

# General Terms and Conditions



## 1 INTRODUCTION

This document sets out the General Terms and Conditions for the delivery of Services and Deliverables.

## 2 DEFINITIONS AND INTERPRETATION

Terms and expressions with capital letters will have the meaning set out in Appendix 2 (Definitions) to these General Terms and Conditions.

## 3 WARRANTIES

3.1 The Supplier warrants that:

- (a) the Services and/or Deliverables will conform with and be provided in accordance with the specifications set out in the Agreement;
- (b) the performance of the Services and/or Deliverables will adhere to Best Industry Practice;
- (c) the Supplier will discharge its obligations under the Agreement with all reasonable skill, care and diligence;
- (d) the Supplier has and will maintain in good standing all licenses, registrations, permits and all approvals required under Applicable Law, necessary to provide the Services and the Deliverables, and to otherwise operate its business;
- (e) the provision of Services and Deliverables will be in compliance with and will enable the Customer to comply with Applicable Law and the Customer Code of Conduct; and
- (f) the provision of Services and Deliverables will be in compliance with and will enable the Customer to comply with the European Data Privacy Directive 95/46/EC with later amendments and as of 25 May 2018 the European Regulation 2016/679, the Children's Online Privacy Protection Act (COPPA) and other relevant and applicable data protection legislation.

3.2 The Supplier shall acknowledge that the Customer Group has a zero tolerance approach to bribery and corruption within its business and that of the third parties it does business with. Accordingly, the Supplier shall act in a professional and ethical manner at all times when doing business relating to or on behalf of the Customer Group and in performing any contractual obligations under this Agreement and therefore the Supplier warrants that the provision of Services and Deliverables will be in compliance with all Applicable Laws relating to anti-corruption, anti-bribery and money laundering, such as but not limited to the U.S. Foreign Corrupt Practices Act 1997 and the UK Bribery Act 2010. If the Supplier has knowledge of or reasonable grounds to suspect a breach of said laws, the Supplier must as soon as reasonably practicable report the (suspected) breach and provide the Customer with all relevant information and documents pertaining thereto (as allowed by Applicable Laws).

For the avoidance of doubt, non-compliance with one of the obligations set out in 3.1 or 3.2 above or any infringement hereof shall constitute a material breach of this Agreement and the Customer shall be entitled to terminate the Agreement with immediate effect and withhold any payments that may otherwise be due to the Supplier at the time of termination. To the extent permitted by law, the Supplier shall indemnify and hold the Customer harmless from any and all Losses and costs related to and/or caused by such infringement(s).

## 4 CONFIDENTIALITY

4.1 For the purpose of this Article 4, the "Disclosing Party" shall mean the Supplier or the Customer Group, as applicable, disclosing Confidential Information, and the "Receiving Party" shall mean the Supplier and the Supplier's Affiliates or the Customer and the Customer's Affiliates, as applicable, receiving Confidential Information.

4.2 The Receiving Party shall keep in confidence and observe strict confidentiality with respect to all Confidential Information obtained from or relating to the Disclosing Party and shall not directly or indirectly disclose or otherwise make available such Confidential Information, whether in whole or in part, to any third party without the prior written approval by the Disclosing Party. The Supplier may only use the Customer's Confidential Information for the purposes of the Agreement. The Receiving Party shall undertake the aforementioned confidentiality obligations by exercising the degree of skill, care, diligence, prudence and foresight, which would reasonably and ordinarily be expected from a skilled and experienced contractor, or with the same degree of care as the Receiving Party exercises in regards to the Receiving Party's own Confidential Information, which ever degree is higher.

## 5 INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights belonging to a Party prior to entering into the Agreement shall remain vested in that Party.
- 5.2 Except to the extent expressly agreed in writing between the Parties, any Intellectual Property Rights developed for or on behalf of the Customer under the Agreement will vest in the Customer unconditionally and immediately on their creation. The Customer grants to the Supplier a royalty-free, non-exclusive licence to use, reproduce, modify, adapt and develop such Intellectual Property Rights solely for the purpose of performing its obligations under this Agreement and provided that any Intellectual Property Rights created in relation hereto shall vest in the Customer.
- 5.3 The Supplier agrees that the Customer Group's company names, trade names and trademarks (including LEGO ®) are the exclusive property of the Customer or the Customer Group.

## 6 DELAY

6.1 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) for any reason: provide the Services and/or Deliverables or perform any of its obligations under the Agreement in accordance with the timeframes specified for such performance, it will promptly notify the Customer of the fact of the delay, summarize the reasons for it and explain in detail how it intends to mitigate the effects of the delay. No approval of any mitigation plans by the Customer shall constitute a waiver of rights and remedies in case of a delay or an anticipatory delay.

## 7 DEFECTS AND NON-PERFORMANCE

7.1 Upon becoming aware of a Defect (or a potential Defect) or upon notice from the Customer, the Supplier will: (a) notify the Customer in writing of the Defect or potential Defect (unless the Customer notified the Supplier of the Defect or potential Defect); and (b) promptly initiate remediation of

the Defect, including redelivery of the relevant Services and/or Deliverables, if applicable, in accordance with the Agreement. Any remedial work undertaken must result in the complete resolution of the Defect.

- 7.2 Any remediation required by the Customer will be performed by the Supplier, at the Supplier's cost.

## **8 LIMITATION OF LIABILITY**

8.1 THE SUPPLIER'S AGGREGATE LIABILITY PER CONTRACT YEAR SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAID AND/OR PAYABLE BY THE CUSTOMER FOR THE TERM OF THE AGREEMENT. IF THE TERM OF THE AGREEMENT IS MORE THAN FIVE (5) CONTRACT YEARS, THE LIMITATION SHALL BE CALCULATED AS FIVE (5) TIMES THE ANNUAL AVERAGE OF THE TOTAL CHARGES PAID AND/OR PAYABLE FOR THE TERM OF THE AGREEMENT.

8.2 IN NO EVENT SHALL THE CUSTOMER'S AGGREGATE LIABILITY PER CONTRACT YEAR EXCEED THE TOTAL CHARGES PAID AND/OR PAYABLE BY THE CUSTOMER FOR THE TERM OF THE AGREEMENT. IF THE TERM OF THE AGREEMENT IS MORE THAN FIVE (5) CONTRACT YEARS, THE LIMITATION SHALL BE CALCULATED AS FIVE (5) TIMES THE ANNUAL AVERAGE OF THE TOTAL CHARGES PAID AND/OR PAYABLE FOR THE TERM OF THE AGREEMENT.

8.3 THE LIMITATION SHALL APPLY TO ALL LIABILITY TO THE SUPPLIER OR THE CUSTOMER, RESPECTIVELY, UNDER OR IN CONNECTION WITH THIS AGREEMENT OCCURRING IN EACH INDIVIDUAL CONTRACT YEAR, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), FOR BREACH OF CONTRACT, FOR ACTS AND OMISSIONS OF THE CUSTOMER.

8.4 NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (A) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL, FOR THIRD PARTY CLAIMS, PUNITIVE DAMAGES UNLESS OTHERWISE PROVIDED IN THE AGREEMENT AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) ANY INDIRECT OR CONSEQUENTIAL LOSS PROVIDED, HOWEVER, THAT (A) AND (B) WILL NOT APPLY TO THE FAILURE OF: (I) THE SUPPLIER TO PAY ANY PENALTIES OR SERVICE LEVEL CREDITS; AND (II) THE CUSTOMER'S PAYMENT OF THE CHARGES.

8.5 Nothing in this Agreement will exclude or limit either Party's liability: (a) for death or personal injury caused by its negligence or that of its employees or agents or, in the case of the Supplier, any Sub-contractor or its employees; (b) for fraudulent acts or omissions, theft, gross negligence or wilful misconduct; (c) for Loss resulting from any breach of the data protection obligations set out in this Agreement; (d) for Loss resulting from a breach of the Party's obligations relating to intellectual property rights or confidentiality under this Agreement; (e) in respect of claims for indemnification under the Agreement; or (f) to the extent Applicable Law precludes or prohibits any exclusion or limitation of liability.

## **9 INDEMNITIES**

9.1 Either Party, its successors and assignees will at all times, at its cost and expense, pay, defend, indemnify and hold harmless the other Party, its respective directors, officers, agents and employees, from and against, all costs, expenses (including, without limitation, reasonable legal fees), liabilities, claims, proceedings, damages and Losses, as incurred and on demand, in any way arising from or connected with: (a) any claim or action against the first Party by any third party that the receipt by it of any Services and/or Deliverables (or any part of them) or the use of any software, equipment or materials provided by the other Party, infringes the Intellectual Property Rights of that third party; (b) any breach of Article 4 on confidentiality; and (c) fines, penalties and other sanctions imposed by

a court, tribunal, government authority under Applicable Law. Neither Party shall have any liability or obligation to the other Party under this Article 9.1 to the extent that the costs, expenses, liabilities, claims, proceedings, damages or Losses under 9.1(a), 9.1(b) and 9.1(c) arise from a breach of the terms of the Agreement by the other Party.

## **10 INSURANCE**

10.1 Throughout the Term of this Agreement and for a period of three (3) years thereafter, the Supplier shall obtain and maintain at its own expense, from a qualified and licensed insurance carrier reasonably acceptable to the Customer, all insurance required to be obtained under any Applicable Laws as well as the following insurance, as required, each with worldwide coverage: (i) professional indemnity insurance; (ii) public and product liability insurance; and (iii) cyber liability insurance. The form and amount of the insurance must be acceptable to the Customer. Such insurance shall include coverage for consequential losses. The Supplier shall provide insurance details to the Customer on request.

## **11 TERMINATION**

11.1 The Customer may, at any time by giving notice in writing to Supplier, terminate the Agreement as of the date specified in such notice if there is a change of Control of the Supplier and in the reasonable opinion of the Customer such change of Control will have an adverse effect on the suitability and capacity of the Supplier to fulfil its obligations under the Agreement (such assessment of suitability may include consideration of the financial standing of the Supplier) or have an adverse effect on the reputation of the Customer. The Supplier shall provide prompt notice to the Customer in the event of a change of Control of the Supplier.

11.2 Either Party may at any time by notice in writing terminate the Agreement as of the date specified in such notice if: (a) the other Party at any time becomes bankrupt or has a receiving order or administration order made against it or makes any composition or arrangement with or for the benefit of its creditors or purports to do so; or (b) the other Party passes a resolution or a court makes an order that (i) the other Party be wound up, or (ii) a receiver or an administrator on behalf of a creditor is appointed in respect of the business of the other Party or any part or parts thereof, or (iii) circumstances arise which entitle a court or a creditor to appoint a receiver or administrator or which entitle a court to make a winding-up order; or (c) anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other Party.

11.3 The Customer shall be entitled to immediately terminate this Agreement fully or partly if the Supplier commits any material breach of this Agreement and fails to remedy that breach within fifteen (15) Business Days of written notice of that breach (the fifteen (15) Business Day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Agreement may be terminated by written notice immediately).

11.4 The Supplier will in no event, irrespective of its cause of action, retain or hold back any information to be provided under the Agreement, including any Services and/or Deliverable to be provided to the Customer, or any other property of the Customer.

## **12 MISCELLANEOUS**

12.1 Nothing in the Agreement shall be construed to create a partnership, joint venture or agency relationship between the Supplier and any of the Customer Group Entities.

12.2 Neither Party nor any Customer Group Entity shall be in default or otherwise liable for any delay in or failure of its performance under the Agreement where such delay or failure is directly caused by a Force Majeure Event. If and to the extent any Force Majeure Event has prevented or is reasonably expected to substantially prevent the provision of the Services or any Deliverables for a period of more than thirty (30) calendar days, the applicable Customer Group Entity may terminate the Agreement fully or partly with no further notice.

**12.3 Transfer rights**

(a) The Agreement is personal to the Supplier. The Supplier may not assign, novate, or otherwise dispose of the Agreement to any third party, including as a result of a change of control in Supplier, via operation of law, or otherwise, without the prior consent in writing of the Customer.

(b) The Customer is entitled to assign, novate or otherwise dispose of its rights and obligations under the Agreement wholly or partly, including the assignment of all of its rights and obligations in relation to specific areas of Services under the Agreement to a Customer Group Entity or another business unit in the Customer Group.

12.4 Except for temporary consultants working directly under the Supplier's management, the Supplier will not subcontract any part of its obligations under this Agreement without the Customer's prior written consent, which may be given subject to such conditions as the Customer deems appropriate. The Supplier shall remain fully liable before the Customer for any acts and/or omissions of its Sub-contractors. For the avoidance of doubt, the provision of Services by the Supplier's affiliates will be considered sub-contracting for the purposes of this Article.

12.5 The Customer may set off, deduct or withhold from any liability owed to the Supplier under or in connection with the Agreement any liability of the Supplier to the Customer in connection with the Agreement whether present or future, actual or contingent, liquidated or unliquidated, disputed or undisputed and whether owed jointly or severally or in any other capacity and irrespective of the currency of its denomination (and for this purpose may convert the currency of any liability).

12.6 If any provision or part of a provision of the Agreement is held by any court of competent jurisdiction or, pursuant to any Applicable Law becomes invalid, illegal or unenforceable for any reason, such provision shall be severed from the Agreement and the remaining provisions shall continue in full force and effect as if the invalid, illegal or unenforceable provision or part of a provision had been eliminated from the Agreement. Furthermore, the Parties shall use reasonable efforts to replace the ineffective provision with a provision of fundamentally the same content, which, however, is legally valid, binding, and enforceable under the said law.

12.7 All Persons within the Customer Group shall be entitled to all rights and benefits of the Customer as stated in the Agreement, and such Persons may enforce such rights and benefits directly against Supplier.

**12.8 Payment terms**

All undisputed invoices fall due and will be paid by the Customer or the Customer Group Entity not later than sixty (60) days from the date of its receipt of a valid, legally-compliant and correct invoice.

**12.9 Interest on late payments**

In the event of payment, interest will accrue at a rate of two percent (2%) per annum, subject to applicable laws.

**12.10 Charges and Taxes**

All Charges under this Agreement are exclusive of any applicable value added tax, sales tax, duties, levies, bank transfer fees, other fees or other similar taxes (hereinafter "VAT or Other Taxes") except for any withholding tax applicable in the country with which the Customer Group Entity receiving the Services resides. If the compensation is subject to VAT or Other Taxes in the Supplier and/or Customer Group Entity's country, Supplier and/or Customer Group Entity (respectively) shall pay and declare these amounts additionally in accordance with the applicable rules and regulations. If, based on applicable rules and regulations, (a) the Charges are subject to value added taxes or equivalent taxes; and (b) the Supplier is liable to pay such taxes to the applicable authorities, the Customer Group Entity shall only be liable to pay such taxes to the Supplier after receipt of a legally-compliant invoice in which such value added tax (or equivalent tax) is properly charged and itemized.

**12.11 Withholding Taxes**

Should the Charges referred to herein be subject to withholding taxes Customer Group Entity shall have the right to deduct the amount of withholding tax required by the law of Customer Group Entity's country of residence and pay it to the tax authorities in the name and on behalf of the Supplier.

**13 CHOICE OF LAW AND DISPUTE RESOLUTION**

**13.1 Governing law**

This Agreement and any non-contractual obligations arising out of or in connection herewith will be governed by and construed in accordance with the Applicable Laws of the following jurisdictions, without regard to international private law regulations or principles leading to the application of other laws:

(a) If the Customer is domiciled in Denmark, the Applicable Laws of Denmark will apply;

(b) Except for Customers domiciled in Denmark, if the Customer is domiciled in Europe, the Applicable Laws of England and Wales will apply;

(c) If the Customer is domiciled in China, and a Foreign Element is not satisfied the Applicable Laws of the People's Republic of China will apply;

(d) If the Customer is domiciled in China, and a Foreign Element is satisfied the Applicable Laws of Singapore will apply;

(e) Except for Customers domiciled in China and where the Foreign Element is not satisfied, if the Customer is domiciled in the Asia Pacific region, the Applicable Laws of Singapore will apply;

(f) If the Customer is domiciled in any jurisdiction located in North America or South America, the Applicable Laws of the State of New York, in the United States of America, will apply; or

(g) In all other instances the Applicable Laws of England and Wales will apply.

13.2 Any dispute or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof shall be referred and finally resolved by arbitration in accordance with the below provisions. In each case, the number of arbitrators shall be one (1):

(a) If the Customer is domiciled in Denmark, arbitration shall take place in Denmark, under the Danish Arbitration Act (in Danish: "Voldgiftsloven");

(b) Except for Customers domiciled in Denmark, if the Customer is

domiciled in Europe, arbitration shall take place in London, under the rules of the London Court of International Arbitration (LCIA);

(c) Except for (d) below, if the Customer is domiciled in the Asia Pacific region, arbitration shall take place in Singapore, in accordance with the arbitration rules of the Singapore International Arbitration Centre (SIAC);

(d) If both Parties are domiciled in China and there is no Foreign Element, the arbitration shall take place in Beijing, in accordance with the arbitration rules of the China International Economic and Trade Arbitration Commission (CIETAC). For the avoidance of doubt, if the Customer is domiciled in China and the Supplier is domiciled outside China, arbitration shall take place in accordance with (c) above; and

(e) If the Customer is domiciled in any jurisdiction located in North America or South America, arbitration shall take place in the county of New York in the State of New York, in the United States of America, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

13.3 In the event of disagreement as to the place and rules of arbitration referred to in Article 13.2 (a) – (e) above, the arbitration shall take place under the provisions of Article 13.2 (b).

13.4 Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

## **Appendix 1 - Country specific provisions**

### **USA**

If the Applicable Laws of the State of New York, in the United States of America, applies to the Agreement, the following Articles shall apply:

- Article 9.1 shall be amended to read:  
  
*“Supplier indemnities. Supplier, its successors and assignees will at all times, at its cost and expense, pay, defend, indemnify and hold harmless the Customer, its respective directors, officers, agents and employees, from and against, all costs, expenses (including, without limitation, reasonable legal fees), liabilities, claims, proceedings, damages and Losses, as incurred by the Customer and on demand, in any way arising from or connected with: (a) any claim or action against the Customer by any third party that the receipt by it of any Services or Deliverables (or any part of them) or the use of any software, equipment or materials provided by the Supplier, infringes the Intellectual Property Rights of that third party; (b) any breach of Article 4 on confidentiality; and (c) fines, penalties and other sanctions imposed by a court, tribunal, government authority under Applicable Law; except where such costs, expenses, liabilities, claims, proceedings, damages or Losses are finally determined by a duly appointed arbitration panel or by a court of competent jurisdiction (as applicable) to arise from a breach of the Agreement by the Supplier.”*

### **People’s Republic of China**

If the Applicable Laws of the People’s Republic of China applies to the Agreement, the following Articles shall apply:

- In addition to Article 8.5, nothing in this Agreement shall exclude or limit either Party’s liability (a) for personal injury caused to the other Party; or (ii) for property losses caused to the other Party either intentionally or as a result of gross negligence.
- Article 12.7 shall not apply.

## **Appendix 2 - Definitions**

“**Agreement**” means the Agreement entered into between the Parties.

“**Applicable Law(s)**” means all applicable laws, directives, regulations, Regulatory Requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

“**Affiliates(s)**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party, which for the avoidance of doubt for the Customer shall include any Customer Group entity.

“**Best Industry Practice**” means the exercise of skill, care, professional judgment and foresight which would be expected from the top twenty-five per cent (25%) of companies who are expert and experienced in conducting the same type of undertaking that provides the same or similar services as the Services.

“**Business Day**” means weekdays excluding weekends and public holidays of the country in which the Services are to be used by the Customer.

“**Charges**” means the charges paid by the Customer under the Agreement.

“**China**” means the People’s Republic of China, excluding, for the purposes of this Agreement, the Hong Kong and Macau Special Administration Regions and Taiwan.

“**Confidential Information**” means the following information and Documentation of the Customer Group and the Supplier, respectively, whether

### **Singapore**

If the Applicable Laws of Singapore applies to the Agreement, the following Articles shall apply:

- The ABC Laws defined in Article 0 shall include the Singapore Prevention of Corruption Act.
- Article 13.2(c) shall be amended to read:  
  
*“If the Customer is domiciled in Asia, arbitration shall take place in Singapore, in accordance with the Arbitration Rules of the Singapore International Arbitration Centre, which (if applicable) rules are deemed to be incorporated by reference in this provision. The seat of the arbitration shall be Singapore and the Tribunal shall consist of one (1) arbitrator. The language of arbitration shall be English;”*
- The definition of ‘Confidential Information’ included in Appendix 2 shall also include personal data as defined in the Singapore Personal Data Protection Act 2012.
- Save for the persons identified in Article 12.7, the Singapore Contracts (Rights of Third Parties) Act shall not under any circumstances apply to these General Terms and Conditions and any person who is not a party hereto (whether or not such person shall be named, referred to, or otherwise identified, or form part of a class of persons so named, referred to or identified, in these General Terms and Conditions) shall have no right whatsoever under the Singapore Contracts (Rights of Third Parties) Act to enforce these General Terms and Conditions.

disclosed to or accessed by the Customer Group or the Supplier in connection with the Agreement:

- (i) with respect to the Customer Group, all information, that would be regarded as confidential by a reasonable business person, concerning the Customer Group, including its employees, products, services, customers, suppliers, contractors and other third parties conducting business with the Customer Group;
- (ii) the terms of the Agreement;
- (iii) with respect to the Supplier, all information that would be regarded as confidential by a reasonable business person of the Supplier, of its employees, products, services, customers, suppliers, contractors and other third parties conducting business with the Supplier;
- (iv) any information developed by reference to or use of the Customer Group’s or the Supplier’s information referenced above; and
- (v) any information which according to Applicable Law is confidential, including Personal Data.

Information or Documentation will not be deemed Confidential Information merely due to such information or Documentation being identified or marked as confidential unless said information or

Documentation qualifies as Confidential Information in accordance with the above.

Confidential Information shall not include information which is in the public domain at the time of disclosure or which subsequently comes into the public domain through no fault of the Receiving Party.

“**Control**” means any of the following:

- (i) direct or indirect ownership of more than fifty per cent (50%) of the share capital or other ownership interest in any other Person;
- (ii) the right to exercise more than fifty per cent (50%) of the votes in any other Person; or
- (iii) the contractual right to designate more than half of the members of such Person’s board of directors or similar executive body.

“**Customer**” means as set out in the purchase order

“**Customer Data**” means any and all data deriving from or being created by the Customer, including personal data (as defined in the European Directive 95/46/EC and as of 25 May 2018 the European Regulation 2016/679) with later amendments for which the Customer is deemed, under the rules of the applicable data protection authority in the territory in which the Customer is domiciled, to be the Data Controller.

“**Customer Group**” means the Customer and the Customer Group Entities.

“**Customer Group Entity**” means any Person who from time to time is directly or indirectly owned or Controlled by the Customer’s parent company, which for the avoidance of doubt includes: (i) A subsidiary of the Customer or any other Person over which the Customer has an identical or corresponding influence as that over its subsidiary; (ii) any Person under common Control with the Customer; (iii) any Person under the direct or indirect Control of a Person under common Control with the Customer including Persons directly or indirectly minority owned by such Persons where there is a legal prerequisite under local law for local majority ownership; or (iv) any Person that has the direct or indirect Control of the Customer; and the parent company itself.

“**Customer Group Code of Conduct**” means the LEGO Group Code of Conduct

“**Data Controller**” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data (as defined in the European Directive 95/46/EC and as of 25 May 2018 the European Regulation 2016/679)

“**Data Processor**” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller (as defined in the European Directive 95/46/EC and as of 25 May 2018 the European Regulation 2016/679)

“**Defect**” means any non-performance of or fault or defect in any Deliverables or Services, including if the Deliverables or Services do not meet any specifications, Service Levels or other criteria agreed between the Parties or which would be reasonably expected to apply.

“**Deliverables**” means each item (including any finished goods or raw materials or hardware) contracted to be delivered to the Customer by or on behalf of the Supplier pursuant to this Agreement.

“**Disclosing Party**” has the meaning set forth in Article 4.1.

“**Documentation**” means all documents, records, written material and other copies whether in physical or electronic form, including specifications and technical manuals documenting the Services or any Deliverables prepared or delivered in the course of or related to the Services.

“**Force Majeure Event**” means unforeseeable acts, events, omissions, happenings or non-happenings beyond a Party’s reasonable control, which is not

attributable to the Party’s fault or negligence, that could not reasonably have been prevented or avoided by such Party and that causes the Party or a Customer Group Entity to be delayed or unable to perform its obligation under the Agreement. This shall include expropriation or confiscation of facilities, war, riots, uprising, rebellion, revolutions and local or national state of emergency.

“**Foreign Element**” means, in connection to a legal agreement with a relationship to China, an element of the contractual relationship that is sufficient for the relationship to constitute a “foreign-related civil relationship” under the laws of the People’s Republic of China, including but not limited to:

- (a) a party or both parties involved is/are foreign citizen(s), foreign legal person(s) or any other stateless organization;
- (b) the habitual residence of a party or both parties involved is/are located outside China;
- (c) the subject of the contract is located outside China;
- (d) the legal facts that trigger, change or terminate the civil relation take place outside China;

“**Intellectual Property Rights**” means copyrights and related rights, patents, utility models, trademarks, service marks, trade names, topography rights, design rights and rights in databases, domain names, rights in know-how, trade secrets and all applications or pending applications in each case whether or not registerable in any country and all rights and forms of protection of a similar nature or having equivalent or similar effect anywhere in the world.

“**Loss**” or “**Losses**” means all losses, liabilities and costs suffered or incurred by that person, in each case arising out of any and all claims, actions, demands, proceedings or judgments which may be instituted or asserted in any jurisdiction against or involving that person due to the specific matter in question.

“**Personal Data**” means any information relating to an identified or identifiable natural person both directly and indirectly, i.e. a data subject (as defined in the European Directive 95/46/EC and as of 25 May 2018 the European Regulation 2016/679).

“**Processing**” means when the Personal Data is collected, used, shared, changed, stored, archived or deleted (as defined in the European Directive 95/46/EC and as of 25 May 2018 the European Regulation 2016/679).

“**Receiving Party**” has the meaning set forth in Article 4.1.

“**Regulatory Requirement(s)**” means any declaration, decree, directive, regulation, legislative enactment, order, ordinance, regulation, rule or other binding requirement of or by any government authority applicable.

“**Services**” means all services to be performed by the Supplier for the Customer pursuant to the Agreement, and including any Deliverables to be provided as part of such Services .

“**Service Level**” means any agreed upon service levels or performance criteria applicable to the Services.

“**Sub-contractor**” means a contractor, vendor, agent or independent consultant selected and retained by the Supplier who is providing the Services on behalf of the Supplier.