

## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (the “Terms and Conditions”) govern all Client use of all Diligent products and services.

These Terms and Conditions are entered into by Diligent and Client as of the date the Client purchases, or otherwise accesses or uses, any Diligent products or services.

1. **Definitions.** The following terms, as used within these Terms and Conditions, will have the meanings set out below:

“**Affiliate**” means Client and companies affiliated with the Client according to §§ 15 ff. AktG.

“**Agreement**” means these Terms and Conditions, together with the applicable Product Terms and Order Form.

“**Client**” means the entity or organization who purchases access to, or otherwise accesses or uses, any Diligent Services, Software and/or Professional Services pursuant to each Order Form.

“**Client Data**” means the information successfully uploaded, entered, created and stored by Client within any Diligent Service.

“**Content Service**” means that portion of any Diligent Service which provides, distributes, performs, broadcasts, or otherwise makes available any data, data structure, metadata, metrics, charts, graphs, literature, or other content in any form and/or any derivatives thereof, including, where applicable, all Updates delivered thereto (but at all times excluding Client Data).

“**Data Privacy Law**” means EU Data Protection Law as well as, where applicable, any replacement or equivalent legislation of any other applicable jurisdiction, provided that the processing of personal data is actually governed by the national laws of such jurisdiction.

“**Deliverables**” has the meaning set out in Section 13.

“**Diligent**” has the meaning set out in the Order Form.

“**Diligent Service**” means each proprietary software-as-a-service developed by Diligent, as described in more detail in the applicable Documentation. For clarity, Diligent Service includes the Content Services.

“**Documentation**” means the training materials, specifications, and technical information regarding any Diligent Service and Software provided by Diligent to Client and its Users, and all other information and User instructions regarding the capabilities, operation, installation and access to the Software and Diligent Service, as may be updated by Diligent from time to time. For the avoidance of doubt, Documentation may be made available by electronic means.

“**Effective Date**” has the meaning set out in the Order Form or, if no Effective Date is specified, the date the Client purchases access to, or otherwise accesses or uses, any Diligent products or services..

“**EU Data Protection Law**” means European Union Regulation 2016/679 (The General Data Protection Regulation).

“**Freemium Service**” means a product, service or functionality provided by Diligent that may be made available to Client to use, at Client’s option and at no additional charge, which is designated as beta, limited release, early access, “freemium,” free access, or by a similar description.

“**Order**” or “**Order Form**” means the ordering document or invoice issued by Diligent, its Affiliates or one



of their authorized resellers for the purchase by Client of access to any Diligent Services, Software, and/or Professional Services, which identifies the applicability of these Terms and Conditions to such access. "Order" or "Order Form" includes any Statement of Work agreed by both Parties. An Order Form may for the avoidance of doubt be issued electronically.

**"Party"** and/or **"Parties"** means Diligent and Client (as defined herein).

**"Product Terms"** means any specific terms and conditions applicable to specific Diligent Service(s), Software, and/or Professional Services ordered by the Client.

**"Professional Services"** means those specific consulting services (if any) agreed to in an Order Form to be delivered by Diligent in connection with a Diligent Service (including any services identified as professional services, consulting services, managed services, or implementation services in an Order Form), but excluding support services.

**"Professional Services Term"** means the term during which Professional Services shall be performed, being either (a) as specifically identified in the applicable Order Form where Professional Services are ordered; or (b) if no term is identified within such Order Form, then from the Effective Date of such Order Form until completion of the Professional Services identified therein.

**"Software"** means any proprietary downloadable software applications and products developed by Diligent and provided to Client (and its Users) for installation and use by Client (and its Users) on a personal computer, tablet or other device, including any Updates thereto provided by Diligent during the Term.

**"Statement of Work" or "SOW"** means an Order Form solely for Professional Services to be provided in connection with a Diligent Service or Software (such Diligent Service purchased under a separate Order Form).

**"Subscription Fees"** means the fees for the right to access and use a Diligent Service, Software or, where applicable, Professional Services as set out in the applicable Order Form.

**"Term"** has the meaning set out in Section 3.

**"Third-Party Provider"** means a supplier of data, information, software, services or other items that are part of or otherwise used in connection with the Content Services.

**"Updates"** means corrections, bug fixes, patches, modifications, updates and enhancements that Diligent, in its sole discretion, makes generally available to its customer base.

**"User"** means an individual identified by Client as authorised to access a Diligent Service in accordance with the applicable Order Form.

**"User ID"** means a unique alphanumeric identifier assigned to a User so that the User can access the Diligent Service, Software and use the corresponding authorized features of a Diligent Service.

**2. Provision of Product and Services.** During the Term, Diligent will make the Diligent Services specified in the Order Form available to the Client and its Affiliates (subject to any restrictions in the Agreement, including number of Users and, with respect to Affiliates, Section 4.3). Client will provide Diligent with all necessary and reasonable cooperation to enable Diligent to perform its obligations under the Agreement.

**3. Term.** The Term of this Agreement begins on the applicable Effective Date and will continue for the period identified as the "Initial Term" in the Order Form ("**Initial Term**"). If no specific Initial Term period is stated in the Order Form, the Initial Term shall be one year. After the Initial Term, the term of the Agreement will automatically renew for additional one (1) year terms ("**Renewal Term**"), unless either Party provides the other written notice of non-renewal no later than thirty (30) days prior to the expiration of the Initial

Term or any Renewal Term. Diligent may implement revised pricing (for example, to account for an increase in personnel or other costs) for any Renewal Term by giving written notice of the new pricing to Client at least sixty (60) days prior to the commencement of a Renewal Term and the pricing will apply to the Renewal Term unless Client provides written notice of non-renewal in accordance with this Section. Collectively each Initial Term and each Renewal Term (if any) constitute a “**Term**” in respect of the applicable Order Form. The Parties’ rights to terminate this Agreement for good cause where expressly provided elsewhere under this Agreement remain unaffected.

#### **4. Access Right; Restrictions.**

4.1. Access Rights. During the Term and conditioned upon Client’s compliance with all the terms of the Agreement, Diligent grants to Client, a limited, non-exclusive, non-transferable, and non-sublicensable right to allow Users to, in accordance with the Agreement, access and use the applicable Diligent Services set out in the relevant Order Form solely for Client’s internal business purposes. As part of the implementation of certain Diligent Services, Client may be required to identify in writing the Users, who will be assigned User IDs. For the avoidance of doubt, if applicable pursuant to the relevant Order Form, any Content Services described thereunder shall be Diligent Services and subject to the restrictions set forth herein. Certain Diligent Services and Software may be accessed and delivered electronically through a secure area of the applicable Diligent website and are deemed delivered when they are made available for access or download by Client, as applicable.

4.2. Software. During the Term and conditioned upon Client’s compliance with all the terms of the Agreement, Diligent grants Client a limited, non-exclusive, non-transferable, and non-sublicensable right to install and use the applicable Software in accordance with the Documentation for such Software.

4.3. Affiliates. To the extent that Client is purchasing access on behalf of its Affiliates, Client irrevocably and unconditionally guarantees the compliance of each Client Affiliate with the Agreement and will be jointly and severally liable with each Client Affiliate for breach of the Agreement. All remedies available to Diligent, including the ability to obtain injunctive relief, will apply to such Client Affiliates, and Client will reasonably assist Diligent in enforcing Diligent’s rights and remedies against such Client Affiliates. Client’s Affiliates may enter into an agreement with Diligent on the same terms as Client under this Agreement by entering into an Order Form referencing the agreed terms between Client and Diligent. Any such Order Form shall be its own separate agreement between Diligent and the Client Affiliate, running on its own term, and the termination of this Agreement shall not terminate such separate agreement (or vice versa). For the avoidance of doubt, where the Client Affiliate is based outside the Client’s country, a Diligent Affiliate (where applicable) may enter into such Order Form in lieu of Diligent, and pricing may be converted to a local currency where such local currency is supported by the Diligent Affiliate.

4.4. Reservation of Rights. Except for the limited rights set forth in Section 4.1 and 4.2 above, Client does not acquire any intellectual property or other rights, express or implied, in or relating to any Software or Diligent Services. Diligent reserves title, ownership, and all other rights to all Software and Diligent Services. Client and Users will not remove, obscure, or alter Diligent’s copyright notices, trademarks, other proprietary rights notices, or any other content of any kind appearing in the Diligent Services, Software, or Documentation. For the avoidance of doubt, ownership of all Content Services (including any products or components contained therein) belongs to Diligent or its Third-Party Providers and nothing in this Agreement shall transfer or assign any right, title or interest in the applicable product or components of the Content Services to the Client.

4.5. Restrictions. Client must not and represents and warrants it will not use the Diligent Services in any manner that is not described in the Documentation or in any manner that is prohibited by the Agreement. Client is responsible for all access and use of the Diligent Services and Software by its Users and any person that gains access through Client or any of its Users or User IDs.

4.6. Restrictions on Use. Client must not and must ensure that Users do not, directly or indirectly, (i) reverse engineer, disassemble, decipher, translate, decompile, prepare derivative works of the Diligent Services or Software or otherwise attempt to access, imitate, derive or discover the source code thereof

except in accordance with the precondition of § 69e sec. 1 German Copyright Act (UrhG), and only if Diligent is not providing the necessary data and/or information in a reasonable period of time after being requested to do so in writing; (ii) upload any Client Data or any content, data or information that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or racially, ethnically or otherwise objectionable; (iii) infringe the intellectual property or privacy rights of any third party in connection with use of the Diligent Services, Software or Documentation (including by uploading Client Data to the Diligent Services); (iv) interfere with or disrupt Diligent's software, the Diligent systems used to host the Diligent Services, other equipment or networks connected to the Diligent Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Diligent Services made known to Client; (v) license, sell, rent, lease, lend, transfer, outsource, sublicense or otherwise provide access to the Diligent Services or Software or utilise the Diligent Services for the benefit of a third party, including through a service bureau, commercial time-sharing arrangement, or application service provider (ASP) arrangement; (vi) provide publicly, or make publicly available, any links, hypertext (Universal Resource Locator (URL) address) or otherwise (other than a "bookmark" from a Web browser) to the Diligent Services, or any part thereof; (vii) circumvent the User authentication or security of the Diligent Services or any host, network, or account related thereto; (viii) perform any penetration testing on or with respect to the Diligent Services, including use of any tools, code or instruction intended to fuz, damage, destroy, alter, reveal any portion or expose vulnerability of the Diligent Services (unless specifically authorized by Diligent in writing); (ix) mirror the Diligent Services on any server; (x) make any use of the Diligent Services that violates any applicable law; (xi) fail to use commercially reasonable efforts to prevent the unauthorised license, sale, transfer, lease, transmission, distribution or other disclosure of the Diligent Services; (xii) allow any non-Users to use any User IDs, code(s), password(s), or other mechanisms issued to, or selected by, Client or Users for access to the Diligent Services; (xiii) use the Diligent Service, in whole or in part, in any manner that competes with Diligent or its Affiliates, including, but not limited to, any distribution of a Diligent Service, related data or derivative works based thereon; (xiv) create a database in any form whatsoever from the Diligent Service; (xv) associate the Diligent Service or its content to another website by employing any technology, including, but not limited to, hyper linking and framing; (xvi) use automated systems, software or processes to extract or compile data from the Diligent Service ("data scraping"); or (xvii) use the Diligent Service as part of Client's intranet or other internal network.

4.7. User IDs. Rights of any User to utilise any Diligent Services cannot be shared or used by more than one individual. Client must not and will ensure that Users do not permit any other individual or entity to access (through User ID and password sharing or otherwise) the Diligent Service or Software. Client is restricted to the number of Users for which it has purchased subscriptions. Virtualization technology may not be used to circumvent the restrictions in this Agreement. Client may on a permanent basis transfer a User's access right purchased by Client to another User without incurring additional Subscription Fee charges (but subject to payment of an installation fee , if applicable), as long as the number of Users does not exceed the number of Users purchased, and the original User is no longer a User and is not permitted access to the Diligent Service. If Client exceeds, or wishes to increase, the number of Users, additional fees will apply.

4.8. Feedback. Client is not required to provide Diligent any feedback, comments or suggestions about the Diligent Service or any of Diligent's technologies, products, or services ("**Feedback**"). However, if Client provides Feedback, Client agrees that even if it is designated confidential, the Feedback is not confidential and Diligent is free to use, disclose, reproduce, license or otherwise distribute the Feedback without any obligations or restrictions of any kind, including intellectual property rights.

## **5. Client Data and Client Materials.**

5.1. Client reserves all title and ownership of the Client Data. Diligent will take reasonable security measures with respect to the storage and transmission of Client Data. Upon Client's reasonable request, Diligent will provide Client with Diligent's then-current security Documentation made generally available to customers of the relevant Diligent Service. Diligent shall promptly and without undue delay notify Client after confirming any actual or reasonably suspected information security breaches affecting the security of the Client Data.

5.2. Client hereby grants Diligent the right to use the Client Data for the purposes of providing the Diligent Services pursuant to the Agreement. If Client furnishes to Diligent any content, materials or other intellectual property (including graphics, logos, trademarks, etc.) other than Client Data (collectively “Client Materials”) Diligent may use the Client Materials in connection with the provision of the Diligent Services and Professional Services under the Agreement. In addition to the foregoing, Client acknowledges that Diligent may (i) collect anonymised, de-identified information relating to use of the Diligent Services (including usage data) in order to improve Diligent’s products and services and for other reasonable internal uses and (ii) aggregate such anonymized, de-identified information with anonymous, de-identified information of its other clients for purposes of creating and distributing case studies or industry reports as part of its products and services, provided that, in each case the information does not, and could not reasonably be used to, relate back to or identify Client and Diligent does not sell, resell or make other commercial use of such information (other than on an aggregated basis under the foregoing (ii)). Diligent may also collect data related to Client and its Users for the purpose of notifying Client and its Users of product upgrades or other necessary notifications.

5.3. Client determines what Client Data it uses in connection with the applicable Diligent Service and retains full control over the access to and use of its Client Data. Diligent will not access Client Data, except as instructed or authorized by Client, where necessary to prevent or address service or technical problems affecting Client, or as required by applicable law, regulation or court order.

5.4. Client agrees that Diligent and its affiliated companies may reference Client as a Diligent customer (including using Client’s name and logo), including on Diligent’s and its affiliated companies’ website. Diligent will (a) comply with Client’s reasonable instructions that are provided to Diligent related to such use of name and logo and (b) promptly cease such reference upon Client’s request (such requests may be directed to [marketing@diligent.com](mailto:marketing@diligent.com)).

5.5. Client is responsible for providing sufficient bandwidth and network connectivity to ensure all Users can access and use the Diligent Service. The technical requirements set forth in the Documentation are subject to change upon notice. Client is responsible for ensuring its firewalls permit access to the Diligent-owned URLs/IP Addresses. To ensure Client receives optimal performance, Client should use the Diligent Service on a hardware and software system that matches or exceeds the highest specifications recommended by Diligent, available in the Documentation. Suitable configuration of software and hardware will depend on individual circumstances. System performance may be adversely affected by unsuitable software or hardware. Client is responsible for taking reasonable security precautions, including, without limitation, determining the security configurations of its systems (e.g. password construction rules and expiration intervals). Client is responsible for setting up and ensuring the confidentiality of User accounts and passwords assigned to them for use with the Diligent Service. Client is responsible for promptly notifying Diligent after confirming any actual or reasonably suspected information security breaches affecting the security of the Diligent Service or Software, of which it becomes aware, including without limitation compromised User accounts. Client is responsible for periodically reviewing its security configurations and access rights to determine if they are appropriate for its needs. Client is responsible for defining its authorised approvers, documentation and validation requirements for changes to its use and access to the Diligent Service.

5.6. Each Party will comply, to the extent applicable, with Data Privacy Law (including EU Data Protection Law) in performing their obligations under this Agreement. Diligent’s Data Protection Addendum is also available at <https://diligent.com/data-processing-addendum>, and the terms of such Data Protection Addendum as of the Effective Date are hereby incorporated into this Agreement by reference. Client may separately elect to execute such Data Protection Addendum provided that Client returns a copy of such executed Data Protection Addendum to Diligent at [privacy@diligent.com](mailto:privacy@diligent.com).

## **6. Pricing and Payment.**

6.1. Fees. In consideration for the provision of the applicable Diligent Services and Professional Services (as applicable), Client will pay the amounts set forth in the Order Form in accordance with the

terms set forth in this Section. All Subscription Fees are to be paid annually in advance. Except as specifically provided to the contrary in the Agreement, in the event of the cancellation, completion, expiration or termination of the Agreement, all monies paid or due or owing to Diligent by Client shall be deemed non-refundable. Any reduction in the quantity of any purchase made in an Order Form must be agreed in writing by the Parties at least thirty (30) days in advance of the commencement of the next Renewal Term, and any such reduction shall take effect as of the commencement of the next Renewal Term. If there is no written agreement to reduce the quantity of any purchase in an Order Form by such time, the Agreement will automatically renew for the same quantity for the preceding Initial or Renewal Terms, as applicable. Diligent will issue an invoice to Client for the Initial Term's Subscription Fee for the first year and any other fees on or about the date the Order Form is executed. For each year of the Term thereafter, Diligent will invoice Client for Subscription Fees approximately thirty (30) days prior to the anniversary of the applicable Effective Date. Client will pay all invoices within thirty (30) days of the date of invoice. For any amount not paid when due, and without prejudice to any other right and remedies of Diligent, Diligent may charge interest accruing on a daily basis on such due amounts at an annual rate equal to five percent (5%) over the then current base lending rate of HSBC Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment. Client will reimburse Diligent for its costs incurred (including reasonable attorney's fees) in the collection of Client's past due amounts. If any fees owing by Client are thirty (30) days or more overdue, Diligent may, without limiting its other rights and remedies, suspend access to the Diligent Services and/or Professional Services until such amounts are paid in full, provided Diligent has given Client at least ten (10) days' prior notice that its account is overdue. Client will be responsible for all reasonable, pre-approved travel, accommodation and meal expenses incurred in connection with any on-site training, services or instruction. Such expenses will be invoiced at actual cost. If Client reschedules or cancels any onsite training, instruction or Professional Services for which Diligent has incurred non-refundable out-of-pocket expenses, Client will reimburse Diligent for such non-refundable expenses. All amounts payable to Diligent hereunder are payable in full in EURO (unless otherwise indicated in the Order Form) without deduction or set off, and shall be in addition to all taxes, bank fees or duties, which are also Client's responsibility.

6.2. Taxes. All Subscription Fees are quoted exclusive of value added tax. Client is responsible for payment of all applicable value-added, sales, use, license and other transaction-based taxes (such as gross receipts or excise taxes), withholding taxes, and all applicable export and import fees, customs duties, and similar charges (other than taxes based on Diligent's net income) which are levied or imposed by reason of the transactions contemplated by this Agreement. In the event that any withholding taxes are payable under any applicable law in respect of any payment due to Diligent under this Agreement, Client shall gross up such payment such that the balance payable to the Diligent after deduction of the applicable withholding taxes shall be equivalent to the original amount due to Diligent. Provided that in the event any avoidance of double taxation treaty is applicable to such payments, Diligent and Client shall cooperate to obtain the full benefit of such treaty.

## **7. Warranties and Disclaimers.**

7.1. Software and Services. During the Term, Diligent warrants that the applicable Diligent Service and Software will materially conform to the applicable Documentation. The warranty will not apply: (i) if the applicable Diligent Service or Software is not used in accordance with this Documentation; or (ii) if the defect is caused by Client Data, Client Materials or any third party services, content, products or modification or customisation made by Client to such Diligent Service or Software unless the aforementioned has been recommended or approved by Diligent.

7.2. Remedy for Breach of Warranty. Client shall provide Diligent with written notice of any defect of the Diligent Service or Software encountered by Client immediately and undertake reasonable actions that enable Diligent to identify and solve the applicable issue. Diligent will, at its option, (i) correct the non-conforming Diligent Service or Software so that it materially complies with the Specifications within a reasonable time; or (ii) provide a replacement with substantially equivalent functionality and performance. If Diligent's final attempt to remedy a defect within one month of the Client's written notice has failed, Client may (i) demand a reduction in the fees (*Minderung*) equivalent to a pro-rata portion of the prepaid

Subscription Fee based on the number of months remaining in the Initial Term or Renewal Term as of the date that Client provided written notice of the warranty claim, (ii) claim damages in accordance with Section 9 of this Agreement or (iii) terminate this Agreement for good cause in accordance with Section 10 of this Agreement.

7.3. Viruses. Diligent will take reasonable precautions to protect against any person acting by, under or through Diligent from introducing any software virus, worm, “back door,” “Trojan Horse” or similar harmful code into the Software.

## **8. Indemnification.**

8.1. Indemnity by Diligent. Diligent will indemnify Client against any bona fide third party claim that the grant of a right to, or the access and use by, Client and its Users of the Software or any Diligent Service (or any Deliverables if applicable) in accordance with the Agreement infringes a validly existing German trademark, copyright, patent or other proprietary right and pay any final judgment awarded or Diligent-negotiated settlement. Diligent’s obligations under this Section are conditioned upon Client providing Diligent (i) prompt written notice of any claim; (ii) sole and exclusive control over the defense and settlement of the claim; and (iii) such cooperation as Diligent may reasonably request with respect to the defense or settlement of such claim at Diligent’s expense. Diligent will defend any claim under this Section with counsel of its own choosing and settle such claim as Diligent deems appropriate provided that this does not require an admission of guilt or liability by Client. Client may participate in such defense with counsel of its own choosing and at its own cost and expense. Client will not admit liability, take any position adverse or contrary to Diligent, or otherwise attempt to settle any claim or action for which it is seeking indemnification without the express written consent of Diligent. If, in Diligent’s sole opinion, an infringement claim may have validity or if there is an infringement that impairs or prohibits use of the Software by the Client, then Diligent may modify the Software, Deliverables or Diligent Service to make it non-infringing, procure any necessary license, or replace the affected item with one that is reasonably equivalent in function and performance. If Diligent’s final attempt to remedy a defect has failed, Client may demand a reduction in the fees (*Minderung*) or, if the defect makes the access to the Diligent Service impossible or limit the use of the Diligent Service to such an extent that use of the Diligent Service for day-to-day business is either impossible or is possible only at unreasonable expense, claim damages in accordance with Section 9 or 8 of this Agreement.

8.2. Indemnity by Client. Diligent shall have no obligation under Section 8.1 for, and Client shall fully indemnify and hold harmless Diligent (in the following incl. its representatives, employees and/or agents) from and against all third party claims arising from any inadmissible use of the Diligent Service by Client or Users, in particular but not limited to violations of Sections 4.6 and sentence 3 of Section 5.5 and to claims against Diligent due to the infringement of third party intellectual property rights by Client in connection with the use of the Diligent Service. This Section 8.2 shall not apply in cases where Client has not at least acted with negligence.

## **9. Limitations on Liability.**

9.1. General. If not excluded or limited by any stipulation included in this Section 9, the parties are liable according to the rules and regulations applying under applicable statutory law.

9.2. Limitation of Liability. If not stated otherwise in this Section 9, the total aggregate liability of either Party shall be limited to typical and foreseeable contractual damages in the total amount of the Subscription Fees paid or payable by Client under this Agreement, irrespective of the legal basis of the underlying claim, such as e.g. breach of contract or tort.

9.3. Exclusions from Limitation of Liability. The limitations set forth in Section 9.2 will not apply to: (i) any action undertaken by Diligent with willful misconduct or gross negligence; (ii) Diligent’s negligence causing death or bodily injury or illness; (iii) fraud; (iv) the assumption of a guarantee; or (v) any liability requirement for damages under the German Product Liability Act (Produkthaftungsgesetz) or any other mandatory law.

9.4. Limitation on Category of Liability. In no event, but subject to restrictions set out in Section 9.3, will Diligent be liable for loss of profits (Article 252 German Civil Code (Bürgerliches Gesetzbuch) and punitive damages. In case of loss (and provided such loss does not result in or constitute a disclosure of Confidential Information prohibited under Section 12 of this Agreement) or corruption of Client Data, Diligent shall only be liable for the costs related to the successful data recovery activities by Diligent, which would be necessary.

9.5. Notwithstanding Section 9.3, Diligent's strict liability ("verschuldensunabhängige Haftung") for defects existing at the time of conclusion of the Agreement (§ 536a BGB) is excluded.

9.6. Section 9.2 also applies in case of breach by an agent or subcontractor of Diligent and the personal liability of Diligent's employees, representatives, and management and/or corporate body of Diligent.

9.7. The Client's claim for damages according to Section 9.2 shall become time-barred according to applicable law. The Client's claim for all other damages shall become time-barred after one (1) year beginning with the last day of the year in which the Client became aware of the damage. All claims become time-barred latest after five (5) years after arising, or ten (10) years after the respective action, breach of duty or other action causing the damage took place.

**10. Termination for Good Cause.** This Agreement may be terminated, in whole or in part, for good cause (aus wichtigem Grund) upon written notice by either Party. A Party shall have good cause for termination if there are any circumstances that would make a continued cooperation of the Parties unduly burdensome for the terminating Party, including, but not limited to, a breach of Section 11 (Confidentiality) by one of the parties, a breach of Section 4 (Access Right; Restrictions) by Client or a breach of Section 5 (Client Data and Client Materials) by Diligent.

**11. Consequences of Termination.** Upon termination of the Agreement for any reason, all rights granted to Client pursuant to the Agreement (as the case may be) will terminate, Client will immediately cease all access and use of the applicable Diligent Service(s) and Software, and pay all unpaid fees. If Client terminates this Agreement due to Diligent's breach of the Agreement, then to the extent Client has paid fees to Diligent that relate, on a pro-rated basis, to any portion of the Term that is after the date of termination, Diligent will pay to Client a pro-rated refund of such fees. If requested by Client after termination of the Agreement, Diligent will make Client Data available for the Client to export or download as provided in the Documentation for a period not to exceed thirty (30) days from the date of termination. After such period (or if Client does not make such a request within ten (10) days of the date of termination), Diligent will be under no obligation to hold the Client Data and will delete all Client Data (including backups of Client Data) no later than one hundred twenty (120) days from the termination date unless Diligent has specifically agreed otherwise in writing. After deletion is complete, Diligent will provide a certificate confirmation deletion of the Client Data if so requested by Client. Sections 1, 4.4, 4.5, 5.2, 5.4, 6-16 will survive termination of the Agreement for any reason.

**12. Confidentiality.** Client will retain in confidence the terms and pricing of the Agreement and all other non-public information, technology, and materials (including the Diligent Service and Software) provided by or on behalf of Diligent during the Term (Diligent's "**Confidential Information**"), and Diligent shall retain in confidence the Client Data (Client's "**Confidential Information**"). Each Party will not disclose the Confidential Information of the other to any third party except for those provided under the Agreement or use it for any purpose other than to carry out the activities contemplated under the Agreement. Each Party may only disclose the other's Confidential Information to its employees or third parties who assist with the operation of the Agreement (e.g., Users, contract developers, service providers, etc.), who have a need to know in connection with the Agreement and who have agreed to obligations of confidentiality that are no less restrictive than the obligations in the Agreement. Each Party will take reasonable steps, and in no event will those steps be any less secure than the steps it uses to protect its own similar information, to ensure that the other's Confidential Information is protected. Each Party is responsible for the actions or inactions of its employees and advisors with respect to use and disclosure of the other's Confidential Information. The restrictions set forth in this paragraph will not apply to any information that: (a) was known

by the receiving Party without obligation of confidentiality prior to disclosure by the disclosing Party; (b) was in or entered the public domain through no fault of the receiving Party; (c) is disclosed to the receiving Party by a third party legally entitled to make the disclosure without violation of any obligation of confidentiality; or (d) is independently developed by the receiving Party without reference to any Confidential Information. To the extent that Confidential Information is required by applicable law or regulations to be disclosed, a receiving Party may disclose such information after providing to the disclosing Party, to the extent permitted by law, prompt notification of such request for disclosure for the purpose of challenging such request. In the event that Diligent is required by law to disclose any portion of the Client Data, or is so directed by Client, Client shall pay any reasonable fees associated with complying with such disclosure.

### **13. Professional Services.**

13.1. Scope of Applicability. The provisions of this Section shall apply solely to Professional Services, where such Professional Services are included in an Order Form. This Section does not limit the operation of any other Sections of the Agreement, but in the event of any direct conflict between this Section and other Sections with respect to the Professional Services, this Section shall control. Notwithstanding Section 3, for purposes of any SOW, the Term of such SOW shall be as set forth in the applicable SOW or Order Form.

13.2. Provision of Services. Subject to Section 13.5, Diligent shall use commercially reasonable efforts to perform the Professional Services in accordance with the applicable Order Form or SOW, and Diligent represents and warrants that all Professional Services shall be provided in a professional and workmanlike manner.

13.3. Remedy. If notified in writing of any claim for Diligent's breach of Section 13.2, Diligent will, at its option, (i) reperform the Professional Services so that they comply with Section 13.2; or (ii) terminate the portion of the affected Order Form attributable to such Professional Services and refund the fees attributable for such Professional Services.

13.4. Suitability. Diligent shall assign employees and subcontractors with qualifications suitable for the Professional Services described in the relevant Order Form. Diligent may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

13.5. Client Responsibilities. Client shall make available in a timely manner at no charge to Diligent all technical data, Client Data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Client required by Diligent in each case for the performance of the Professional Services, as well as anything specified in the applicable Order Form. Client shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Client. Client shall provide, at no charge to Diligent, reasonable cooperation as Diligent requires to perform the Professional Services.

13.6. Ownership. Ownership of all work product, developments, inventions, technology or materials related to any Professional Services (the "Deliverables") shall be solely owned by Diligent (except with respect to Client Data, which shall remain Client's sole property). Solely during the applicable Term and conditioned upon Client's compliance with all the terms of the Agreement, Diligent grants to Client a limited, non-exclusive, non-transferable, and non-sublicensable right to make use of the Deliverables.

13.7. Modifications and Change Orders. For the avoidance of doubt, modifications to the scope of any Professional Services shall become effective only when a document incorporating the relevant written change request is executed by authorised representatives of both Parties.

### **14. Content Services.**

14.1. Scope of Applicability. The provisions of this Section shall apply solely to Content Services. This Section does not limit the operation of any other Sections of the Agreement, but in the event of any direct

conflict between this Section and other Sections with respect to the Content Services, this Section shall control. For the avoidance of doubt, the Content Services and any components, data, or content therein constitute a part of the Diligent Service under this Agreement.

14.2. Enhancements or Revisions to Content. Diligent reserves the right to alter or modify the Content Services and any portions or configurations thereof from time to time. Such alterations and/or modifications may include, without limitation, addition or withdrawal of features and/or data or changes in instructions and/or documentation.

14.3. Specific Restrictions. Without limiting anything else in the Agreement, Client shall not (and shall ensure that each User shall not) perform any of the following acts, except as otherwise expressly permitted by the Agreement or with the express written permission of Diligent:

- (i) access the Content Service except in conjunction with the Diligent Service or remove or alter any copyright, trademark or other proprietary notice appearing on or within the Content Services;
- (ii) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise redistribute any data within the Content Service or any components thereof in any manner, including, but not limited to, via or as part of any internet site;
- (iii) provide access to the Content Service or any portion thereof to any person, firm or entity other than a User, including, but not limited to, any Affiliate not expressly identified in the Agreement;
- (iv) use and access the Content Services other than as permitted under this Agreement; or
- (v) copy, reproduce, modify, distribute, create derivative works of, publicly display, publicly perform, reverse engineer, decompile, or disassemble the Content Services or any portions thereof; and
- (vi) PCI-DSS materials are used in accordance with the current PCI Standards Council, LLC License Agreement made available through the PCI DSS website at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) and also through the applicable Diligent Service prior to download of such materials.

14.4. Disclaimer. DILIGENT AND ANY THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES REGARDING THE COMPLETENESS, VERACITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ACCURACY OF THE CONTENT SERVICES OR ANY COMPONENT THEREOF, OR FOR ANY DELAYS, INTERRUPTIONS OR OMISSIONS. THE CONTENT SERVICES ARE FOR EDUCATIONAL AND INFORMATIONAL PURPOSES AND DO NOT CONSTITUTE LEGAL, ACCOUNTING OR OTHER PROFESSIONAL ADVICE. CONTENT SERVICES SHOULD NOT BE DEEMED TO SET FORTH ALL APPROPRIATE PROCEDURES, TESTS OR CONTROLS OR TO SUGGEST THAT OTHER PROCEDURES, TESTS OR CONTROLS THAT ARE NOT INCLUDED MAY NOT BE APPROPRIATE. CLIENT AND ITS USERS ARE RESPONSIBLE FOR APPLYING PROFESSIONAL JUDGEMENT AND APPROPRIATE PROCEDURES, TESTS OR CONTROLS. THE CONTENT SERVICES AND ANY COMPONENTS THEREOF ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CLIENT'S USE OF THE CONTENT SERVICES IS AT CLIENT'S OWN RISK. DILIGENT AND ANY THIRD-PARTY PROVIDERS ARE NOT LIABLE FOR THE DATA, DATA STRUCTURE, METADATA, METRICS, CHARTS, GRAPHS, LITERATURE, OR OTHER CONTENT IN ANY FORM AND ANY DERIVATIVES THEREOF, (INCLUDING, WHERE APPLICABLE, ALL UPDATES TO THE FOREGOING) IN EACH CASE INCLUDED IN THE CONTENT SERVICES OR ANY DECISION OR CONSEQUENCE BASED ON USE OF THE FOREGOING.

14.5. Indemnity Client will indemnify Diligent and any Third-Party Providers for any claim, suit, action or proceeding by a third party arising directly from (a) any negligent or more culpable act or omission, willful misconduct or fraud of Client in connection with its use of the Content Services; (b) the infringement or misappropriation of any trademark, copyright, patent, or other proprietary rights of a third party by Client; (c) any failure by Client to materially comply with any applicable law in connection with its use of the Content Services; or (d) Client's failure to comply with any of the terms of this Agreement in connection with its use of the Content Services.

**15. Freemium Services.** From time to time, Diligent may make Freemium Services available to Client at no charge. **Client may choose to try such Freemium Services in Client's sole discretion.** Unless

otherwise determined by Diligent, no Order Form is specifically required to enable Client's use of Freemium Services. Certain Freemium Services are intended for evaluation purposes and not for production use. Freemium Services are not supported and may be subject to supplemental terms in addition to those set out in this Agreement, which will be presented to Client. Freemium Services are not considered part of the "Diligent Service", "Software" "Professional Services", or similar terms under this Agreement; however, all restrictions and Client commitments under this Agreement shall apply to Client's use of Freemium Services (including for the avoidance of doubt Section 4 (Access Right; Restrictions)). Unless otherwise stated, Freemium Services are available for Client's use during the Term, except that any Freemium Services that are made available on a trial basis will expire upon the earlier of one year from the trial start date or the date that a version of the Freemium Services becomes generally available without the applicable Freemium Services designation. Diligent may discontinue Freemium Services at any time in Diligent's sole discretion and may never make Freemium Services generally available. Diligent will have no liability for any harm or damage arising out of or in connection with a Freemium Service.

## **16. Miscellaneous.**

16.1. Conflict. If there is an inconsistency between any of the provisions in the Terms and Conditions, the Product Terms and any Order Form, the order of precedence shall be the Order Form, the Product Terms, then the Terms and Conditions (with the first mentioned document prevailing over each subsequently mentioned document in this Section).

16.2. Variation. No amendment or variation of the Agreement (including any Order Form) will be effective unless it is in writing and signed by each Party.

16.3. Waiver. All waivers under the Agreement must be in writing to be effective.

16.4. Interpretation of Agreement. Should individual provisions of the Agreement be or become void or unenforceable after conclusion of the Agreement, the effectiveness of the Agreement itself shall otherwise remain unaffected thereby.

16.5. Governing Law and binding language. The interpretation of this Agreement and all matters related to this Agreement, including its formation, will be construed exclusively in accordance with the laws of the Federal Republic of Germany without reference to its choice-of-law provisions and with the exception of the United Nations Conventions on Contracts for the International Sale of Goods. The Parties irrevocably and unconditionally consent and submit to exclusive venue and jurisdiction of the Munich courts.

16.6. Notices. Any notices required or permitted to be given hereunder by either Party to the other will be given in writing addressed to the other Party at the address set forth in the Order (or to such other address as the other Party may request in writing by notice given pursuant to this Section) or by email with proof of receipt.

16.7. Entire Agreement. The Agreement contains the entire understanding and agreement between Diligent and Client with respect to the subject matter of the Agreement, and supersedes all other prior and contemporaneous proposals, representations, agreements, understandings, and commitments between Diligent and Client with respect to the subject matter of the Agreement.

The Agreement supersedes any conflicting terms in Client's purchase order or other ordering document. Any terms of trade stated or referenced in Client's purchase order, or any other terms to which Diligent has not specifically agreed in a writing signed by an authorized representative of Diligent, are not binding on Diligent.

16.8. No Offer of Securities. Neither Diligent nor its Third-Party Providers are investment advisors and nothing contained in the Content Services will be construed as to make a representation or warranty, express or implied, regarding the accuracy or completeness of the data and information contained in the applicable product or the advisability to buy, sell, subscribe for, exchange or redeem a particular investment. The service provided under this Agreement and all content provided in conjunction with them

are for informational purposes only and do not constitute, and should not be construed as a solicitation or offering of any investment or other transaction, an identification or offering of any securities for purchase, a recommendation to acquire or dispose of any investment, or the provision of any financial, tax, legal or other advice of any nature whatsoever. Client understands and agrees that any decisions it makes on the basis of any information provided under this Agreement are made solely at its own risk and Diligent and the Third-Party Providers have no responsibility or liability arising from such decisions. Diligent and/or the Third-Party Providers do not (i) serve as an agent for Client, Users, or any other person, (ii) market securities to investors, (iii) participate in negotiations between a Client, Users or any investor, (iv) handle any monies or securities in transactions between investors and Client or Users (or other third parties), or (v) assist Client, Users, or investors with the completion of any transactions between them (such as transaction documentation or paid referrals).

16.9. Links to Third-Party Sites. Diligent Services and/or Software may contain links to, or allow Client or its Users to connect and use, certain third-party products, services, or software (“Third-Party Services”, and each, a “Third-Party Service”) in conjunction with Client’s use of the Diligent Service. To take advantage of these features, Users may be required to sign up or log into such Third-Party Service or their respective websites or applications. Client acknowledges that any use of such Third-Party Service is governed solely by the terms and conditions and privacy policy of such Third-Party Service, and that Diligent does not endorse, is not liable for, and makes no representations as to any Third-Party Service, its content, or the manner in which such Third-Party Service uses, stores or processes any data. Certain features of certain Diligent Services and/or Software may depend on the availability of these Third-Party Services and the features and functionality they make available to us. Diligent does not control Third-Party Service features and functionality, which may change without notice to Diligent or Client. If any Third-Party Service stops providing access to some or all of the features or functionality currently or historically available to Diligent, or stops providing access to such features and functionality on reasonable terms, as determined by Diligent in its sole discretion, Diligent may stop providing access to certain features and functionality of the Diligent Services and/or Software. Diligent will not be liable to Client for any refunds or any damage or loss arising from or in connection with any such change made by a Third-Party Service or any resulting change to the Diligent Service and/or Software. Client and its User irrevocably waive any claims against Diligent with respect to any Third-Party Services.

16.10. Force Majeure. Neither Party will be responsible for failure of performance, due to unforeseeable causes beyond its control, including: acts of God or nature; sovereign acts of any governments; network and/or computer failure or shortage of supplied materials which are not in the sphere of influence of a Party (“**Force Majeure Event**”). Each contracting party must immediately inform the other in writing of the occurrence of a case of force majeure. Either Party will have the right to terminate the Agreement upon written notice if a force majeure occurrence continues to impact performance of the other Party for more than thirty (30) consecutive days. Each Party must immediately inform the other in writing of the occurrence of a Force Majeure Event.

16.11. Export. Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Agreement (or any products, including software, incorporating any such data) to any country or person in breach of any applicable laws or regulations regulating export (“*Export Control Laws*”). Client shall ensure that its Users do not access any Diligent Service (or use the Software or any Deliverables) in breach of Export Control Laws.

16.12. Anti-Bribery. Each Party shall comply with all applicable anti-bribery legislation in connection with the operation of this Agreement. Each Party agrees that it has not received or been offered any illegal bribe, kickback payment, gift, or thing of value from any of the other Party’s employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If a Party learns of any breach of this Section related to this Agreement, it will use reasonable efforts to promptly notify the other Party’s legal department.

16.13. No Assignment or Delegation. Client may not (i) assign the Agreement or rights to the Diligent Service, Professional Services or Software, in whole or in part, or (ii) delegate its duties, or have another

assume its responsibilities or liabilities, under the Agreement, to any third party without the prior written consent of Diligent. Notwithstanding the foregoing, Client may assign its rights and obligations under this Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets with notice to Diligent. Any attempted assignment in contravention of this provision will be null and void. The Agreement will be binding on all permitted assignees and successors in interest. Diligent may freely assign or subcontract its rights or obligations under this Agreement.

16.14. Third-party Beneficiaries. Diligent's Third-Party Providers are third-party beneficiaries under this Agreement and may enforce the terms and conditions of this Agreement against Client as it relates to such Third-Party Provider, but such Third-Party Providers will not be liable to Client for any direct or indirect damages with respect to the Content Services or any matters arising under this Agreement with respect to the Content Services. For the avoidance of doubt, no contractual relationship shall be deemed to have been created between the Client and Third-Party Providers. Other than as expressly set out in this Section 16.14, this Agreement does not and is not intended to confer rights on anyone other than the two parties to the Agreement.

16.15. Rights and Remedies. Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.16. Counterparts. The Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will constitute one signed agreement between the Parties. Signatures may be transmitted by facsimile or electronic mail in PDF or other similar format and will be deemed original. The signatories to the Agreement hereby represent and warrant that they have all necessary authority to enter into and bind their respective Party to the Agreement.