

Wunderman Thompson Technology BV Terms of Service

1.

DEFINITIONS

Term	Definition
Consultancy Services	services provided by Wunderman Thompson to Customer other than SaaS Services and Support Services.
Customer	contracting party of Wunderman Thompson for the delivery of Services.
Customer Data	data owned by Customer as used in the SaaS Service as further defined in clause 12.4.
Defect	a malfunction in SaaS Services provided by Wunderman Thompson (not caused by incorrect configuration or otherwise not following usage instructions in the Documentation) materially degrading functionality of the SaaS Services as described in the then current Documentation.
Documentation	the then current version of the user manuals for the SaaS Services as issued by Wunderman Thompson via its website or directly to the Customer from time to time.
Wunderman Thompson	Wunderman Thompson technology B.V., a Dutch company with as registered address Nieuwe Gracht 74, 2011 NJ Haarlem, the Netherlands.
Intellectual Property Rights	all copyrights, patents, database rights, Wunderman Thompson s, trade names, designs, know-how, confidential information and similar rights (whether registered or unregistered).
Offer	written offer issued by an authorised representative of Wunderman Thompson for the provision of Services to the Customer.
Order	Order which is accepted by the Customer.
SaaS Services	making software installed, managed and hosted by the supplier available for use by Customer over the internet.
Services	all services of Wunderman Thompson as provided to the Customer.
Support Services	the standard support services provided to Customer with respect to SaaS Services provided by Wunderman Thompson as further described in clause 5.

2. APPLICABILITY OF TERMS

- 2.1. **Introduction:** These are the general terms and conditions of Wunderman Thompson. These apply to all Services of Wunderman Thompson, all Offers of Wunderman Thompson and all agreements entered into by Wunderman Thompson with the Customer with respect to the supply of Services by Wunderman Thompson.
- 2.2. **Unilateral amendment clause:** Wunderman Thompson has the right to unilaterally amend these general terms and conditions, of which Wunderman Thompson will notify Customer in writing.
- 2.3. **Offers and Orders:** Customer may accept Offers for Orders issued by Wunderman Thompson by signing them and sending these to Wunderman Thompson or by accepting them online (if the Order is offered online such as on websites, in app-stores or in apps). Offers for Orders expire if not accepted by Customer within 30 days of the date they were provided, unless another validity term is expressly included in the Offer. Offers made by Wunderman Thompson online may be revoked without notice. Apparent typo's and errors in Offers do not bind Wunderman Thompson and Wunderman Thompson may reject or terminate Orders based on Offers containing such apparent errors.
- 2.4. **Terms Wunderman Thompson SaaS Services:** In case it is agreed in the Order that Wunderman Thompson will provide Services with respect to SaaS Services sold and provided by Wunderman Thompson itself to the Customer, then clauses 3, 4 and 5 below will be applicable to the provision of such SaaS Services and the related Support Services of Wunderman Thompson to Customer.
- 2.5. **Terms third-party SaaS Services:** In case the Services to be provided under the Order are limited to Consultancy Services provided by Wunderman Thompson with respect to SaaS Services procured by Customer under a direct agreement between Customer and a third-party provider of such SaaS Services, then clauses 3, 4 and 5 below will not apply to such SaaS Services. Wunderman Thompson is not responsible or liable in any way for such SaaS Services, their compliance or proper functioning. It is in such case the sole responsibility of Customer to ensure it obtains the required right to use the SaaS Services and to enable Wunderman Thompson to access and use such SaaS Services for the purpose of enabling Wunderman Thompson to provide its Consultancy Services with respect thereto.
- 3. WUNDERMAN THOMPSON SAAS SERVICES SCOPE**
- 3.1. **Hosting and technical management:** SaaS Services of Wunderman Thompson as standard include the hosting and technical management by Wunderman Thompson of the software in a secured third-party data centre located in Europe. The software will be implemented by Wunderman Thompson and made available ready for use by Customer via the internet. Customer can subsequently connect to the Software via the internet using up to date software browsers, to configure the software, load its own data in the Software and use the SaaS Services.
- 3.2. **Service commitment:** Wunderman Thompson will ensure the SaaS Services are provided in a professional manner and will work to ensure they will function for the duration of the subscription of Customer for the SaaS Services in substantial conformity with the Documentation. Wunderman Thompson does not warrant the SaaS Services will operate error free or uninterrupted, but commits to address Defects in the SaaS Services in accordance with clause 5.
- 3.3. **Evolution of SaaS Services:** The SaaS Services provided by Wunderman Thompson may be updated, changed and upgraded by Wunderman Thompson from time to time. For material changes to the SaaS Services with a foreseeable material impact on Customer, Wunderman Thompson will (where reasonably possible) provide at least one-month prior notice (via email or posting of a message on the login screen of the SaaS Services) to enable Customer to prepare for such change. Wunderman Thompson will not charge Customer additional fees for additional features it may make available to Customer by means of such changes, unless these concern new future features or functions for which Wunderman Thompson also generally charges other users of the SaaS Services separately. However separately charged new features

will not be charged to Customer until Customer has confirmed to desire to use such new feature by concluding an Order in which the related additional charges are agreed.

4. LICENSE TERMS WUNDERMAN THOMPSON SAAS SERVICES

- 4.1. **Usage limitations:** Customer may only use the SaaS Services provided by Wunderman Thompson for the usage scope expressly agreed in the Order. Use beyond the agreed usage scope by Customer without prior agreement in an Order entitles Wunderman Thompson to invoice Customer for the additional usage made at Wunderman Thompson 's then current standard pricing for such expanded use. Where a maximum number of users for the use of the SaaS Services is defined in the Order, this is a maximum number of 'named' users and determines the maximum number of user accounts which may at any time be configured in the SaaS Services for Customer. Customer may not copy and use any part of the SaaS Services, expressly including any software, concept, knowhow or other proprietary aspect of the SaaS Services outside the scope of the SaaS Services. Customer must in using the SaaS Service observe the usage instructions and guidelines in the Documentation and may not use the SaaS Services in a manner interfering or disrupting the integrity of the proper functioning of the SaaS Services and the data stored thereon.
- 4.2. **No use for/by third-parties allowed:** Customer may only use the SaaS Services for its own internal business purposes and may not make the SaaS Services available to any third-party by sale, rent, sublicensing, timesharing or on any other basis nor use the SaaS Services for the benefit of any third-party on any basis including by reselling them or by combining them with the services provided by Customer to third-parties.
- 4.3. **Customers responsibility for legal use:** Customer is fully responsible for all use Customer makes of the SaaS Services, all data it uploads to and distributes via the SaaS Services and all related instructions it gives to Wunderman Thompson in configuring and using the SaaS Services. Customer shall at all times ensure that all such use complies with applicable laws, does not violate any third-party rights (expressly including any Intellectual Property Rights) and is does not constitute a tort against any third-party . Further Customer commits not to use the SaaS Services for sending obscene, threatening, defamatory, fraudulent, or otherwise tortious or offensive messages that could hurt the reputation of Wunderman Thompson and its licensors.
- 4.4. **Right to suspend services:** Wunderman Thompson reserves the right to block any use of the SaaS Services provided by Wunderman Thompson, expressly including the sending of any messages via the SaaS Services which it reasonably deems to violate these terms, any applicable law or any third-partyright.
- 4.5. **Ownership SaaS Services:** All Intellectual Property Rights in or related to the SaaS Services, and any modifications thereto, including those suggested or requested to be made by Customer (but excluding any Customer Data) are and will remain to be fully and wholly owned by Wunderman Thompson and its licensors. Customer Data is Agreed to be the property of Customer as further specified in clause 12.4 below.
- 4.6. **Return of Customer Data:** Wunderman Thompson will upon termination of the Services for up to one month after such termination allow Customer to download from the SaaS Services any copies of Customer Data available for download from the SaaS Services.
- 4.7. **Third-Party license terms:** If the parties agree in the relevant Order that the SaaS Services to be provided by Wunderman Thompson will be based on or utilise standard saas services and/or standard software tools of a third-party licensor to Wunderman Thompson such as Exact Target© or another Salesforce© affiliate (hereafter **Third-Party Tools**), then with respect to the use of such Third-Party Tools, the relevant license and usage terms with respect to such Third-Party Tools as imposed by the relevant third-party licensor as shared by Wunderman Thompson with Customer will apply to the use thereof, in addition and where relevant in deviation of these terms of Wunderman Thompson . For the avoidance of doubt, the fees payable for the use of Third-Party Tools are included in the fees agreed for the SaaS Services to be provided by Wunderman Thompson and are not separately payable by Customer unless expressly otherwise agreed in the relevant Order.
- 5. SUPPORT SERVICES FOR WUNDERMAN THOMPSON SAAS SERVICES**
- 5.1. **Support Services – general support:** Support Services included in the subscription fees for the SaaS Services of Wunderman Thompson include the following:
- a. access to the Documentation of the SaaS Services and self-help tooling (such as the FAQ lists, white papers, example materials and use cases) as made available from time to time via the SaaS Services to Customer;
 - b. general usage support via email and phone (during Dutch business hours, for a maximum of 2 hours per month or such other maximum number as may be agreed in the Order) to answer reasonable usage related questions regarding the SaaS Services regarding aspects not covered by the Documentation and other self-help tooling made available by Wunderman Thompson; and
 - c. proactive monitoring by Wunderman Thompson of key performance statistics of the SaaS Services to help prevent Defects and to identify Defects occurring in the SaaS Services.
- 5.2. **Support Services – Defects:** Wunderman Thompson will use its reasonable efforts to address and resolve Defects in a reasonable amount of time. In case a Defect effectively blocks Customer from accessing the SaaS Services or using material parts of the functionality of the Services, Wunderman Thompson will use all reasonable efforts to provide at least a work around to allow Customer to resume use of the (affected part of) the SaaS Services as soon as practical, which work around may require Customer to temporarily accept to apply alternative working procedures or a reduction of minor functionality.
- 5.3. **Customer responsibilities for receiving support:** Customer must ensure that employees contacting Wunderman Thompson to receive general support and/or to report Defects have been suitably trained to operate the SaaS Software and have consulted the Documentation of the SaaS Services before contacting Wunderman Thompson for support. Customer must when reporting a Defect provide all relevant information and co-operation to Wunderman Thompson to enable Wunderman Thompson to identify and reproduce the Defect. Resolving issues caused by failures to follow usage instructions set out in the Documentation, by uploaded materials not compliant with the related technical requirements or with respect to restoring Customer data are not part of standard Support Services, and assistance with respect thereto may be separately charged by Wunderman Thompson as Consultancy Service to Customer.
- 6. CONSULTANCY SERVICES**
- 6.1. **Consultancy Services:** All forms of services provided by Wunderman Thompson other than the SaaS Services and related standard Support Services as set out above, such as general usage assistance, assistance in implementing and customising the settings of SaaS Services for Customer, assisting in uploading and tailoring Customer Data for use with SaaS Services, are Consultancy Services which are not included in the subscription fees for SaaS Services provided by Wunderman Thompson and are separately chargeable to Customer.
- 6.2. Wunderman Thompson acquires all Intellectual Property Rights, with the exception of Customer Data, which arise in relation to the Services. To the extent necessary, these Intellectual Property Rights are hereby transferred in advance by Customer to Wunderman Thompson, for the moment at which the intellectual Property Rights arise. This transfer is hereby accepted by Wunderman Thompson.

- 6.3. **Terms and dates:** All delivery dates and other periods stated or agreed by Wunderman Thompson for Consultancy Services are determined based on data known to Wunderman Thompson when it agreed or communicated such dates or periods and may be subject to change. Wunderman Thompson will use its reasonable efforts to observe agreed delivery dates and other periods as much as possible, subject to the Customer's timely performance of its obligations.
- 6.4. **Fees for Consultancy Services:** Unless expressly otherwise agreed, Consultancy Services are charged on a time and material basis against the standard hourly rates of Wunderman Thompson or such hourly rates as may be agreed in the relevant Order. Communicated budgets for performing certain activities are (unless expressly otherwise agreed) non-binding estimations and not fixed prices. Wunderman Thompson will only with the prior written consent from Customer spend time beyond the agreed budget. Agreed fixed prices for Consultancy Services for certain specific activities are subject to the assumptions and conditions set out in the Order and on the general assumption Customer provided correct, up to date and complete information for Wunderman Thompson to basis its fixed price offer on and will fully co-operate as per clause 6.5 below. For Consultancy Services on a fixed price basis related to designing, tailoring look and feel, house style or other elements subject to the subjective approval by Customer, one correction round is included in such fixed price. Additional iterations to fine tune such aspects of the relevant deliverables are not included in the fixed price and may be separately charged by Wunderman Thompson .
- 6.5. **Customer co-operation:** The Customer shall furnish Wunderman Thompson in a timely manner with all information and cooperation which is reasonably requested by Wunderman Thompson to execute its obligations. Customer will ensure any Customer Data provided for inclusion in the SaaS Services complies with the relevant technical standards as set out in the Documentation. Where the Consultancy Services are provided with respect to SaaS Services procured by Customer under a direct agreement between Customer and the third-party provider of such SaaS Services, then Customer is responsible to ensure the timely and correct co-operation by such third-party provider to enable Wunderman Thompson to perform the Consultancy Services.
- 6.6. **Quality commitment Consultancy Services:** Wunderman Thompson will provide Consultancy Services in a professional and diligent manner. In case deliverables created as the result of Consultancy Services contain manifest errors or shortcomings caused by a failure by Wunderman Thompson to perform the Consultancy Services to the standard set out in this clause, and Customer reports this to Wunderman Thompson within 3 months after the delivery of the relevant deliverable, Wunderman Thompson will as a sole remedy and without additional charge use its reasonable efforts to correct such error or shortcoming or alternatively offer Customer a proportional reduction in the fees charged for the relevant Consultancy Services.
- 6.7. **Rescheduling planned Consultancy Services:** If Wunderman Thompson must reschedule the performance of Consultancy Services agreed with Customer to be performed on a certain date or in a certain period, less than 3 weeks before the planned date or start of the planned period on request of Customer or because of a delay in enabling the performance of the planned Consultancy Services by Customer or a third-party supplier to Customer, then Wunderman Thompson reserves the right to charge Customer the following rescheduling costs: 100% of the fees for the first week of planned Consultancy Services, 50% of the second week and 33% of the third week.
- 6.8. **Performance Consultancy Services:** A claim by Customer for performance, for example regarding the consumption of hours for Consultancy Services, expires after 12 (twelve) months after the start of the day, following the day on which the claim has become due and payable (e.g. the start date of the Order).
- 7. DATA PROTECTION (PRIVACY) COMMITMENTS**
- 7.1. **Commitment to comply to privacy laws:** Each party will ensure compliance of its activities to the applicable privacy laws in using respectively providing the SaaS Services. Where Wunderman Thompson processes personal data while performing the Services, it will act as data processor under the direction and responsibility of Customer as controller in accordance with EU Privacy Directive 2016/679 (the General Data Protection Regulation or "GDPR") . Customer will at all times ensure compliance with the GDPR and other applicable data protection laws, when using the Services and when instructing Wunderman Thompson in configuring and using the SaaS Services for Customer.
- 7.2. **Security commitment:** If Wunderman Thompson is the provider of the SaaS Services under the Order, then Wunderman Thompson shall implement appropriate technical and organisational measures to protect personal data stored and processed via the SaaS Services provided by Wunderman Thompson against abuse. Wunderman Thompson shall ensure that the data centres used to host the Wunderman Thompson SaaS Services and to store Customer Data are located in Europe. Wunderman Thompson will prior to the start of the SaaS Services provided by Wunderman Thompson share the name, location and observed security standards committed to be employed to secure the data centre and the computer environment used to host the SaaS Services with Customer.
- 7.3. **Ultimate responsibility:** With respect to applicable privacy and other laws Wunderman Thompson may share prior experiences and perceived market practices in respect of the use of the SaaS Services, but this is done expressly without accepting any liability or responsibility. Wunderman Thompson is not a legal advisor or law firm and the ultimate responsibility for ensuring compliance to applicable laws in using the SaaS Services (and in particular obtaining relevant consents from persons whose personal data is used by means of the SaaS Services) is and remains at all times with Customer.
- 8. PRICE AND PAYMENT**
- 8.1. **Taxes and costs:** All prices of Wunderman Thompson are, unless explicitly otherwise agreed, exclusive of turnover tax (VAT) and other taxes, levies or duties imposed by governmental authorities. Pricing of Services is excluding applicable transportation, travel and accommodation costs which will be charged separately as incurred to provide the agreed Services except as explicitly agreed otherwise in the relevant Order.
- 8.2. **Payment terms:** Subscription fees for SaaS Services provided by Wunderman Thompson become payable yearly in advance from the date Wunderman Thompson first provides access to the SaaS Services by making user names and passwords available to Customer to start configuration of the Services. Fees for Consultancy Services are payable in accordance with the payment schedule set out in the Order or in absence thereof, monthly in arrears on the basis of actual hours spent in the past month. The Customer shall pay each invoice within thirty days after the invoice date. The Customer shall not be entitled to set off any counterclaims or to suspend payment of an invoice.
- 8.3. **Late payment consequences:** In case of late payment, Wunderman Thompson can charge the Customer the applicable Dutch statutory interest rate for trade agreements to the outstanding amount and suspend Services until full payment is received. If after the Customer has been given written notice of non-payment by Wunderman Thompson, the Customer persists in not paying the invoice, Wunderman Thompson shall be entitled to engage third-parties in obtaining payment from the Customer and charge the related costs to the Customer.
- 8.4. **Pricing:** All prices of Wunderman Thompson can be increased annually by Wunderman Thompson with a maximum of 3%. The increased prices will be effective on the first day of the month following the notification by Wunderman Thompson of the increased prices. In case of renewal of the term of SaaS Services, the then current standard prices for the SaaS Services as published by Wunderman Thompson on its website or notified by Wunderman Thompson to the Customer in writing will be applicable to the SaaS Services as of the date of renewal.
- 9. LIMITATION OF LIABILITY**
- 9.1. **Liability limit direct damage:** The total liability of Wunderman Thompson under any Order for breach of contract, tort or under any other legal theory in any calendar year is limited to an amount equal to the 50% of the total fees actually paid by Customer to Wunderman Thompson during the previous full calendar year under the Order (or if no Services were provided in the previous calendar year to Customer under the Order, the total fees paid in the initial 6 months of the term of the Order).
- 9.2. **Exclusion liability indirect damage:** Wunderman Thompson shall not be liable towards Customer or towards third-parties for any consequential or incidental damage, damage to data, lost turnover, lost profits, lost savings or damage to good name, whether such damages arise under a tort, contract or other claim, even if Wunderman Thompson has been informed of the possibility of such damages.
- 9.3. **No limitation:** The limitations mentioned in the preceding paragraphs of this clause shall not apply if and insofar as the damage or injury are the result of intentional misconduct or gross negligence of Wunderman Thompson.
- 9.4. **Employees and subcontractors:** The provisions in this clause shall also apply for the benefit of the employees of Wunderman Thompson and of the subcontractors and licensors utilized by Wunderman Thompson in executing its obligations toward the Customer.
- 9.5. **Third-Party claims:** The Customer will indemnify and hold Wunderman Thompson harmless from any third-party claims and related reasonable legal costs caused by or related to Customer's use of the SaaS Services, expressly including but not limited to any claim from any third-party caused by a violation of such third-party's rights or of applicable privacy or other laws by Customer in using the SaaS Services.
- 10. TERMINATION**
- 10.1. **Term and renewal of Wunderman Thompson SaaS Services:** The right for Customer to use SaaS Services provided by Wunderman Thompson is granted for the relevant subscription period as set out in the Order. If no subscription period is specified in the Order, the initial subscription period is one year starting on the date the SaaS Services are first made available for use to Customer, after which the subscription is automatically renewed for additional one year periods until either party gives at least 2 months prior written notice of its desire not to renew the SaaS Services. Customer may reduce the scope of the SaaS Services for the following renewal period (e.g. by reducing the number of licensed users) by giving 2 months prior written notice to Wunderman Thompson.
- 10.2. **Term of Order for Consultancy Services:** The applicable term of an Order for Consultancy Services will be as agreed in each Order. Orders for one-time activities will automatically terminate when all Consultancy Services agreed have been provided by Wunderman Thompson and paid for by Customer. Orders for recurring or on-going Consultancy Services will specify the initial and renewal terms and in absence of any explicit initial and renewal term, will be deemed to have been agreed for an initial term of one year with subsequent renewals for additional one year terms until either party gives at least 3 months prior written notice of its intent not to renew the Consultancy Services for an additional one year term.
- 10.3. **Termination rights, both parties:** A party may terminate an Order by giving written notice to the other party in the following circumstances:
- if the other party violates an obligation under an Order and does not remedy such violation within a reasonable period of at least 30 days set by the other party in a written notice of default sent by registered mail to the defaulting party; or
 - if the other party is declared bankrupt or a receiver is appointed to administer its assets or otherwise becomes unable to satisfy its debts when due.
- 10.4. **Wunderman Thompson SaaS Services Discontinuation:** Wunderman Thompson may early terminate the then current term of a subscription for SaaS Services provided by Wunderman Thompson and the related Orders in case Wunderman Thompson decides to end support for the relevant SaaS Service for all its customers. Wunderman Thompson will in such case use its reasonable effort to provide at least 6 months prior notice of such termination. Where possible Wunderman Thompson will offer a migration path for Customer to alternative SaaS Services replacing the terminated SaaS Services which Customer will be free to accept or reject.
- 10.5. **Consequences of termination:** Upon termination or expiration (for whatever reason) of an Order all amounts owed under such Order shall immediately become fully due to be paid, including for subscription fees that would have become due for the remainder of the agreed initial term of the subscription period for the Services. No refunds are provided for amounts pre-paid for Services, except in case the Order was justly terminated by the Customer for an uncured default of Wunderman Thompson.
- 11. IP INDEMNITY**
- 11.1. **IP indemnity commitment:** As far as Wunderman Thompson is aware, the Services provided by Wunderman Thompson do not infringe upon any third-party Intellectual Property Rights when used in accordance with the applicable terms. Wunderman Thompson shall, as sole and exclusive remedy, defend the Customer at its expense against any claim from a third-party that the use of the Wunderman Thompson Services by the Customer infringes any third-party's Intellectual Property Rights.
- 11.2. **Conditions for IP indemnity:** Wunderman Thompson shall pay all costs, damages and attorney's fees that a court finally awards as a result of such a claim or make all payments related to a settlement agreed by Wunderman Thompson with such third-party concerning such claim, provided that:
- Such claim is not in any way caused by any Customer Data or any act or omission of Customer;
 - Customer promptly notifies Wunderman Thompson in writing of such claim; and
 - allows Wunderman Thompson to control, and fully co-operates with Wunderman Thompson in, the defence against such claim and any related settlement negotiations.
- 11.3. **Resolving infringement:** If a claim for infringement of Intellectual Property Rights of a third-party is made or in the reasonable opinion of Wunderman Thompson is likely to be made then, at Wunderman Thompson's option:
- Wunderman Thompson will procure a license from the holder of the relevant Intellectual Property Rights to enable the Customer to continue to use the Services; or
 - Wunderman Thompson will replace the relevant part to the Services with a modified version thereof, which does not infringe the third-party Intellectual Property Rights; or
 - Wunderman Thompson may terminate the relevant Order against a proportional repayment of the fees pre-paid by the Customer for unused portions of the Services.

12. CONFIDENTIALITY

- 12.1. **Confidentiality commitment:** Each party (Recipient) undertakes to the other party (the Disclosing Party) to treat as confidential all information in any medium or format (whether marked "confidential" or not) which the Recipient receives from the Disclosing Party either directly or indirectly which concerns the business, operations, software or customers of the Disclosing Party and which can reasonably be deemed to be of a confidential nature (Confidential Information). The contents and existence of this Agreement is considered Confidential Information.
- 12.2. **Usage restriction:** The Recipient may only use the Confidential Information for the purposes of performing the activities set out in this Agreement. The Recipient may only provide its employees, directors, subcontractors and professional advisers (Permitted Users) with access to the Confidential Information on a strict "need-to-know" basis for this purpose. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this clause.
- 12.3. **Exclusions:** This clause 12, shall not apply to any information which:
- is in or subsequently enters the public domain other than as a result of a breach of this clause 12;
 - has been or is subsequently received by the Recipient from a third-party which is under no confidentiality obligation in respect of that information; or
 - is required to be disclosed any competent governmental or regulatory authority.
- 12.4. **Ownership Customer Data:** All data which Customer uploads in the SaaS Services or sends to the SaaS Services or gathers from its relations via the SaaS Services, expressly including, but not limited to messages texts, Customer logo's and Customers trademark, Customer house style elements and other Customer prepared texts and images, are considered "Customer Data" and are and will remain to be fully and wholly owned by Customer and its licensors. Wunderman Thompson will not use the Customer Data for any other purpose than to provide the Services to Customer, to manage, maintain and improve the Services and to comply with applicable laws.

13. MISCELLANEOUS

- 13.1. **Rejection of third-party purchasing terms:** The applicability of the Customer's purchasing or other general terms and conditions is expressly rejected. If the Customer accepts an Offer or requested an offer with reference to additional or deviating terms or conditions of Customer (such as purchasing terms of the Customer), then such deviating or additional terms shall not apply between the parties unless these are explicitly accepted in a written statement issued and signed by an authorized representative of Wunderman Thompson. In any case the terms of the Offer itself, including these general terms and conditions, shall take precedence over any deviating terms and conditions of the Customer.
- 13.2. **Non poaching of Wunderman Thompson employees:** For the purpose of this clause an "Wunderman Thompson Employee" is any person who works for Wunderman Thompson or in the past 24 months worked for Wunderman Thompson on any basis including as employee, freelancer or as seconded worker (*uitzendkracht*) and who performed Services for Customer under an Order for Customer. Customer may not during the term of any Order concluded between Wunderman Thompson and Customer and up to 24 months after the provision of Services under all Orders between Wunderman Thompson and Customer has ended:
- directly or indirectly employ, hire or on any other basis have Wunderman Thompson Employees perform work for Customer or for any company related or affiliated with Customer; nor
 - in any way promote entice, request or otherwise stimulate or facilitate that any third-party directly or indirectly employs, hires or on any other basis has Wunderman Thompson Employees perform work for such third-party.
- For each violation of this clause, Customer will incur a penalty of EUR 50.000, or if higher a penalty equal to the total gross yearly income of the relevant Wunderman Thompson Employee. The right for Wunderman Thompson to claim payment of this penalty is without prejudice to the right to also enforce compliance to this clause and to claim damages suffered due to a breach of this clause. If Customer procures the Services of Wunderman Thompson for the benefit of a third-party (e.g. to assist Customer in performing services to such third-party), then Customer must ensure that such third-party also fully complies to this clause and Customer will be liable for any breach by such third-party of this clause as if Customer itself breached this clause.
- 13.3. **Applicable law:** These terms and conditions and all agreements to which they apply shall be governed by the laws of the Netherlands.
- 13.4. **Dispute resolution:** All disputes arising in connection these terms or any agreement they are applicable to, shall be submitted to the exclusive jurisdiction of the competent courts of Amsterdam the Netherlands.
- 13.5. **Settlement commitment:** No legal proceedings shall be started, except if for immediate injunctive relief, until after the party which wishes to start such legal proceedings has in good faith attempted to settle the dispute out of court.