Agreement;
 - (f) shall permit the Customer or the Customer's representative, at the Customer's own cost, at any time on reasonable prior written notice (a minimum of 5 days' notice) to have access to the appropriate part of the premises, systems, equipment or other materials and facilities where the Supplier, its suppliers or subcontractors process the personal data for security review and verification purposes; and
 - (g) shall inform the Customer immediately if at any time there is a breach or suspected breach of this Clause 11, or any personal data is or is suspected to be lost, corrupted, used or disclosed to a third party otherwise than in accordance with this Agreement.

- 11.2 The Supplier shall indemnify the Customer against all losses, liabilities, claims, expenses, damages and costs suffered or incurred by the Customer as a result of the Supplier's failure to abide by the Data Protection Legislation, this Clause 11 and/or the provisions of Schedule 1.
- 11.3 From 25 May 2018 the Supplier shall comply with the specific terms required by GDPR relating to any Services of the Supplier that require the processing of Personal Data as set out in Schedule 1.
- 11.4 The Supplier warrants that it shall have in place measures which incorporate the ISO/IEC 27001 information security standard or any such equivalent standard that replaces it from time to time.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to Clause 12.2, the Customer shall own the Intellectual Property Rights in the Deliverables and the Supplier hereby irrevocably and unconditionally assigns with full title guarantee to the Customer all and any Intellectual Property Rights, upon creation of the same, in the Deliverables. The Supplier shall, and shall procure that the Supplier Personnel waive in favour of the Customer absolutely and irrevocably their moral rights (if any) in relation to such Deliverables.
- 12.2 Nothing in this Agreement is intended to affect the Supplier's ownership of materials used or developed by it independently of the Services of the Supplier or the Supplier's generic methodologies, tools, technology or processes which are used by it (but not developed by it) in the performance of the Services of the Supplier (together the "Supplier's Pre-Existing Materials"). If the Supplier's Pre-Existing Materials (or part thereof) are incorporated in the Deliverables, or required to use or exploit the Services of the Supplier, the Supplier hereby grants to the Customer a perpetual, worldwide, irrevocable, non-exclusive, royalty-free licence to use the Supplier's Pre-Existing Materials to enable the Customer to obtain the full benefit of the Services of the Supplier.
- 12.3 The Supplier warrants and represents that it has the right to assign or license all Intellectual Property Rights granted or assigned pursuant to this Agreement and that the grant and terms of its respective assignment or licence shall not infringe the Intellectual Property Rights of any third party.
- 12.4 The Supplier shall not acquire any right, title or interest in or to any Intellectual Property Rights owned by or licensed by any third party to the Customer by reason of this Agreement and the Supplier acknowledges that all such Intellectual Property Rights remain the property of the Customer and/or its licensors.

13 NO BRIBERY

- 13.1 The Supplier shall comply with the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2 (the "FCPA") and the UK Bribery Act 2010 (the "UKBA") and shall procure the compliance with the FCPA and the UKBA by its group companies, associates and each of their respective directors, employees, agents and intermediaries or any party that is carrying out a service for the Customer (each an "Associated Person").
- 13.2 The Supplier shall not, and shall procure that each Associated Person shall not, directly or indirectly, request, agree to receive or accept a financial or other in violation of his/her or its lawful duty or inducing him/her or it to exercise his/her or its influence to affect or influence any act or decision (including the improper performance of any function) of him, her or it or to obtain or retain business for the Customer. The Supplier shall notify the Customer in writing immediately if it becomes aware of any violation of the FCPA, UKBA or this Clause 13.

14 CUSTOMER AND CLIENT MATERIALS

- 14.1 Title to any property of the Customer or a client of the Customer provided to the Supplier for the performance of the Services of the Supplier shall remain with the Customer or its clients (as applicable).

- 14.2 Subject to reasonable prior notice, the Customer or its client shall be entitled to retake possession of their property at any time from the Supplier.
- 14.3 The Supplier shall keep any property of the Customer or any client of the Customer in its possession safe and shall not dispose of or part with possession of such without the Customer and its client's written consent, save as otherwise required for the performance of the Services of the Supplier. After complete rendering of the Services, the Supplier is obliged to return any property of the Customer or of any client of the Customer.
- 14.4 The Supplier hereby waives any lien or other right that it might otherwise have over any property of the Customer or a client of the Customer and shall keep the same free of all liens and other encumbrances.
- 14.5 The Supplier shall only use the property of the Customer or any client of the Customer in connection with the performance of the Services of the Supplier to which they relate.

15 MODERN SLAVERY ACT AND OTHER PROVISIONS ON THE DEPLOYMENT AND PAYMENT OF EMPLOYEES

- 15.1 The Supplier warrants that:
- (a) neither the Supplier nor any of its officers, employees, agents or subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - (b) it shall comply with the Modern Slavery Act 2015;
 - (c) it shall notify Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under this Clause 15.
- 15.2 The Supplier may assign foreign employees who require a work permit to fulfil the Services of the Supplier only if they are employees of the Supplier. In addition, these employees must hold residence and work permits that are valid for the place and time at which the work is to be performed. The Supplier shall satisfy itself that these conditions are met before these employees commence their activity. By signing and with the conclusion of the contract between the Customer and the Supplier, the Supplier confirms to the Customer that
- no investigations have ever been conducted against the Supplier pursuant to the German Minimum Wage Act (Mindestlohngesetz) and/or the German Posted Workers Act (ArbeitnehmerEntsendegesetz) or
 - such investigations did not reveal any violations of the law.
- 15.3 The Supplier guarantees to pay employees and persons in marginal employment the minimum wage specified by the German Minimum Wage Act and other statutory and collective bargaining provisions, in particular the German Posted Workers Act and relevant collective bargaining agreements, as well as agreed extra payments, including contributions to social insurance, employment promotion and social security payments. In case the Supplier performs the Services of the Supplier outside the Federal Republic of Germany, it guarantees the compliance with the respective national laws.
- 15.4 The Supplier also undertakes to inform the Customer if the competent authorities commence investigations against it due to violation of regulations under labour or residence law or due to a violation of the German Posted Workers Act or the German Minimum Wage Act or comparable national laws. The Supplier grants the Customer all suitable rights to control the Supplier's obligations under the foregoing provisions.

- 15.5 If the Supplier violates any or several of the foregoing provisions, the Customer shall have an extraordinary right of termination with immediate effect. All payment obligations of the Customer with respect to the Supplier shall cease as of the time extraordinary termination is given. In addition, the Supplier undertakes to unconditionally and irrevocably indemnify the Customer against all claims of third parties based on a violation of the foregoing provisions by the Supplier, the subcontractors and/or temporary employment agencies commissioned by the Supplier.

16 MISCELLANEOUS

16.1 Confidentiality.

The Supplier shall during this Agreement and for an unlimited period thereafter, keep confidential all Confidential Information and shall not use or disclose such Confidential Information to any third party except as may be strictly necessary in order to perform the Services of the Supplier or as required by law.

16.2 Assignment and Subcontracting.

- (a) The Customer may, with notice to the Supplier, assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (1) an Affiliate, (2) the Customer's successor pursuant to a merger, reorganization, consolidation or sale or (3) an entity that acquires all or substantially all of that portion of the Customer's assets or business for which the Supplier's Services were acquired or are then being used. Except as otherwise provided above, neither Party may assign this Agreement or any of its rights or interests hereunder, nor delegate any obligation to be performed hereunder, without the prior written consent of the other Party. This Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.
- (b) The Supplier shall not sub-contract the performance of its obligations under the PO to a third party without the Customer's prior written consent. The Customer's approval of a subcontractor shall not constitute a waiver of any rights the Customer may have based on the Supplier's representations and warranties. The Supplier shall be fully responsible for all acts and omissions of its subcontractors. Nothing in this Agreement shall be construed to create any contractual relationship between the Customer and any subcontractor, nor any obligation on the part of the Customer to pay or to ensure the payment of any money due any subcontractor. The supplier must impose the obligations under this Agreement on its Subcontractors.

16.3 Severability.

Should any provision of this Agreement be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement. In place of the ineffective or unenforceable provision shall apply an appropriate provision, which, as far as legally possible, comes closest to the economic point of view, which the parties would have wanted if they had recognized the invalidity or impracticability upon conclusion of this Agreement. The same applies in the event that this Agreement contains a regulatory gap.

16.4 No Waiver of Rights.

Any failure to exercise or any delay in exercising a right or remedy provided this Agreement or at law or in equity shall not constitute a waiver of the rights or remedies or a waiver of any other rights or remedies.

16.5 No Joint-Venture.

Nothing in this Agreement shall be construed as establishing or implying any partnership or agency relationship between the parties.

16.6 Integrity of the Agreement.

This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with within it and supersedes any previous agreement between the parties relating to such matters, unless expressly agreed otherwise in writing within the meaning of Clause 16.7.

16.7 Written Form.

Changes and additions to this Agreement must always be made in writing in order to be effective. This also applies to the cancellation or amendment of the written form requirement itself.

16.8 Jurisdiction and Governing Law.

This Agreement and any non-contractual obligations shall be governed exclusively by German law with the exclusion of the UN Convention on Contracts for the International Sale of Goods. The parties agree to submit any dispute to the exclusive jurisdiction of the Court having territorial jurisdiction over the Customer's registered office.

SCHEDULE 1:

DATA PROTECTION: GDPR

1 SCOPE

- 1.1 This Schedule 1 is only applicable, provided the Supplier processes personal data on behalf of the Customer within the meaning of Art. 28 GDPR.

2 DATA PROTECTION

2.1 In this Schedule 1

- (a) terms used but not otherwise defined in this Agreement have the meanings given in the EU Data Protection Directive.
- (b) Personal Data has the meaning given in the EU Data Protection Directive, but data is also personal data for the purposes of this Agreement if:
 - (i) it relates to legal persons and its processing, under or in connection with this Agreement, is subject to any Data Protection Legislation that apply to data about legal persons as well as data about natural persons; or
 - (ii) it includes any of the following information and its processing, under or in connection with this Agreement, is subject to any U.S. federal or state law or regulation: name, address, telephone number, fax number, social security number, DEA number, other government issued identifier, credit card information, medical insurance identifiers, IP addresses, email addresses and information relating to the past, present or future health or condition (physical or mental) of an individual;
- (c) In-Scope Personal Data means any Personal Data that is processed by the Supplier in the course of providing the Services of the Supplier or performing its other obligations under this Agreement;
- (d) Data Safeguards means administrative, technical and physical safeguards that protect against threats or hazards to the integrity and security of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to, In-Scope Personal Data and that comply with best industry practice;
- (e) Model Terms means the standard contractual clauses approved by European Commission decision of 5 February 2010 (2010/87/EU) on standard contractual clauses for the transfer of personal data to processors established in third countries (but which shall exclude any contractual clauses designated by the European Commission as optional in that decision), as amended or replaced from time to time by the European Commission;
- (f) Member State means a Member State for the time being of the European Union;
- (g) a reference to transferring data out of any country or territory includes, without limitation, remotely accessing that data from outside that country or territory;
- (h) the references to Applicable Law in Clauses 2.4(c) and 2.8(a)(iii) shall be limited to European Union or Member State law to which the Supplier is subject, to the extent that those Clauses apply in relation to In-Scope Personal Data the processing of which is subject to European Union or Member State law; and
- (i) on and from 25 May 2018, references to the EU Data Protection Directive shall be read as references to GDPR, and the reference in Clause 2.5(a)(ii) to Article 25(6) of the EU Data Protection Directive shall be read as a reference to Article 45(3) of GDPR.

2.2 Each of the Supplier and Customer shall, at all times, comply with its obligations under all Data Protection Legislation and all applicable Customer Policies in connection with this Agreement.

2.3 The Supplier shall not be entitled to use or otherwise process any In-Scope Personal Data for any purpose other than to provide the Services of the Supplier and to perform its other obligations under this Agreement.

2.4

The Supplier shall:

- (a) process In-Scope Personal Data only on and in accordance with the written instructions of Customer;
- (b) promptly notify Customer upon becoming aware of any errors or inaccuracies in any In-Scope Personal Data;
- (c) ensure that, except as otherwise instructed in writing by Customer or required by Data Protection Legislation, any copies of In-Scope Personal Data in the possession or under the control of the Supplier, any sub-contractor or any Supplier personnel are permanently destroyed when they are no longer required for the performance of the Supplier's obligations under this Agreement;
- (d) ensure that In-Scope Personal Data is accessible only to Supplier personnel who: (i) need to have access to the data in order to carry out their roles in the performance of the Supplier's obligations under this Agreement; (ii) have been appropriately trained on the requirements of Data Protection Legislation applicable to the processing, care and handling of the data; and (iii) are subject to contractual or statutory obligations of confidentiality in respect of the In-Scope Personal Data; and
- (e) subject to Clause 2.12, give the Customer such co-operation, assistance and information and execute all documents as they may reasonably request to assist them to comply with their obligations under any Data Protection Legislation insofar as they relate to any In-Scope Personal Data, and co-operate and comply with the directions or decisions of any competent data protection or privacy authority in relation to such data, and, in each case, within such time to assist Customer and to meet any time limit imposed by Data Protection Legislation or by the data protection or privacy authority.

2.5

In respect of In-Scope Personal Data the processing of which is subject to European Union or Member State law, the Supplier shall:

- (a) not transfer, and shall ensure that any sub-contractor does not transfer, such data out of any country or territory, nor require any Customer to make such a transfer, except:
 - (i) between member states of the European Economic Area;
 - (ii) from any member state of the European Economic Area to any country or territory which is at the time subject to a current finding by the European Commission under Article 25(6) of the EU Data Protection Directive which is applicable to the transfer, provided that the Supplier has given Customer sufficient notice of, and information regarding, the transfer reasonably to enable Customer to meet any notification, registration or approval requirements of any Data Protection Legislation in relation to the transfer;
 - (iii) where the transfer merely continues, and is carried out in all material respects in the same way as, a transfer which was carried on between Customer before the Effective Date (unless another provision of this Agreement requires that transfer to cease); or
 - (iv) on the written instructions of Customer, and then subject to any reasonable additional restrictions set by Customer; and
- (b) at any time in relation to a transfer of the kind contemplated by Clause 2.5(a)(iii) or Clause 2.5(a)(iv), promptly enter into (or require, in the case of a transfer by or to a subcontractor, that that subcontractor promptly enters into) an agreement with Customer on Model Terms unamended but completed in such manner as Customer may reasonably stipulate, or such other form as the Parties may agree in writing.

2.6

In respect of In-Scope Personal Data not falling within Clause 2.5, but the processing of which is subject to any Data Protection Legislation that prohibits or restricts (a) the transfer of that In-Scope Personal

Data to any country or territory or (b) the processing of that In-Scope Personal Data in any country or territory, the Supplier shall not transfer or process that In-Scope Personal Data in contravention of any such prohibition or restriction, except where the transfer merely continues, and is carried out in all material respects in the same way as, a transfer which was carried on between Customer before the Effective Date (unless another provision of this Agreement requires that transfer to cease).

2.7 The Supplier shall:

- (a) at all times have in place (and keep Customer's data protection officer informed in writing of the identity of) a Supplier Person who is responsible for assisting Customer in responding to enquiries received from data subjects or any competent data protection or privacy authority;
- (b) ensure that the Supplier Person referred to in Clause 2.7(a) always responds promptly and reasonably to the enquiries referred to in that Clause, taking full account of the relevant requirements of Data Protection Legislation as to timely response; and
- (c) take no steps in relation to any enquiry as referred to in Clause 2.7(a) except on the written instructions of the applicable Customer.

2.8 The Supplier shall:

- (a) not disclose or transfer any In-Scope Personal Data to any third party, except for a disclosure or transfer:
 - (i) made on the written instructions of Customer;
 - (ii) to a subcontractor in accordance with Clause 2.8(b); or
 - (iii) to the extent required by Data Protection Legislation or any other provision of this Agreement;
- (b) in respect of any processing of In-Scope Personal Data by a subcontractor:
 - (i) comply with the provisions of Clause 13.2, (Assignment, Subcontracting);
 - (ii) ensure that the subcontractor's processing is carried out under a written contract imposing on the subcontractor the same obligations as are imposed on the Supplier under this Schedule 1 (Data Protection: GDPR);
 - (iii) procure that the subcontractor performs and observes those obligations; and
 - (iv) if Customer so requests, procure that the subcontractor enters into a written contract with Customer, imposing on the subcontractor the same obligations as are imposed on the supplier under this Schedule 1 (Data Protection: GDPR).

2.9 The Supplier:

- (a) shall adopt, implement and maintain Data Safeguards, including, as part of the Data Safeguards, security procedures and practices to prevent the unauthorized or accidental access to or destruction, loss, modification, use or disclosure of In-Scope Personal Data;
- (b) warrants to Customer that the Supplier has written security policies, procedures and practices that comply with the Supplier's data security obligations under Data Protection Legislation;
- (c) shall maintain and enforce the Data Safeguards at each facility from which the Supplier provides the Services of the Supplier, and with respect to any and all networks that process In-scope Personal Data; and
- (d) shall review and revise the Data Safeguards from time to time in accordance with prevailing industry practices and as reasonably requested by Customer (and shall promptly provide details of such revised Data Safeguards to Customer in writing upon request).

2.10 In the event of any unauthorized or accidental access to or use or disclosure of any In-Scope Personal Data, or the Supplier having reasonable belief that any such access, use or disclosure has occurred or is at risk of occurring (which shall include, without limitation, the loss

of or the inability to locate definitively any media, device or equipment on which In-Scope Personal Data is or may be stored), the Supplier shall:

- (a) notify Customer without delay, and in any event within twenty-four (24) hours, providing reasonable detail of the impact on Customer of the access, use or disclosure and the corrective action taken and to be taken by the Supplier;
- (b) subject to Clause 2.12, promptly take all necessary and appropriate corrective action to remedy the underlying causes of the access, use or disclosure;
- (c) take any action pertaining to the access, use or disclosure required by Data Protection Legislation including, without limitation, at the request of Customer, providing notices to data subjects whose personal data may have been affected, whether or not such notice is required by Data Protection Legislation; and
- (d) if the access, use or disclosure would permit access to a data subject's financial information or lead to a reasonable risk of identity theft or fraud, the Supplier shall provide, for a reasonable period of time of not less than one (1) year, credit monitoring services for any such data subjects.

2.11 Customer:

- (a) is responsible, in its own right for instructing the Supplier to take such steps in the processing of personal data on behalf of Customer as are reasonably necessary for the performance of the Supplier's obligations under this Agreement; and
- (b) authorizes the Supplier, to the extent permitted by Data Protection Legislation, to provide equivalent instructions to the subcontractors on behalf of Customer.

2.12 The costs and expenses incurred by the Supplier in complying with Clauses 2.4(e), 2.10(b), 2.10(c) and 2.10(d) shall be borne:

- (a) by the Supplier in cases where the action required to be taken by the Supplier results from a breach of this Agreement or any negligent, wilful or fraudulent act or omission of the Supplier including failure to comply with the GDPR, any subcontractor or any Supplier Personnel; and
- (b) by Customer in other cases.