



## Supply of Goods and Services Terms

These Supply of Goods and Services Terms (together with its annexes) (the “**Terms**”) are effective from the Commencement Date (defined below) and are entered into by and between Celonis SE or an affiliated entity of Celonis SE, as identified in the applicable Order (the “**Customer**”) and the Supplier for the purchase and supply of the Goods and/or Services ordered by Customer under the applicable Order in accordance with such Order and these Terms.

The definitions used in these Terms are set out in **Annex A**.

### 1. BASIS OF CONTRACT

1.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Terms.

1.2. The Order shall be deemed to be accepted on the earlier of:

- the Supplier issuing written acceptance of the Order; or
- the date specified in the applicable Order; or
- any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Agreement shall come into existence (“**Commencement Date**”).

1.3. The Agreement is the entire agreement between the parties and applies to the purchase and supply of the Good and/or Services hereunder to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.4. All of these Terms shall apply to the supply of both Goods and Services except where the application to one or the other is specified. In the event of any conflict between the terms of these Terms and the Order, these terms shall prevail, except where specified in the Order that any terms of such Order shall prevail over the terms of these Terms.

### 2. SUPPLY OF GOODS

2.1. The Supplier warrants and guarantees to the Customer that the Goods shall:

- correspond with their description and any applicable Goods Specification;
- be of satisfactory quality (within the meaning of applicable law) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier’s skill and judgement;
- where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.2. The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

2.3. The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Agreement.

2.4. If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier’s undertakings at clause 2.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

2.5. The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 3. DELIVERY OF GOODS

3.1. The Supplier shall ensure that:

- 3.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 3.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 3.1.3. it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.2. The Supplier shall deliver the Goods:

- 3.2.1. on the date specified in the Order and time is of the essence for any and all deliveries of Goods;
- 3.2.2. to the Customer’s premises or such other location as is set out in the Order or as otherwise instructed by the Customer before delivery (“**Delivery Location**”); and
- 3.2.3. during the Customer’s normal hours of business on a Business Day, or as instructed by the Customer.

3.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and issuance of an acknowledgement of receipt by an Authorized Person.

3.4. Nothing in these Terms shall oblige the Customer to accept any deliveries exceeding or falling short of the ordered quantities, and any rejected Goods shall be returnable at the Supplier’s risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

3.5. The Supplier shall not deliver the Goods in instalments without the Customer’s prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.1.

3.6. Title and risk in the Goods shall pass to the Customer on completion of delivery.

### 4. SUPPLY OF SERVICES

4.1. The Supplier shall from the Commencement Date and for the duration agreed in such Order supply the Services to the Customer in accordance with the terms of the Agreement.

- 4.2. In providing the Services, the Supplier warrants and guarantees to the Customer that it shall at all times:
- a) meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates;
  - b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - c) use Personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - d) prior to exchanging any Personnel involved in the provision of a Service, contact Customer without undue delay and inform Customer in writing or electronically of any such envisaged change (including all relevant contact details, permissions and similar information);
  - e) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
  - f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
  - h) obtain and at all times maintain all licenses and consents which may be required for the provision of the Services;
  - i) comply with the Mandatory Policies and all applicable local, state, national and foreign laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, including without limitation, those relating to data privacy, export control and anti-bribery and corruption;
  - j) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
  - k) hold all materials, equipment, tools, software, drawings, specifications and data supplied by the Customer to the Supplier and any updates thereto ("Customer Materials") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than for the purposes of the provision of the Services and in accordance with the Agreement and the Customer's written instructions or authorization;
  - l) inform the Customer promptly if, in its opinion, changes to the services which would result in improvements are possible;
  - m) not do or omit to do anything which may cause the Customer to lose any license, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
  - n) comply with any Service Levels set forth in the SoW.

4.3. In the event the Customer for any reason determines, acting reasonably, that any Personnel used by Supplier to deliver the Services are not suitable, it shall notify Supplier and Supplier shall promptly replace such Personnel.

4.4. Unless expressly agreed otherwise, the Supplier shall keep the Customer informed about the progress of the services carried out on behalf of the Customer.

4.5. If the Customer requests a change to the scope or execution of the Services, Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the change;
- b) any variations to Supplier's charges arising from the change;
- c) the likely effect of the change on the applicable SoW; and
- d) any other impact of the change on the terms of the Agreement; and

any such change shall not take effect until the parties have agreed an amendment to this Agreement in accordance with clause 15.8 to incorporate the necessary variations to the charges, the relevant Statement of Work and any other relevant terms of the Agreement to take account of the change.

4.6. In the event Supplier processes, uses, stores and/or transmits any data of Customer and/or its customers in the provision of the Services it shall do so only for the purposes of its performance of the Services under and in accordance with this Agreement and Annex B and at all times maintain administrative, physical, and technical safeguards for the protection, security, availability, integrity and confidentiality of such data in accordance with good industry practice and applicable laws and regulations. Supplier shall further only process personal data (as defined in Annex B) of Customer and/or its customers in accordance with Customer's instructions, Applicable Data Protection Laws, and Annex B.

## 5. CUSTOMER REMEDIES

5.1. If the Supplier (a) fails to deliver the Goods and/or the Goods do not comply with any of the undertakings or warranties set out in clause 2 and/or (b) fails to deliver and/or perform the Services in accordance with any of the warranties or undertakings contained in clause 4 and/or by the applicable date(s), the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights to:

- 5.1.1. terminate the Agreement with immediate effect by giving written notice to the Supplier;
- 5.1.2. reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 5.1.3. require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- 5.1.4. require Supplier to re-perform, rectify or replace the affected Services and/or Deliverables;
- 5.1.5. refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 5.1.6. recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- 5.1.7. require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- 5.1.8. claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's breach.

5.2. Notwithstanding any other rights or remedies available to Customer if the Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct 3% of the price of the Goods for each week's delay in delivery, up to a maximum of 15% of the total price of the Goods. In the event such delay continues for six (6) weeks or more, Customer may terminate the Agreement with immediate effect upon given Supplier written notice.

5.3. These Terms shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

5.4. The Customer's rights under the Agreement are in addition to its rights and remedies implied by statute and common law.

## **6. CUSTOMER'S OBLIGATIONS**

6.1. The Customer shall provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services.

6.2. The Customer shall provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **7. CHARGES AND PAYMENT**

7.1. The price for the Goods:

7.1.1. shall be the price set out in the Order; and

7.1.2. shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

7.2. The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.3. Unless otherwise agreed in the Order, in respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. Unless otherwise agreed in the Order, in respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

7.4. In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier. If the Customer makes the payment within 14 (fourteen) days, Customer is entitled to a 3 % early settlement discount.

7.5. Unless otherwise stated in the applicable Order, all amounts payable by the Customer under the Agreement are exclusive of any applicable taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**").

The Supplier will separately state and describe in reasonable detail any Taxes applicable to the amounts payable by the Customer. The Customer will pay or reimburse the Supplier, where it is liable under applicable tax statute, for all Taxes associated with the Customer's purchases hereunder. For clarity, the Supplier is solely responsible for taxes assessable against it based on its income, property and employees. Where applicable, Supplier shall complete and sign a United States Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification), or similar form, as applicable, outside the United States, and shall deliver the form to the Customer within ten (10) days from the Commencement Date. Further, the Customer shall not be obligated to pay or reimburse the Supplier for any taxes, fees or surcharges for which Customer claims an exemption. For clarity, the Customer shall not pay or reimburse or otherwise be charged by the Supplier for any taxes, fees or surcharges, on the Supplier's intercompany transactions or services or that are triggered because the Supplier cannot invoice from its appropriate Affiliate. The Supplier shall reasonably cooperate with the Customer in the audit of any applicable tax and shall make available to the Customer, and any taxing authority, all information, records, or documents relating to any audits or assessments attributable to or resulting from the payment process under the Agreement, and the filing of any tax returns or the contesting of any tax. The Customer shall not be obligated to pay or reimburse the Supplier for additions to taxes, penalties, interest, fees, or other expenses or costs, if any, incurred by the Customer as a result of, or attributable to the Supplier's negligence, misconduct or failure to file properly any required returns or reports, or other required documents. If the Customer is required by law to make any deduction or to withhold from any sum payable under the Agreement, then the sum payable by the Customer upon which the deduction is based shall be paid to the Supplier net of the deduction or withholding. The Customer shall pay the applicable tax authorities any required deduction or withholding. The Customer shall provide the Supplier with documentation evidencing the deduction or withholding as requested by the Supplier in writing to the Customer.

7.6. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

7.7. The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1. Unless otherwise expressly agreed by the parties in the Order, all Intellectual Property Rights in the Deliverables and/or anything created by the Personnel of Supplier under the Agreement and/or otherwise arising out of or in connection with the Services (other than Intellectual Property Rights in any Supplier Pre-existing IPR) shall be owned by the Customer and its Affiliates.

8.2. The Supplier shall procure the irrevocable and unconditional waiver of all moral (or similar rights) in the Deliverables and anything created by the Supplier and/or Supplier Personnel under the Agreement (excluding Supplier Pre-existing IPR). The Supplier shall assign and shall procure that all Personnel shall assign upon creation, and hereby assigns by way of future assignment in the case of copyrights, to the Customer with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to the Deliverables and/or anything created by the Personnel of Supplier under the Agreement and/or otherwise arising out of or in connection with the Services. Supplier shall take such steps and execute such documents as may be requested by the Customer in writing to give full effect to the Customer's rights under this clause 8.

8.3. Subject to clause 8.4, the Supplier grants or shall procure the direct grant to the Customer (and its Affiliates) of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable license to use, copy and modify the Supplier Pre-existing IPR for the purpose of receiving and using the Services and the Deliverables. In the event, any open source license used by the Supplier are subject to a "Copyleft Effect" then the Customer is entitled to cancel within two weeks of becoming aware of this information. For this purpose, "Copyleft Effect" means that the terms of the open source license require that certain of the Supplier's products, as well as any products derived from such products, may only be redistributed in accordance with the terms of the open source license, which for example may require the source code is disclosed when redistributing.

8.3.1. In the event the Customer is licensing from Supplier any Supplier Pre-existing IPR which is software (as specified in the Order) and it is mutually agreed by the parties in the applicable Order that such license shall be for a fixed license term, the Customer and its Affiliates are granted a fully paid up, worldwide, non-exclusive, royalty-free license for the fixed license term specified in the Order to use and copy such software for the purposes of receiving and using the Services and the Deliverables.

8.4. The Customer grants the Supplier a non-exclusive, non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of the Agreement solely for the purpose of providing the Services to the Customer.

8.5. All Customer Materials and all IPR in such Customer Materials are and shall remain the exclusive property of the Customer.

## **9. INDEMNITY**

9.1. The Supplier shall defend, indemnify and hold harmless the Customer and its Affiliates from and against any and all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the customer arising out of or in connection with:

9.1.1. any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

9.1.2. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

9.1.3. any claim made against the customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;

9.1.4. any claim made against the Customer by a third party or regulatory authority arising out of or in connection with supplier's breach of any applicable data protection laws and/or regulations;

9.1.5. any claim made against the Customer by a third party, regulatory authority or any Personnel of Supplier arising out of or in connection with Supplier's Employment Liabilities;

9.1.6. any claim (by a third party or otherwise) arising out of or in connection with Supplier's breach of any of the warranties given by it under this Agreement;

9.1.7. any claim (by a third party or otherwise) arising out of or in connection with Supplier's negligence and/or willful misconduct;

9.1.8. any claim (by a third party or otherwise) arising out of or in connection with Supplier's breach of its confidentiality obligations hereunder; and

9.1.9. any claim (by a third party or otherwise) arising out of or in connection with Supplier's disclosure, misuse or misappropriation of any of Customer's or its customers data, confidential information, data or Intellectual Property Rights.

9.2. This clause 9 shall survive termination of the Agreement.

## **10. INSURANCE**

During the term of the Agreement and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance and any other insurance necessary to cover the liabilities that may arise under or in connection with the Agreement, and shall, provide to the Customer both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. CONFIDENTIALITY**

11.1. Each party undertakes that it shall not at any time during the Agreement and for a period of five years after termination of the Agreement, disclose to any third party any confidential information concerning the business, affairs, customers and/o,r suppliers of the other party, except as permitted by clause 11.2. Each party reserves all rights in its confidential information

11.2. Each party may disclose the other party's confidential information:

- a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 11; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3. Each party shall not use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

## **12. TERMINATION**

12.1. Without affecting any other right or remedy available to Customer, the Customer may terminate the Agreement:

12.2. with immediate effect by giving written notice to the Supplier if (i) there is a change of Control of the Supplier; (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or (iii) the Supplier commits a breach of clauses 2.1.4 or 4.3.8; or

12.3. for convenience by giving the Supplier one (1) months' written notice.

12.4. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

12.5. the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

12.6. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **CONSEQUENCES OF TERMINATION**

On termination of the Agreement, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

12.7. Termination or expiry of the Agreement shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12.8. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

## **13. FORCE MAJEURE.**

Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days or more the party not affected may terminate this agreement by giving 15 days' written notice to the affected party.

## **14. LIMITATION OF LIABILITY**

Except for any liabilities which cannot be excluded or limited by applicable law and any liabilities arising from Supplier's (i) breach of its

obligations of confidentiality; (ii) indemnification obligations; or (iii) gross negligence, willful misconduct or fraud, in no event will either Party or any Affiliate of either party be liable to the other Party for any exemplary, special, incidental, consequential or other indirect damages (including, without limitation, any payment for lost business, loss of profits, loss of goodwill, reimbursement for expenditures or investments made or commitments entered into, termination of employees or employees salaries, overhead or facilities incurred or acquired based upon the business derived or anticipated under this Agreement), whether foreseeable or not, claims under termination, protection, non-renewal or similar laws, for any cause whatsoever and under any theory of liability, including contract, tort (including negligence) or otherwise.

## **15. GENERAL**

**15.1. Employment Liabilities.** Supplier shall at all times during the term of the Agreement and upon the expiration, termination or any assignment of the Agreement howsoever arising, remain responsible and liable for its Personnel and all Employment Liabilities in respect of its Personnel.

### **15.2. Assignment and other dealings.**

15.2.1. The Customer may at any time assign, transfer or subcontract to a third party or deal in any other manner with any or all of its rights and obligations under this Agreement.

15.2.2. The Supplier shall not assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Customer.

### **15.3. Third party rights. U**

15.3.1. If applicable, and unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

### **15.4. Notices.**

15.4.1. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by pre-paid first-class post or other next working day delivery service at the address of the relevant party specified in the Order; or sent by email to the email address specified in the Order.

15.4.2. A notice or other communication shall be deemed to have been received: if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at 9.00 am on the next Business Day after transmission.

15.4.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**15.5. Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

**15.6. Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**15.7. No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorize either party to make or enter into any commitments for or on behalf of the other party.

**15.8. Entire agreement.** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**15.9. Variation.** Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional Supplier terms, shall be effective unless it is agreed in writing and signed by the parties or their authorized representatives.

### **15.10. Governing law and Jurisdiction.**

If Supplier is located in the United States or Canada, this Agreement shall be governed by the laws of the State of New York, excluding its conflicts of law rules. The parties submit to the exclusive jurisdiction and venue of the federal and state courts in New York County, New York.

If Supplier is located in Germany, this Agreement shall be governed by the laws of Germany, without giving effect to its rules regarding conflicts of laws, other than such principals directing application of German law. The parties submit to the exclusive jurisdiction of the courts in Munich, Germany.

If Supplier is located in the rest of the world, this Agreement shall be governed under the laws of England and Wales, excluding its conflicts of law rules. The parties submit to the exclusive jurisdiction of the courts in London, England.

## Annex A - Definitions

1. **Affiliate:** an entity that directly or indirectly Controls, is Controlled by, or is under common Control with, a party to this Agreement.
2. **Agreement:** these Terms and any Order or SOW entered into by the parties under these Terms.
3. **Authorized Person:** An employee of the Customer duly authorized to acknowledge receipt of Goods and Services.
4. **Business Day:** a day other than a Saturday, Sunday or public holiday in the governing jurisdiction.
5. **Commencement Date:** has the meaning given in clause 1.2.
6. **Control:** the ownership of (i) greater than fifty per cent of the voting power to elect directors of the entity, or (ii) greater than fifty per cent of the ownership interest in the entity (and change of control shall be construed accordingly).
7. **Customer:** has the meaning given in the first paragraph above.
8. **Customer Materials:** has the meaning set out in clause 4.2k).
9. **Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs and applications, data, specifications and reports (including drafts) and any updates or changes thereto.
10. **Employment Liabilities:** any and all liabilities (including social security liabilities) connected with or arising from the employment of employees or the use or engagement of Personnel and their health and safety at work including any requirement to inform or consult such individuals or their representatives.
11. **Goods:** the goods (or any part of them) set out in the Order.
12. **Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed by the parties in the Order or otherwise agreed in writing by the Customer and the Supplier.
13. **Intellectual Property Rights (IPR):** patents, rights to inventions, copyright and neighboring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
14. **Mandatory Policies:** the Customer's business policies, including without limitation the Customer's Information Security, health and safety and business conduct policies and such other policies as notified by Customer to Supplier from time to time.
15. **Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be which detail the Goods and/or Services being purchased, the fees payable, Goods Specifications, any SoWs for Services and any other mutually agreed terms applicable to the purchase and supply of such Goods and/or Services.
16. **Personnel:** means all employees, agents, consultants, contractors and other representatives of Supplier and any Supplier subcontractors (where approved by the Customer in writing) used by Supplier in the provision of the Services and/or Goods.
17. **Services:** the services, including any Deliverables, to be provided by the Supplier under the Agreement and as specified in the SoW.
18. **Service Levels:** the service levels for Services agreed in writing by the Customer and the Supplier and as set out in or attached to the SoW.
19. **Statement of Work or SoW:** means the statement of work setting out the description and specification for the Services, along with any Service Levels as set out in or attached and incorporated into the Order.
20. **Supplier:** the person or firm from whom the Customer purchases the Goods and/or Services as identified in the Order.
21. **Supplier Pre-existing IPR:** means any IPR of Supplier existing in the Deliverables or Services which is owned by or licensed to Supplier and which pre-dates the Commencement Date or are created by Supplier independently of the Agreement and without any use of the confidential information of the Customer or any Customer Materials and are intended for general use in respect of Supplier's business.

## Annex B- Data Protection

In the event Supplier processes any personal data, it shall, in addition to the terms and condition of the Agreement, comply with the data protection terms and conditions set forth in this Annex B.

### 1. Definitions:

- 1.1. **Applicable Law:** means any law of the governing jurisdiction;
- 1.2. **Applicable Data Protection Laws** means (i) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the GDPR, as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (ii) any code of practice or guidance published by any relevant Regulator from time to time;
- 1.3. **Controller, Data Subject, Personal Data, Personal Data Breach, Processing, and Processor:** shall have the same meanings as are assigned to those terms in the GDPR (whereby Process and Processed shall be construed accordingly; any references to Personal Data shall include Sensitive Personal Data; and Personal Data Breach shall include a breach of clause 2.6.3
- 1.4. **GDPR:** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data;
- 1.5. **International Transfer Requirements:** means the requirement to ensure that transfers of personal data outside of the EEA have adequate protections in place, as set out in the Applicable Data Protection Laws;
- 1.6. **Regulator Correspondence:** means any correspondence or communication (whether written or verbal) from a Regulator in relation to the Processing of the Personal Data;
- 1.7. **Security Requirements:** means the requirements regarding the security of the Personal Data, as set out in the Applicable Data Protection Laws (including, in particular, the seventh data protection principle of the Act and/ or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable and any security policies of Customer as provided by Customer to Supplier including the Celonis Supplier Information Security Requirements;
- 1.8. **Sensitive Personal Data:** means Personal Data that reveals such categories of data as are listed in Article 9(1) and Article 10 of the GDPR;
- 1.9. **Staff:** those persons employed or engaged by Supplier or any Subprocessor from time to time in the provision of the Goods and/or Services;
- 1.10. **Subprocessor:** means any third party appointed by Supplier to process Customer's Personal Data in connection with the Agreement;
- 1.11. **Third Party Request:** means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation.

### 2. Relationship of the Parties and Processor Obligations.

2.1 The parties acknowledge that the factual arrangement between them dictates the role of each party in respect of the Applicable Data Protection Laws. Notwithstanding the foregoing, the parties anticipate that, in respect of the Personal Data, as between Customer and Supplier for the purposes of the Agreement, Customer is deemed to be the Controller and Supplier is deemed to be the Processor. The subject matter and duration of the Processing of Personal Data by Supplier, the nature and purpose of such Processing and the type (and categories) of Personal Data being Processed will be detailed in the applicable Order. Nothing within the Agreement relieves Supplier of its own direct responsibilities and liabilities under the GDPR.

2.2 Each party shall make due notification to any relevant Regulator. Supplier undertakes to Customer that it will take all necessary steps to ensure that it operates at all times in accordance with the requirements of the Applicable Data Protection Laws and Supplier will, at its own expense, assist Customer in discharging its obligations under the Applicable Data Protection Laws (as more particularly detailed in this clause 2). Supplier shall not, whether by act or omission, cause Customer to breach any of its obligations under the Applicable Data Protection Laws.

2.3 Supplier shall not disclose the Personal Data to any third party (other than Subprocessors appointed in accordance with clause 2.5) without the prior written consent of Customer, save in relation to requests for cooperation under Article 31 of GDPR or Third Party Requests where Supplier is prohibited by EU law or regulation from notifying Customer, in which case it shall use reasonable endeavours to advise Customer in advance of such disclosure and in any event as soon as practicable thereafter.

2.4 To the extent that Supplier or any Subprocessor Processes any Personal Data (as a Processor) on behalf of Customer (as a Controller), Supplier shall (and shall procure that the Subprocessor shall):

2.4.1 only Process the Personal Data in accordance with the Agreement and any instructions of Customer unless required to do so by Applicable Law;

2.4.2 unless prohibited by Applicable Law, notify Customer immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable Law to act other than in accordance with the instructions of Customer, including where it believes that any of Customer' instructions under clause 2.4.1 infringes any of the Applicable Data Protection Laws. Without prejudice to the foregoing, where Supplier is required by Applicable Law to Process the Personal Data other than in accordance with instructions given by the Customer under clause 2.4.1, Supplier must, unless prohibited by Applicable Law, notify Customer of such requirement prior to the relevant Processing taking;

2.4.3 take, implement and maintain appropriate technical and organisational security measures which are sufficient to comply with at least the obligations imposed on Customer by the Security Requirements. In the event that Supplier becomes aware of any conflict or inconsistency between this clause 2 and the Security Requirements, Supplier shall immediately notify Customer of such conflict or inconsistency and Supplier shall comply with this clause 2;

2.4.4 Supplier shall maintain complete and accurate records to demonstrate compliance with this clause 2 and the Applicable Data Protection Laws and shall permit Customer (and/or its respective auditors or authorised agents), upon reasonable prior notice, to conduct audits or inspections of Supplier's (and its Subprocessors) compliance with the requirements of this clause 2 and Article 28 of GDPR, and shall allow provide all reasonable assistance in order to assist Customer in exercising its audit rights under this clause;

2.4.5 not transfer any such Personal Data to any location or territory outside the European Economic Area except with the prior written consent of Customer and in accordance with any terms Customer may impose on such transfer as Customer deems necessary to satisfy the International Transfer Requirements (including, without limitation, requiring Supplier to enter into and execute, or at the request of Customer procure that a Subprocessor enters into and executes, the form of clauses contained in EU Commission Decision 2010/87/EU of 5 February 2010);

2.4.6 without prejudice to the generality the Agreement, take all reasonable steps to ensure the reliability and integrity of any of the Staff who have access to the Personal Data by ensuring that each member of Staff:

(i) shall have undergone reasonable levels of training on the Applicable Data Protection Laws and in the care and handling of Personal Data: and

(ii) shall have entered into appropriate contractually binding confidentiality undertakings and comply with the obligations set out in this clause 2, and Supplier shall ensure that only such Staff required by it to assist it in meeting its obligations under the Agreement shall have access to such Personal Data, and no other Staff shall have access to such Personal Data;

2.4.7 without limitation to, or prejudice to the generality of, schedule 3, inform Customer promptly and in any event within twenty-four (24) hours in the event that Supplier (or its Subprocessor) fails to comply with this clause 2, and within forty-eight (48) hours in the event that Supplier receives a Data Subject Request or Regulator Correspondence, and shall:

(i) not disclose any Personal Data in response to any Data Subject Requests or Regulator Correspondence without first consulting with, and obtaining the consent of, Customer: and

(ii) provide Customer with all reasonable co-operation and assistance required by Customer in relation to any such Data Subject Request or Regulator Correspondence.

2.4.8 comply with the obligations imposed upon a Processor under the Applicable Data Protection Laws; and

2.4.9 assist Customer to comply with the obligations imposed on Customer by the Applicable Data Protection Laws, including without limitation: (i) compliance with the Security Requirements; (ii) notifications to regulatory authorities and/or Data Subjects required by the Applicable Data Protection Laws: and (iii) undertaking any Data Protection impact assessments.

2.4.10 Upon, and in any case within twenty-four (24) hours of becoming aware of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of, or access to, the Personal Data or other Personal Data Breach in relation to the Personal Data, Supplier shall notify Customer of the incident or breach (and follow-up in writing), and shall thereupon: (i) conduct, or support Customer in conducting, computer forensic investigations and analysis that Customer requires in respect of such incident or breach; (ii) implement any actions or remedial measures to restore the security of the compromised Personal Data and/or Confidential Information and which Customer considers necessary as a result of the breach; and (iii) support Customer to make any required notifications to any relevant Regulator and affected Data Subjects.

2.5 Supplier shall not appoint any Subprocessor to process any Personal Data on behalf of Customer without Customer's prior specific written consent to the appointment of the proposed Subprocessor. If a Subprocessor is approved by Customer, Supplier shall ensure that such Subprocessor is bound by the terms of a contract that imposes on the Subcontractor the same data protection obligations as those set out in this clause 2. Supplier shall remain fully liable to Customer for the performance of the Subprocessor's obligations and any acts or omissions of such Subprocessors.

2.6 The Supplier shall on demand, at all times during and after the Term, indemnify each member of the Customer and its affiliates and keep each of Customer and its Affiliates indemnified and held harmless from and against:

2.6.1 except to the extent covered by clauses 2.6.2 or 2.6.3, any losses suffered or incurred by, awarded against or agreed to be paid by Customer and/or its Affiliates to the extent arising from Supplier's failure to comply with this clause 2;

2.6.2 any fines levied by any relevant Regulator on Customer, or the costs of an investigative, corrective or compensatory action required by any relevant Regulator, or of defending a claim made by any relevant Regulator, where those fines, costs or claims have arisen as a result of a breach of this clause 2 by Supplier or its Subprocessors; and

2.6.3 any losses suffered or incurred by, awarded against or agreed to be paid by the relevant Customer and/or Affiliates pursuant to a claim, action or challenge made by a third party against Customer and/or its affiliates (including by a Data Subject) as a result of Supplier's failure to comply with this clause 2.

2.7 Upon the cessation of the services or the termination of the Agreement, for whatever reason, Supplier will, at Customer's option, delete or return all existing copies of Customer's Personal Data under the Agreement to Customer, unless the Applicable Data Protection Laws or other relevant laws require storage of the Personal Data. To the extent necessary to give it effect and without limitation where Supplier continues to process Personal Data for Customer, this clause will survive the termination, for whatever reason, of the Agreement.