



## GENERAL TERMS AND CONDITIONS OF COOPERATION ORLEN SKYLIGHT ACCELERATOR

These General Terms and Conditions of Cooperation with ("ORLEN S.A." or the "Principal"), together with all appendices hereto (the "GTCC"), form part of the Agreement between the Parties.

### DEFINITIONS AND INTERPRETATION

The following capitalised terms used in the Agreement or these GTCC (whether in singular or in plural) shall have the meanings given to them below, unless expressly stated otherwise:

Acceleration	shall mean an individual action plan for the Start-up under the Programme, agreed by the Parties in the Implementation Plan, with its start date being the date of the Acceleration Agreement;
ORLEN Group	shall mean ORLEN S.A., its legal successors and any subsidiary, parent or related companies of ORLEN S.A. (within the meaning of the Accounting Act of September 29th 1994 (Dz.U. of 2021, item 217, consolidated text, as amended));
Milestone	shall mean the results of a particular phase of the Acceleration or work carried out as part of the Acceleration, as defined by the Parties in the Implementation Plan;
Operator	shall mean the entity responsible for some operational aspects of the Acceleration; The Operator shall be Rebels Valley Sp. z o.o., with its registered office at ul. Chmielna 2/31, Warsaw, Poland, Tax Identification Number (NIP) 5222962340, entered in the Business Register of the National Court Register maintained by the District Court for the Capital City of Warsaw in Warsaw, 13th Commercial Division of the National Court Register, under No. KRS 0000366597;
Plan (Implementation Plan)	shall mean the document setting out the timeline and terms under which the Acceleration is to be carried out, including in particular its detailed budget and Milestone metrics; The Plan is attached as an appendix to the Agreement;
Product	shall mean an innovative solution offered by the Start-up, addressing a selected Call, as defined in the Implementation Plan;

Programme (Acceleration Programme)	shall mean the ORLEN Skylight accelerator programme run by ORLEN S.A. to enhance the innovation performance of ORLEN Group companies by supporting Start-ups;
Report	shall mean a document summarising the work performed by a Start-up to deliver a Milestone;
Rules	shall mean the Rules of the Programme;
GDPR	shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27th 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
Force Majeure	shall mean any event that could not have been reasonably foreseen with the exercise of due diligence required in professional relations, caused by forces external to the Parties, which could not have been prevented by them acting with due diligence;
Start-up (Contractor)	shall mean an entity with which ORLEN S.A. or an ORLEN Group company has entered into the Acceleration Agreement; The Start-up may be an entity registered in Poland, in the register of businesses or associations or of other social and professional organisations, foundations and public health care establishments of the National Court Register (KRS) or the Central Business Register and Information Service (CEIDG) (a "Domestic Start-up"), or an entity registered outside of Poland (a "Foreign Start-up");
Parties	shall mean the Start-up and ORLEN S.A. or an ORLEN Group company;
Participant	shall mean an employee of the Start-up or an individual providing work for the Start-up under a contract other than an employment contract, who participates in the Acceleration;
Improvement	shall mean an expansion or advancement of the Product developed in the course of the Acceleration;
Agreement (Acceleration Agreement)	shall mean the agreement between the Organiser and the Start-up whose Product has been selected by the Organiser; if the Acceleration is carried out for an ORLEN Group company (other than ORLEN S.A.), the Acceleration Agreement shall mean the agreement concluded between the Start-up and that ORLEN Group company;
Works	shall mean a Report and other materials prepared to document the progress of the Acceleration, provided to ORLEN S.A./ORLEN Group company, and other dedicated materials specified in the Acceleration Agreement (presentations, reports, photographs, audiovisual materials, etc.), including software, which will be

developed by or at the request of the Start-up for ORLEN S.A./ORLEN Group company during the Acceleration and which will constitute a work within the meaning of the Copyright and Related Rights Act of February 4th 1994 (consolidated text: Dz.U. of 2021, item 1062, consolidated text, as amended);

## **1. AGREEMENT EXECUTION**

- 1.1. The Parties shall enter into the Agreement in writing. Execution of the Agreement shall signify acceptance of any amendments or additions made to the Start-up's proposal by ORLEN S.A./ORLEN Group company and shall signify execution of the Agreement on the terms and conditions set out in the appendices thereto and these GTCC.
- 1.2. In particular, the Agreement shall specify: the Product, scope of cooperation between the Parties, expected outcomes of the cooperation, consideration amount, settlement method, deadline for and/or schedule of the Acceleration, selected terms of commercial cooperation, and persons participating in the Acceleration on the Start-up's side.

## **2. OBLIGATIONS OF THE PARTIES**

- 2.1. ORLEN S.A./ORLEN Group company agrees to:
  - 2.1.1. provide the Start-up with necessary mentoring support;
  - 2.1.2. provide the Start-up with access to ORLEN S.A.'s necessary infrastructure to the extent specified in the Plan;
  - 2.1.3. cooperate with the Start-up for the purposes of performing the Agreement within the time frame and to the extent specified in the Plan.
- 2.2. The Start-up agrees to:
  - 2.2.1. carry out the Acceleration in accordance with the Plan and applicable national and European Union laws, including, without limitation, the GDPR;
  - 2.2.2. closely cooperate with ORLEN S.A./ORLEN Group company in order to perform the Agreement, including by participating in meetings and other events pertaining to the Acceleration, as required by ORLEN S.A./ORLEN Group company;
  - 2.2.3. properly and timely deliver the Milestones;
  - 2.2.4. inform ORLEN S.A./ORLEN Group company of any circumstances preventing or significantly hindering the delivery of a Milestone or participation in meetings and other events pertaining to the Acceleration, as required by ORLEN S.A./ORLEN Group company;
  - 2.2.5. prepare Reports documenting the delivery of Milestones;
  - 2.2.6. at ORLEN S.A.'s request, submit the originals or copies, certified as true copies by an authorised representative of the Start-up or a notary public, of the agreements referred to in Section 3.2.5 below, which will guarantee compliance with the conditions set out in Section 6 of these GTCC;
  - 2.2.7. report any threats to the performance of the Agreement that may affect the quality or scope of the Start-up's obligations under the Agreement.

- 2.3. All samples delivered to the Start-up by ORLEN S.A. for testing in connection with the performance of the Agreement shall remain the property of ORLEN S.A./ORLEN Group company. The Start-up agrees to use such samples solely for the purposes of performing the Agreement. Following the performance of the Agreement, the Start-up shall account for the sample quantities received and used in a separate report and shall submit a copy of that report to ORLEN S.A./ORLEN Group company together with the final Report.
- 2.4. If the Agreement is performed at ORLEN S.A.'s/ORLEN Group company's site, the Start-up shall provide full insurance cover for the Participants for the time of performing the Agreement. The Start-up shall assume all risks, claims and consequences and shall indemnify ORLEN S.A. against liability for:
  - 2.4.1. any accidents involving Participants that may occur while performing the Agreement,
  - 2.4.2. any damage or loss to a third party caused by Participants,
  - 2.4.3. any damage to or destruction of tools or other equipment owned by or in the possession of the Start-up or its personnel. The provisions of the preceding sentence shall not apply to any events caused by ORLEN S.A.'s wilful misconduct.
- 2.5. The Start-up shall be responsible for all formalities, notifications to competent administrative authorities, all necessary permits and all taxes and social security contributions related to hiring the Participants to perform the Agreement at ORLEN S.A.'s/ORLEN Group company's site.
- 2.6. The Start-up warrants that if the Agreement is performed at ORLEN S.A.'s/ORLEN Group company's site, Participants shall comply with the regulations in place at ORLEN S.A..
- 2.7. The Start-up shall bear full liability for any actions and omissions of the Participants as for its own actions and omissions, with no right to disclaim such liability on any grounds, including in particular on the grounds that there has been no fault in the selection of a given Participant or that specific work has been entrusted to an entity that performs such work or contracts as part of its business activities.
- 2.8. Where the performance of the Agreement requires the Start-up's access to ORLEN S.A.'s production site, the Parties shall incorporate relevant regulations in place at ORLEN S.A. into the Agreement, particularly the provisions of the ORLEN S.A. Order Concerning On-Site Movement of People.
- 2.9. The Start-up further agrees that during the Acceleration it shall not undertake any projects or activities that would prevent or significantly hinder proper implementation of the Acceleration.
- 2.10. If ORLEN S.A./ORLEN Group company determines that the Start-up has failed to perform or has improperly performed its obligations under the Agreement, ORLEN S.A./ORLEN Group company may set a time limit for the Start-up to remedy or take steps to remedy such non-performance or improper performance of the Agreement. If the Start-up fails to comply with the time limit set by ORLEN S.A./ORLEN Group company, or if its obligations cannot be performed, ORLEN S.A./ ORLEN Group company may terminate the Agreement with immediate effect.

### **3. REPRESENTATIONS BY THE PARTIES**

- 3.1. The Parties represent that:
  - 3.1.1. the Agreement does not constitute and should not be construed as a memorandum of association of a civil-law partnership, joint-venture or another partnership or company recognised under Polish law;
  - 3.1.2. they confirm that the Non-Disclosure Agreement (a copy of which is attached as Appendix 3 to the Agreement) remains binding and constitutes an obligation of the Parties to keep confidential all information obtained by the Parties in the course of their cooperation and performance of the Agreement.
- 3.2. The Start-up represents that:
  - 3.2.1. it satisfies all the conditions required to participate in the Acceleration and all its representations made in connection with joining the Programme have been and remain true;
  - 3.2.2. it has all rights and powers to enter into the Agreement and its execution will not infringe upon the rights of any third parties;
  - 3.2.3. it is licensed to conduct the business activities required for the performance of the Agreement;
  - 3.2.4. it has adequate technical, organisational and personnel resources to ensure proper performance of the Agreement;
  - 3.2.5. it confirms that each Participant:
    - 3.2.5.1. works for the Start-up under a contract of employment or other relationship governed by a civil-law contract whose provisions ensure proper performance of the Agreement, particularly the relevant obligations pertaining to intellectual property;
    - 3.2.5.2. has received a GDPR privacy notice, which fulfils the obligation of ORLEN S.A., as a personal data controller, to provide relevant information.
  - 3.2.6. The above representations shall remain valid for the entire Acceleration period or such other periods that may be specified in the Agreement.

#### **4. CONSIDERATION; COSTS AND EXPENSES**

- 4.1. The Start-up may also receive cash consideration for delivery of Milestones, as agreed in the Agreement.
- 4.2. The detailed scope of the cash consideration from ORLEN S.A./ORLEN Group company, along with relevant amounts and payment due dates, is set out in the Plan.

#### **5. PAYMENT TERMS FOR ORLEN S.A.**

- 5.1. The provisions of this Section 5 shall apply where ORLEN S.A. and the Start-up are the Parties to the Agreement. If the Acceleration is carried out for the benefit of an ORLEN Group company, detailed payment terms shall be determined on a case by case basis.
- 5.2. The Start-up shall issue invoices on the basis of Acceptance Reports referred to in Section 7.1 hereof. Payments due under the Agreement shall be made by ORLEN S.A. to the Start-up's bank account stated in the invoice within 45 (forty five) days of receiving a correctly rendered invoice by ORLEN S.A..
- 5.3. If the Agreement is concluded with a Domestic Start-up in a currency other than PLN: The amount due shall be equivalent to the amount stated in the Plan in

the foreign currency translated into PLN at the exchange rate specified in Art. 31a of the Value Added Tax Act of March 11th 2004 (consolidated text: Dz. U. of 2021, item 685, as amended) (the "VAT Act"), namely the mid-exchange rate quoted by the National Bank of Poland for the day preceding the date of sale, plus VAT (the exchange rate and the exchange rate table should be stated in the invoice).

- 5.4. The consideration specified in the Plan shall be a VAT-exclusive amount. In each invoice issued by a Domestic Start-up, the consideration shall be increased by VAT at the applicable rate. A Foreign Start-up shall not charge its domestic VAT or any other tax of a similar nature, subject to the following provisions.
- 5.5. An invoice including the following details of ORLEN S.A.:
- ORLEN S.A.  
ul. Chemików 7, 09-411 Płock, Poland,  
NIP 774 – 00 – 01 – 454  
number of the Acceleration Agreement  
MPK (Cost Centre) code of the ordering unit stated in the Agreement  
and sent by registered mail with a return receipt in an envelope annotated "invoice" to the following address:  
ORLEN S.A.  
ul. Chemików 7, 09-411 Płock, Poland,  
shall be deemed delivered to ORLEN S.A. on the date stated on the return receipt. Subject to the following paragraphs, if the Agreement is performed by a Start-up with its registered office outside of Poland, the invoice must also contain the following annotation: "The place of supply of services is the territory of Poland, and the entity liable for payment of Value Added Tax (VAT) is ORLEN S.A.".
- 5.6. ORLEN S.A. agrees to receiving invoices in electronic form in accordance with the arrangements concerning electronic submission of invoices signed by the Start-up.
- 5.7. ORLEN S.A. represents that it is an active VAT payer and holds a Tax Identification Number (NIP) 774-00-01-454. For the purposes of transactions with a Foreign Start-up, ORLEN S.A. represents that it is a taxpayer registered for VAT purposes in the territory of Poland and holds a European Tax Identification Number (EU VAT Number): PL7740001454.
- 5.8. A Domestic Start-up represents that it is an active VAT payer and holds a Tax Identification Number (NIP), to be provided to ORLEN S.A. for the purposes of the Agreement / or it is a taxpayer exempt from VAT, which it shall confirm before ORLEN S.A. prepares the Agreement. A Foreign Start-up that has established its business or has a fixed establishment in the territory of the EU represents that it is a registered VAT payer and holds a European Tax Identification Number (EU VAT Number), to be provided to ORLEN S.A. for the purposes of the Agreement.
- 5.9. The date of payment shall be the date of debiting ORLEN S.A.'s bank account.
- 5.10. If a copy of an invoice archived by a Domestic Start-up contains data different from the data stated in the original invoice provided to ORLEN S.A., or is incorrect due to formal, legal or technical reasons, the Domestic Start-up shall indemnify ORLEN S.A. against any loss or damage arising as a result of

determination of any tax liability, including any penalties and interest imposed on ORLEN S.A. by the competent tax authorities, in the amounts determined pursuant to the relevant decision of the tax authorities. The provisions set forth above shall also apply if a Domestic Start-up issues an invoice to ORLEN S.A. without being entitled to do so.

- 5.11. In the case of a Foreign Start-up, ORLEN S.A. may deduct from any payments due to that Foreign Start-up any income tax payable in Poland (“withholding tax”) that it is required to withhold under Polish law. In order to apply an exemption from or a reduced rate of withholding tax provided for in the applicable and binding double taxation treaty concluded between Poland and the country of residence (tax residence) of the Start-up, the Start-up shall deliver to ORLEN S.A., with the first invoice but in any case no later than 7 (seven) business days before the due date of the first payment, the original or a copy certified as a true copy by a notary public of its valid certificate of residence (i.e. a certificate of tax residence of the Start-up, issued by the competent tax administration authorities). If the Start-up fails to deliver the certificate of residence within the time limit specified in the preceding sentence, ORLEN S.A. may deduct withholding tax in the amount calculated in accordance with the Polish tax law from a payment made to the Start-up.
- 5.12. In order to apply an exemption from or a reduced rate of withholding tax provided for in the relevant binding double taxation treaty with respect to Foreign Start-ups that are not payers of income tax (including but not limited to partnerships), a Foreign Start-up shall deliver, with the first invoice but in any case no later than 7 (seven) business days before the due date of the first payment, the original of a valid certificate of residence of each of its partners/owners. If the Start-up fails to deliver the certificate(s) of residence within the time limit specified in the preceding sentence, ORLEN S.A. may deduct withholding tax in the amount calculated in accordance with the Polish tax law from a payment made to the Start-up. A Foreign Start-up that is not a payer of income tax shall also present a list of all its partners entitled to such payments, specifying the allocation key to be used to allocate such payments among its partners/owners.
- 5.13. For each subsequent payment to the Start-up, ORLEN S.A. shall apply the exemption or reduced withholding tax rate provided for in the relevant binding double taxation treaty only if it holds the original of a valid certificate of residence of the Start-up or a copy thereof certified by a notary public (in the case referred to in Section 5.10. above) or originals of valid certificates of residence of its partners/owners (in the case referred to in Section 5.11. above).
- 5.14. A “valid certificate of residence” referred to in Sections 5.10., 5.11. above and 5.15. below shall mean (depending on the type of certificates issued by the country of residence of the Start-up or its partners/owners):
- 5.14.1. a certificate issued for the calendar year in which the payment is due,  
or
  - 5.14.2. a certificate whose validity period includes the payment due date, or
  - 5.14.3. a certificate issued not earlier than 12 (twelve) months before the payment due date, if it has not been issued for a specific calendar year and no validity period is stated therein.

- 5.15. In the event of any change in the data included in the certificate(s) of residence held by ORLEN S.A. and delivered by the Start-up (e.g. change of the Start-up's name, registered address, etc.), the Start-up shall immediately (and at any rate no later than before the next payment due date) deliver to ORLEN S.A. an updated valid certificate(s) of residence.
- 5.16. ORLEN S.A. assumes that the data included in the certificate of residence delivered by the Start-up is correct, accurate and true and that the certificate itself has been issued by competent authorities in accordance with applicable laws. If, as a result of any defects, errors, omissions or inaccuracies in the data included in the certificate, ORLEN S.A. is required to withhold tax on such payments or to remit withholding tax in excess of the amount withheld from the Start-up, or if any penalties, interest, sanctions, etc. are imposed on ORLEN S.A. as a result of withholding tax in an amount lower than actually due or as a result of not withholding any tax despite being obliged to do so, the Start-up shall reimburse ORLEN S.A. for such tax and any penalties, interest, sanctions, etc. that may be imposed on ORLEN S.A. by tax administration authorities.
- 5.17. By issuing an invoice, a Domestic Start-up represents that it is authorised to issue invoices in accordance with the tax law. The Domestic Start-up warrants, and shall be responsible for, the correct application of VAT rates, i.e. if the competent tax authorities challenge ORLEN S.A.'s right to deduct any tax on the grounds that in accordance with applicable laws a transaction was not taxable or was exempt from tax, the Domestic Start-up, upon ORLEN S.A.'s written request and within the time limit set therein, shall correct the relevant invoice and reimburse ORLEN S.A. for the resulting difference within 30 (thirty) days from the date of delivery of such request. If the Domestic Start-up refuses to issue a correction invoice (credit note), the Domestic Start-up agrees to reimburse ORLEN S.A. for the VAT amount challenged by the tax authorities, with such reimbursement to be made based on a debit note issued by ORLEN S.A., within 30 (thirty) days of its delivery to the Domestic Start-up. In each case provided for above, the Domestic Start-up shall also reimburse ORLEN S.A. for any penalties, interest, sanctions and other charges incurred by ORLEN S.A. or imposed by the tax authorities, with such reimbursement to be made in the manner described in the preceding sentence.
- 5.18. The Domestic Start-up that is an active VAT payer agrees to maintain this status at least until the date when it issues the last invoice to ORLEN S.A.. If the Domestic Start-up is deleted from the VAT register on any of the grounds specified in the VAT Act, it shall be obliged to forthwith notify ORLEN S.A. of such deletion. If the Domestic Start-up fails to notify ORLEN S.A. of having been deleted from the VAT register as referred to in the preceding sentence, the provisions of Section 5.16 above shall apply accordingly, unless the Domestic Start-up submits to ORLEN S.A., within 30 days from becoming aware of having been deleted from the VAT register, documents evidencing that the Domestic Start-up has been re-entered in the register. Notwithstanding the provisions set forth above, the Domestic Start-up agrees to submit a valid official certificate evidencing that it is registered as an active VAT payer on or before the date of the Agreement. The Domestic Start-up agrees to attach to each invoice a printout of a communication evidencing that as at the invoice date it is registered as an active VAT payer. The Domestic Start-up may obtain a communication



referred to in the preceding sentence through an electronic VAT payer status verification channel, which as at the Agreement date is the Tax Portal (*Portal Podatkowy*) of the Ministry of Finance.

- 5.19. The Start-up shall not transfer any claims, including any claims for payment of the consideration due for performing the Agreement, to any third parties without ORLEN S.A.'s written consent.
- 5.20. Payments of invoices issued by the Domestic Start-up shall be made under the split payment regime only to a bank account indicated by the Start-up and included in the list of VAT payers maintained by the competent administration authority (the "White List").
- 5.21. If a payment cannot be made in the manner specified in Section 5.19 above due to the fact that the bank account number indicated by the Start-up is not entered in the White List, ORLEN S.A. may suspend such payment of the consideration to the Start-up. In such a case, the payment shall be made no later than within 7 (seven) business days following the date on which the Start-up notifies ORLEN S.A. that its bank account number has been entered in the White List.
- 5.22. The circumstances referred to in Section 5.20 shall release ORLEN S.A. from the obligation to pay default interest for the period between the payment due date specified in the Agreement and the date of actual payment made by ORLEN S.A. to the Start-up.
- 5.23. Pursuant to Art. 4c of the Act of March 8th 2013 on Preventing Excessive Payment Delays in Commercial Transactions (Dz. U. of 2021, item 424, as amended), ORLEN S.A. represents that it has the status of a large undertaking.

## **6. INTELLECTUAL PROPERTY RIGHTS GENERAL PROVISIONS**

- 6.1. Before entering into the Agreement, the Start-up shall provide ORLEN S.A./ORLEN Group company with an exhaustive list of exclusive rights covering the Product (or information regarding protection afforded to the Product as know-how).
- 6.2. The Start-up shall not transfer any rights in the Product or Improvements to ORLEN S.A. unless otherwise agreed by the Parties in the Agreement.
- 6.3. Where the Acceleration requires creative contribution of ORLEN S.A./ORLEN Group company to an Improvement, the rights in the Improvement shall be jointly vested in the Start-up and ORLEN S.A./ORLEN Group company, in proportion to their respective creative contributions to the Improvement. In the case referred to in this Section 6.2, the Parties jointly holding the rights in the Improvement shall execute, before entering into the Agreement, a separate agreement defining the joint right management rules.
- 6.4. The Start-up hereby warrants and represents that:
  - 6.4.1. it is entitled to dispose of the rights in the Product;
  - 6.4.2. during the Acceleration period it will hold all rights, including, without limitation, intellectual property rights, in the Improvement; 6.4.3 effective on or before the delivery of the Works to ORLEN S.A./ORLEN Group company, ORLEN S.A. shall hold all copyrights in the Works, and that the Works shall be free of any third-party rights and claims;
  - 6.4.3. use of the Product, Works and Improvements by ORLEN S.A./ORLEN Group company will not infringe any third-party rights;

- 6.5. If any third party raises any claims in relation to the use of the Product, Improvement or Work by ORLEN S.A./ORLEN Group company, ORLEN S.A. or that ORLEN Group company shall notify the Start-up of that fact and of such claims, and the Start-up shall take all necessary steps to settle the dispute, bearing any related costs. In particular, if any action is brought against ORLEN S.A. or an ORLEN Group company for infringement of any third-party rights, the Start-up agrees to join any such dispute if permitted by law and if ORLEN S.A./ORLEN Group company so requests and shall cover all reasonable costs related to the defence against claims, including court costs, legal costs, in particular the costs of legal representation, and settlement costs, as well as any costs necessary to redress the damage.
- 6.6. Pursuant to the Agreement, the Start-up shall transfer to ORLEN S.A. all copyrights in the Works, with no limitations as to time or territory, with respect to all fields of use known at the time of execution of the Agreement, particularly the fields specified in Section 6.7. and 6.8 below.
- 6.7. The copyrights shall be transferred with respect to all fields of use which are known on the date of executing the Agreement, including, without limitation:
  - 6.7.1. recording and reproduction – production of copies of the Works using all techniques, regardless of the standard and format of the recording and the carrier, and regardless of the size, form, technique and cover;
  - 6.7.2. marketing;
  - 6.7.3. multiple entry into computer memory and computer networks, including in particular the Internet or databases;
  - 6.7.4. multiple public performance or playback, right to multiple combination with other works and artistic performances, shows, productions, for commercial and non-commercial use;
  - 6.7.5. use of the Works for promotional or marketing purposes;
  - 6.7.6. multiple displaying and screening;
  - 6.7.7. renting and lending;
  - 6.7.8. other multiple provision of access to the Works in any way so they can be accessed by everyone at the place and time of their choice;
  - 6.7.9. altering freely the content and form of the Works and disseminating such altered Works in any way and by any means;
  - 6.7.10. adapting the whole or any part of the Works and using such adaptations (derivative work) in the fields of use which are known at the time of executing the Agreement;
  - 6.7.11. using the Works to perform further works, including scientific, structural engineering, construction, and process engineering-related works, as well as other works associated with the activities of ORLEN S.A. and any of the ORLEN Group companies;
  - 6.7.12. using the Works for the production, distribution, transport and sale of goods;
  - 6.7.13. using the Works in any manner whatsoever before the Patent Office of the Republic of Poland or any other competent public authority, particularly in order to obtain a patent, utility model protection rights or rights in a registered industrial design;
- 6.8. With respect to the Works in the form of software, the transfer of the authors' economic rights (copyrights) to ORLEN S.A. shall cover the following fields of use:
  - 6.8.1. using, displaying, storing and transmitting by any means and in any form;

- 6.8.2. permanent or temporary recording and reproduction of the software, in whole or in part, by any means and in any form, and using or disposing of copies of the software in any manner;
  - 6.8.3. translating, adapting, modifying the layout or content, compiling, decompiling, disassembling or making any other modifications to the software, including the making of adaptations, customisations and new versions of the software by the Principal or any third parties;
  - 6.8.4. distributing the software and any copies thereof, including its versions modified in whole or in part by any means and in any form, including via the Internet and other ICT networks;
  - 6.8.5. marketing, lending, renting and licensing the software, or copies or modified versions thereof, in all the fields of use listed above.
- 6.9. The copyrights shall be transferred upon the transfer of each Work. In the event that the Agreement is terminated before a Work as a whole has been created, the Start-up shall transfer to ORLEN S.A. or an ORLEN Group company the copyrights at the stage of creation of the Work existing upon the termination, expiry, rescission or vitiation of the Agreement.
- 6.10. If new fields of use arise which were unknown at the date of execution of the Agreement or are not expressly listed in Section 6.7 or 6.8 of these GTCC, the Parties represent that it is their intention that ORLEN S.A. or an ORLEN Group company shall hold all and any rights for such fields of use as it holds for the fields of use listed in Section 6.7 and 6.8 above. If such need arises, the Start-up shall, at ORLEN S.A.'s or an ORLEN Group company's request, transfer all rights in the Works in respect of such new fields of use, in return for a separate consideration in the net amount of PLN 100 (one hundred zloty) for each new field of use, applicable to the same extent and on the same terms as specified in these GTCC for the fields of use named herein (unless the Parties agree otherwise in writing on pain of nullity). At ORLEN S.A.'s or an ORLEN Group company's request, the Start-up and ORLEN S.A. or the ORLEN Group company shall enter into such an agreement as specified in the preceding sentences within 14 (fourteen) days from the date of receipt of the request by the Start-up.
- 6.11. Along with the transfer of the authors' economic rights, the Start-up shall transfer to ORLEN S.A. or an ORLEN Group company, as the case may be, the exclusive right to exercise, and to permit third parties to exercise, derivative copyrights in the Works with respect to the fields of use acquired by ORLEN S.A./ORLEN Group company under the Agreement, and to exercise derivative rights to the extent specified in Section 6.7 and 6.8 of these GTCC. The right to exercise and permit third parties to exercise derivative copyrights may be transferred by ORLEN S.A. or an ORLEN Group company to other parties at its own discretion.
- 6.12. The Parties hereby agree that ORLEN S.A. or an ORLEN Group company, as the case may be, shall become the owner of any media containing the Works upon their delivery to ORLEN S.A..
- 6.13. The Start-up agrees and warrants that the authors of the Works shall not exercise their moral rights in the Works for a period of 10 (ten) years from the date of their delivery to ORLEN S.A. or an ORLEN Group company. At the same time, the Start-up represents and warrants that the authors of the Work will authorise ORLEN S.A. or an ORLEN Group company and any third parties acting on their behalf to exercise the authors' moral rights on their behalf throughout the said period. After the lapse of

the period specified above, the obligation not to exercise moral rights and the authorisation to exercise moral rights shall be extended for an indefinite period, with an option to terminate by giving two years' notice, with effect as of the end of a calendar year. The Start-up shall obtain written statements from the authors to the effect that they refrain from exercising their moral rights in the Works and authorise ORLEN S.A. or an ORLEN Group company and any third parties acting on their behalf to exercise such rights, on the terms and conditions stipulated above.

6.14. ORLEN S.A. or an ORLEN Group company, as the case may be, shall retain all rights to any materials made available by ORLEN S.A. or the ORLEN Group company to the Start-up during the Acceleration, and the Start-up may use such materials only in connection with its performance of the Agreement during the Acceleration and for 90 (ninety) days after completion of the Acceleration as well as during negotiations of a commercial cooperation agreement for the purpose of entering into such an agreement.

## **7. ACCELERATION PROCESS**

- 7.1. Upon completion of each Milestone, the Start-up shall prepare a Report outlining the work completed by the Start-up under that Milestone. The Report shall be accepted by ORLEN S.A. by ORLEN S.A.'s representative signing an acceptance report (the "Acceptance Report").
- 7.2. ORLEN S.A. shall accept the Report as referred to above or submit its reservations in writing or by electronic mail within 14 (fourteen) days from the date when the Report is delivered to ORLEN S.A., provided all the work assigned to the relevant Milestone in the Plan has been completed in accordance with the Agreement and the applicable laws and is free of any defects.
- 7.3. The Start-up shall respond to ORLEN S.A.'s reservations within 14 (fourteen) days of their receipt. This procedure shall be repeated until all the work assigned to a Milestone in the Plan is completed in accordance with the Agreement and is free of any defects to ORLEN S.A. and the Acceptance Report is signed by ORLEN S.A., unless ORLEN S.A. exercises its right provided for in Section 7.4 below (which may be exercised after the period of 14 (fourteen) days specified above).
- 7.4. If ORLEN S.A. submits any reservations to the Report and the Start-up fails to remedy the defects within 14 (fourteen) days, ORLEN S.A. may refuse to sign the Acceptance Report and may rescind the Agreement in whole or in part (at the sole discretion of ORLEN S.A.) without incurring any costs and with no obligation to pay the consideration in full or in part, as the case may be, unless ORLEN S.A. elects to accept the completed portion of the work. In such a case, the Start-up shall be entitled to a part of the cash consideration, if provided for in the Agreement, that is proportionate to the properly performed work. The notice of rescission may be submitted by ORLEN S.A. within 2 (two) months after the time limit for remedying the defects has expired without them having been remedied.

## **8. AGREEMENT TERM AND TERMINATION**

- 8.1. The Agreement shall be concluded for the period of the Start-up's participation in the Acceleration, with the proviso that any provisions of the Agreement which establish

the rights or obligations of the Parties for a longer term shall inure to, or be binding upon, a given Party during that longer term. In particular, this shall apply to disclosure and confidentiality clauses.

- 8.2. The Agreement shall come into force on the date of its signing by both Parties.
- 8.3. ORLEN S.A./ORLEN Group company may terminate the Agreement upon 30 days' notice without giving reasons for the termination, with effect as of the end of a calendar month. In the case referred to in this paragraph, ORLEN S.A./ORLEN Group company shall pay the cash consideration (if provided for in the Agreement) in an amount proportional to the scope of work actually and properly completed by the Start-up until the end of the notice period, starting from the date of receipt by the Start-up of the notice of termination of the Agreement, on the basis of a correctly rendered invoice, after signing of the Acceptance Report by the Parties.
- 8.4. The Agreement may be terminated with immediate effect for a good reason, namely:
  - 8.4.1. in the case of the Start-up:
    - 8.4.1.1. ORLEN S.A. or an ORLEN Group company fails to pay the cash consideration (if provided for in the Agreement) within the time limit specified in the Agreement, despite a written call for payment issued by the Start-up and the expiry to no effect of a period of at least 14 (fourteen) days from the date of receipt of the call for payment by ORLEN S.A. or an ORLEN Group company,
    - 8.4.1.2. the Start-up's confidential information has been disclosed;
    - 8.4.1.3. a Force Majeure event has lasted for more than 3 (three) months, preventing or significantly hindering the Start-up's operations;
  - 8.4.2. in the case of ORLEN S.A. or an ORLEN Group company:
    - 8.4.2.1. the Product, Improvement or Work has legal or physical defects;
    - 8.4.2.2. the Start-up has breached the principle of confidentiality, including with respect to other participants of the Programme, violated any of the applicable laws, or compromised the reputation of ORLEN S.A. or an ORLEN Group company;
    - 8.4.2.3. the Start-up fails to participate in meetings or other events pertaining to the Acceleration as required by ORLEN S.A. or an ORLEN Group company;
    - 8.4.2.4. the Start-up has breached any rules concerning the protection or processing of personal data;
    - 8.4.2.5. circumstances exist that prevent proper implementation of the Plan by the Start-up, and changing the Plan would be impossible or impracticable;
    - 8.4.2.6. the Start-up provided false representations or documents in order to qualify for the Programme or as part of the performance of the Agreement;
    - 8.4.2.7. the Start-up has breached any rules relating to security of ORLEN S.A.'s ICT systems or other ORLEN S.A.'s infrastructure;
    - 8.4.2.8. a Force Majeure event has lasted for more than 3 (three) months, preventing or significantly hindering ORLEN S.A.'s or an ORLEN Group company's operations.
- 8.5. A notice of termination (including pursuant to Section 8.3. and 8.4. above) shall be made in writing on pain of nullity.
- 8.6. In the cases referred to in Section 8.4.2 above, ORLEN S.A. or an ORLEN Group company may submit an earlier notice to the Start-up to restore the conditions consistent with the Agreement, and set an additional time limit.

- 8.7. Termination or expiry of the Agreement shall not release any Party from its obligation to deliver on its commitments assumed during the term of the Agreement, as referred to in Section 3 of the Agreement and in Sections 2.2.6, 6.3, 6.5–6.14, 10.1–10.2, 11, 13, 15 and 17 of these GTCC. For the avoidance of doubt, this provision shall not apply to the obligation of the Parties to deliver the Plan.
- 8.8. If the Agreement is terminated for reasons attributable to the Start-up (in particular pursuant to Section 2.10. or 8.4.2. of these GTCC), ORLEN S.A. or an ORLEN Group company shall have the right to demand that the Start-up returns the cash consideration (if provided for in the Agreement) paid to the Start-up together with statutory interest, to the bank account indicated by ORLEN S.A./ORLEN Group company, within 14 (fourteen) days from the date of delivery of the relevant notice to that effect, unless ORLEN S.A./ORLEN Group company elects to accept the completed portion of the Agreement that has economic value to ORLEN S.A./ORLEN Group company. In such a case, ORLEN S.A./ORLEN Group company shall pay to Start-up the consideration in an amount that is proportional to the scope of accepted work.
- 8.9. ORLEN S.A. or an ORLEN Group company shall have the right to seek compensation from the Start-up in an amount higher than the amount returned by the Start-up if the termination of the Agreement entailed damage of a higher value suffered by ORLEN S.A./ORLEN Group company.
- 8.10. ORLEN S.A./ORLEN Group company shall not be held liable for any damage suffered by the Start-up due to termination of the Agreement on the grounds referred to in Section 8.3. and 8.4. of these GTCC.

## **9. PERSONAL DATA**

- 9.1. The Parties represent to have in place the procedures as well as physical, IT and organisational safeguards ensuring an adequate level of protection of the personal data processed by them.
- 9.2. ORLEN S.A. shall be the controller of personal data of the persons associated with the Start-up under any agreements or contracts whose data will be disclosed to ORLEN S.A. during the performance of the Agreement.
- 9.3. The Start-up undertakes to fulfil the obligation to provide relevant information under Article 14 of the GDPR to the data subjects referred to in Section 9.2 above on behalf of ORLEN S.A., as per the notice attached as Appendix 5 to the Agreement, immediately but not later than within 30 (thirty) days from the date of the Agreement with ORLEN S.A., in keeping with the principle of accountability.
- 9.4. If, in connection with the performance of the Agreement, it becomes necessary to entrust to third parties the processing of personal data within the meaning of the applicable personal data protection laws, the Parties shall enter into a separate agreement consistent with the form used by ORLEN S.A. and attached as Appendix 2 to these GTCC, prior to the commencement of processing of such data. Such agreement shall define the terms and conditions of protection and processing of personal data.

## **10. PROMOTIONAL AND INFORMATION ACTIVITIES**

- 10.1. In the event that, for the full and proper conduct of the Acceleration, it is necessary for ORLEN S.A./ORLEN Group company to use the image, voice or biographies of

the Participants, the Start-up agrees to immediately obtain, at the request of ORLEN S.A./ORLEN Group company, written declarations from the Participants authorising ORLEN S.A./ORLEN Group company to use the Participants' image, voice or biographies for the period and purposes stated by ORLEN S.A./ORLEN Group company in the request, including, without limitation, for information, marketing and promotional purposes. If not stated otherwise in the request referred to in the preceding sentence, the manner in which the image, voice or biography of a Participant may be used and the permission to use the same shall cover displaying them to an indefinite number of recipients on any website, including social media, digital media and digital storage media.

- 10.2. The Start-up hereby grants perpetual and territorially unlimited consent to the use of its trademark, word mark, figurative mark or word/figurative mark and other marks by ORLEN S.A. or an ORLEN Group company, as the case may be, in marketing or information materials relating to or connected with the Programme.
- 10.3. The Start-up agrees to obtain prior written consent of ORLEN S.A./ORLEN Group company before placing the company's name, trademark or logo on its website, in the list of its business partners, brochures, advertisements and any other advertising and marketing materials. In such a case, the Start-up shall submit to ORLEN S.A./ORLEN Group company, together with the request for ORLEN S.A.'s consent, a draft version of the materials including such data. The consent shall be granted in the form of a written agreement of the Parties, specifying in particular the validity period of the consent and detailed terms and conditions of using the said property of ORLEN S.A./ORLEN Group company.
- 10.4. The Start-up also agrees to obtain prior written consent of ORLEN S.A./ORLEN Group company before communicating any information related to the Agreement to the mass media, including the press, radio, TV and the Internet. In such a case, the Start-up shall submit to ORLEN S.A./ORLEN Group company, together with the request for ORLEN S.A.'s consent, the contents of the information to be disclosed in such mass media. The consent shall be granted in the form of a written agreement of the Parties, specifying in particular the validity period of the consent and detailed terms and conditions of using the said property of ORLEN S.A./ORLEN Group company.
- 10.5. In the event of non-performance or improper performance of the obligations hereunder, ORLEN S.A./ORLEN Group company may claim payment by the Start-up of a contractual penalty of PLN 100,000.00 (one hundred thousand zloty) for any such breach. Payment of the contractual penalty referred to above shall be without prejudice to ORLEN S.A.'s/ORLEN Group company's right to seek additional compensation in accordance with generally applicable laws if the amount of actual losses exceeds the contractual penalty set out herein.

## **11. LIABILITY**

- 11.1. The contractual and tort liability of ORLEN S.A./ORLEN Group company towards the Start-up and third parties for any damage related to the performance of the Agreement shall be limited to liability for any acts or omissions caused by wilful misconduct or gross negligence.
- 11.2. The Start-up shall be liable for non-performance or improper performance of the Agreement in accordance with generally applicable laws.

- 11.3. The Start-up shall be liable for non-performance or improper performance of its obligations under the Agreement up to the full amount of any damage or loss suffered by ORLEN S.A./ORLEN Group company.
- 11.4. In the event of any delay in delivering the Report, ORLEN S.A./ORLEN Group company may claim payment by the Start-up of liquidated damages equal to 0.2% of the (VAT-exclusive) consideration for each day of delay. The total amount of liquidated damages for late delivery may not exceed 100% of the (VAT-exclusive) consideration due for the performance of the entire Agreement.
- 11.5. The Start-up hereby authorises ORLEN S.A./ORLEN Group company to set off such liquidated damages against the amount of consideration due to the Start-up.
- 11.6. If the Start-up fails to perform the Agreement within the agreed time limit, ORLEN S.A./ORLEN Group company may rescind the Agreement without having to set an additional time limit for the Start-up to perform it.
- 11.7. Payment of liquidated damages shall be without prejudice to the right of ORLEN S.A./ORLEN Group company to seek compensation in accordance with generally applicable laws if the loss or damage actually suffered exceeds the amount of liquidated damages provided for in these GTCC. In the event of multiple breaches, liquidated damages shall be aggregated (i.e. they shall be cumulative).
- 11.8. The Start-up shall not be held liable if:
- 11.8.1. ORLEN S.A./ORLEN Group company provides incorrect information for the purpose of performing the Agreement;
  - 11.8.2. ORLEN S.A./ORLEN Group company refuses to provide any information that is or may be relevant to the result of the Agreement performed by the Start-up (with the proviso that only information requested by the Start-up in writing shall be deemed relevant to the performance of the Agreement).
- 11.9. The Start-up shall satisfy any financial claims of third parties, including authors, engaged to perform the Agreement.
- 11.10. In particular, under the statutory warranty for legal defects, the Start-up warrants that the execution and/or performance of the Agreement shall result in no infringement of any third-party rights, and if any claims are raised against ORLEN S.A./ORLEN Group company, the Start-up shall indemnify ORLEN S.A./ORLEN Group company against any damage or loss arising therefrom, including any costs incurred by ORLEN S.A./ORLEN Group company, such as compensation and legal costs. The Parties agree that the indemnification against any damage, loss and costs, as referred to in the preceding sentence, shall be effective under the Agreement with no additional statements required to be made by the Parties, unless otherwise stipulated by applicable laws. The Start-up agrees to join any such dispute if permitted by law and if ORLEN S.A. so requests.
- 11.11. The provisions governing the statutory warranty for defects shall be without prejudice to the rights of ORLEN S.A./ORLEN Group company to pursue compensation claims, including recourse claims, arising as a result of infringement of third-party rights through the use by ORLEN S.A./ORLEN Group company or its assigns or licensees of the Agreement deliverables.
- 11.12. The Start-up represents that it holds a liability insurance policy, a copy of which is attached as Appendix 6 to the Agreement – copy of the Start-up's liability insurance policy.
- 11.13. In the event of non-performance or improper performance by the Start-up of its obligations under the Agreement resulting in the imposition of liquidated damages



in accordance with this Section 11, ORLEN S.A./ORLEN Group company, before claiming liquidated damages provided for in the Agreement, may set an additional time limit of not more than 5 (five) business days for the Start-up to remedy such non-performance or improper performance of the Agreement.

## **12. FORCE MAJEURE**

- 12.1. Neither Party shall be liable for any non-performance or improper performance of the Agreement or for any loss or damage caused by Force Majeure.
- 12.2. The occurrence of Force Majeure, its adverse impact on the performance of the Agreement and the occurrence of a damage or loss must be proven by the Party invoking Force Majeure and acknowledged by the other Party.
- 12.3. Should the period of Force Majeure be longer than 2 (two) months, the Parties shall agree new terms of cooperation.
- 12.4. The Party that is prevented from performing its obligations due to Force Majeure shall:
- 12.4.1. promptly notify the other Party of the same, no later than within 7 (seven) days from the occurrence of such event;
- 12.4.2. provide reliable evidence in support of the foregoing.
- 12.5. The other Party should be notified that the Force Majeure has ceased as soon as practicable but in any case no later than within 7 (seven) days. Failure to comply with the above requirement shall result in the loss of the right to invoke Force Majeure.
- 12.6. Where Force Majeure is reasonably invoked and the Agreement may no longer be performed due to the Force Majeure event, ORLEN S.A./ORLEN Group company shall pay the Start-up (if the Agreement provides for a cash consideration) for its services provided up to the date of occurrence of the Force Majeure event, taking into account the settlement terms set forth in the Agreement.

## **13. PROTECTION OF INFORMATION (BUSINESS SECRETS)**

- 13.1. If the Parties have not entered into the Non-Disclosure Agreement referred to in Section 3.1.2. of these GTCC, the provisions of this Section 13 shall apply.
- 13.2. The Start-up shall keep confidential all information disclosed to it directly or indirectly by ORLEN S.A. (in any form, including, without limitation, oral, written or electronic form), as well as information otherwise obtained by the Start-up in the course of cooperation between the Parties, including in connection with the execution and performance of the Agreement, and relating directly or indirectly to ORLEN S.A., companies of the ORLEN Group or their business partners; such information shall also include the contents of the Agreement. The Parties hereby acknowledge that any technical, technological, organisational or other information having economic value which, as a whole or in a particular combination or configuration, is not generally known to persons normally involved in this type of information or not easily accessible to such persons, with respect to which ORLEN S.A./ORLEN Group company, as an entity authorised to use and freely deal with such information, has taken steps, while exercising due care, to keep such information confidential, which has been provided by or on behalf of ORLEN S.A. or otherwise obtained by the Start-up in the course of negotiation, execution and performance of the Agreement, shall be treated as business secrets within the meaning of the Fair Trading Act of April 16th 1993 ("Business Secrets"), unless at the time when such information is provided, the disclosing party states in writing or by email that such information is of a different nature.

- 13.3. The obligation to keep confidential the information referred to in Section 13.2 above shall be understood by the Parties as the prohibition to use, disclose or provide such information in any way and to any third parties, except where:
- 13.3.1. the disclosure or use of such information is required for the proper performance of the Agreement and is made in compliance with its provisions; or
  - 13.3.2. such information is already in the public domain at the time of its disclosure, and has been disclosed by ORLEN S.A./ORLEN Group company or with their consent, or otherwise through no action or omission that is contrary to the law or any agreement; or
  - 13.3.3. the Start-up is required to disclose such information by a court, another competent authority or by law, provided that the Start-up shall promptly notify ORLEN S.A./ORLEN Group company in writing of such requirement and the scope of information to be disclosed, and, if possible, shall give effect to recommendations of ORLEN S.A./ORLEN Group company as to the disclosure of such information, in particular regarding the submission of a request to withhold information from disclosure, or reasonability of lodging a relevant appeal or other equivalent legal remedy, and shall notify the court or the competent authority that the information to be disclosed has the status of confidential information; or
  - 13.3.4. ORLEN S.A./ORLEN Group company has given written consent for the Start-up to disclose or use such information for a specific purpose and in the manner specified by ORLEN S.A./ORLEN Group company.
- 13.4. The Start-up shall take such security measures and shall follow such procedures as are appropriate and sufficient to ensure that any Business Secret is processed in a secure manner and in particular in compliance with the Agreement and the law, so as to prevent any unauthorised use, provision or disclosure of, or access to such information. In particular, the Start-up shall not copy or record any Business Secret unless this is required for the proper performance of the Agreement by the Start-up. The Start-up shall promptly notify ORLEN S.A./ORLEN Group company of any breach of information confidentiality rules or any unauthorised disclosure or use of information that is deemed a Business Secret and is processed in connection with the performance of the Agreement.
- 13.5. The obligation to keep confidential all information referred to in Section 13.2 above shall also extend to the Start-up's employees and other persons, including in particular auditors, advisers and subcontractors, to whom the Start-up provides such information. The Start-up shall obligate such persons in writing to protect Business Secrets on terms and conditions at least as strict as those specified in the Agreement. The Start-up shall bear full liability for any actions or omissions by persons who have gained access to Business Secrets, including liability referred to in Section 13.9.
- 13.6. Whenever ORLEN S.A./ORLEN Group company so requests, the Start-up shall send to ORLEN S.A./ORLEN Group company, within five days, a list of persons and entities that have gained access to Business Secrets through the Start-up. Failure to do so shall be deemed unauthorised disclosure of Business Secrets, resulting in liability referred to in Section 13.9 of these GTCC.
- 13.7. The confidentiality obligation shall be binding during the term of the Agreement and for 10 (ten) years after its termination, expiry, rescission or vitiation. If, despite the expiry of the Business Secret protection period specified in the preceding sentence, such information continues to be protected under internal regulations or decisions of

ORLEN S.A./ORLEN Group company, or pursuant to special provisions of law, ORLEN S.A./ORLEN Group company shall give written notice to the Start-up of the protection period being extended for a period specified by the Principal (which may not be longer than 10 years), to which the Start-up hereby consents. The notice referred to in the preceding sentence shall be given prior to the expiry of the 10-year protection period referred to in the first sentence of this paragraph, but not later than 10 business days before the obligation referred to above expires. The Parties agree that the obligation described in this paragraph shall apply regardless of the termination, expiry, rescission or vitiation of the Agreement.

- 13.8. No later than 3 (three) business days after the expiry of the protection period referred to in Section 13.7 above, the Start-up and all persons to whom the Start-up has disclosed Business Secrets shall return to ORLEN S.A./ORLEN Group company or destroy all materials containing such Business Secrets.
- 13.9. In the event of unauthorised use, provision or disclosure by the Start-up of any Business Secret, ORLEN S.A./ORLEN Group company shall be entitled to claim payment by the Start-up of a contractual penalty equal to 100% of the VAT-exclusive consideration due to the Start-up for each instance of such unauthorised use, provision or disclosure of the Business Secret. Payment of the contractual penalty referred to above shall be without prejudice to the right of ORLEN S.A./ORLEN Group company to seek compensation in accordance with generally applicable laws if the loss or damage actually suffered exceeds the contractual penalty provided for in the Agreement. This provision shall be without prejudice to any other sanctions or rights of ORLEN S.A./ORLEN Group company under applicable laws, including the Fair Trading Act of April 16th 1993.
- 13.10. If it becomes necessary during the performance of the Agreement to give access or provide to the Start-up, in any form, any information that constitutes ORLEN S.A.'s Company Secret, understood as a specially protected type of ORLEN S.A.'s Business Secrets with respect to which special measures have been taken as specified in ORLEN S.A.'s internal documents to keep it confidential, and whose use, provision or disclosure to unauthorised persons would seriously undermine or compromise ORLEN S.A.'s interests, the Start-up shall promptly, prior to receiving and processing such information, sign an annex to the Agreement with ORLEN S.A., which shall be consistent with ORLEN S.A.'s internal documents, defining the terms and conditions of protection of ORLEN S.A.'s Company Secret.
- 13.11. For the avoidance of doubt, the Parties acknowledge that regardless of the obligations set out in the Agreement the Start-up is also required to comply with additional requirements relating to the protection of specific types of information (such as personal data, inside information) arising from applicable laws.

#### **14. ANTI-CORRUPTION**

- 14.1. Each Party declares that, in connection with performing the Agreement, it shall exercise due diligence and comply with all applicable anti-corruption laws and regulations issued by the competent authorities in Poland and in the European Union, both when acting directly and through its controlled or related entities.
- 14.2. Each Party further warrants that, in connection with performing the Agreement, it shall comply with all applicable internal regulations and requirements regarding the standards of ethical conduct, anti-corruption, lawful settlement of transactions, costs and expenses, conflicts of interest, offering and accepting gifts, as well as anonymous

reporting and investigation of irregularities, both when acting directly and through its controlled or related entities.

- 14.3. The Parties warrant that, in connection with executing and performing the Agreement, neither Party nor any of its respective owners, shareholders, directors, executives, employees, subcontractors, or any other persons acting on their behalf, has made, offered, promised to make or authorised the making, and none of them shall make, offer, promise to make or authorise the making, of any payment or other transfer representing a financial gain or other benefit, directly or indirectly to any of the following persons:
- 14.3.1. any director, executive, employee or agent of the relevant Party or of any of its controlled or related entities;
  - 14.3.2. any public official, understood as a person performing a public function within the meaning of the law of the country in which the Agreement is being performed or in which the Parties or any of their controlled or related entities have their registered offices;
  - 14.3.3. any political party, member of a political party or candidate for a public office;
  - 14.3.4. any agent or intermediary in exchange for a payment made to any of the persons listed above, or any other person or entity, in order to secure a decision, influence or action that could result in gaining any unlawful privilege or for any other improper purpose, if such action infringes or would infringe upon any anti-corruption laws and regulations issued by the competent authorities in Poland and in the European Union, either when acting directly or through their controlled or related entities.
- 14.4. The Parties shall immediately notify each other of any breach of this provision. At the written request of either Party, the other Party shall provide it with information and reply to all reasonable enquiries made by the other Party pertaining to the performance of the Agreement in accordance with this provision.
- 14.5. In order to duly perform the obligation set out above, each Party declares that during the term of the Agreement it shall enable all persons acting in good faith to anonymously report any irregularities. In the case of ORLEN S.A. irregularities shall be reported by email via the anonymous whistleblowing system: [anonim@orlen.pl](mailto:anonim@orlen.pl), and in the case of the Start-up or an ORLEN Group company – in line with the procedure provided for in the Agreement.
- 14.6. If any acts of corruption are suspected in connection with or for the purpose of performing the Agreement by any of the Parties' representatives, ORLEN S.A. reserves the right to conduct an anti-corruption audit of the Start-up to check its compliance with this provision, including, without limitation, to investigate any issues relating to such suspected act or acts of corruption.

## 15. DISPUTE RESOLUTION

- 15.1. The Parties agree to resolve amicably any disputes arising from or in connection with the execution, breach, expiry, termination or invalidation of the Agreement.
- 15.2. If a dispute is not resolved amicably within 30 (thirty) days after a Party is called upon to reach such amicable resolution, the dispute shall be referred to a court of general jurisdiction competent for the District of Śródmieście of the Capital City of Warsaw.
- 15.3. Pending resolution of the dispute, the Parties shall not disclose its causes to the media or any third parties not legally involved in the dispute. The obligation specified in the preceding sentence shall not apply – in the case of ORLEN S.A. – to the ORLEN

Group companies, and – in the case of both Parties – to any advisers, in particular legal advisers (who are under a statutory obligation to keep professional secrecy), whose services are used by a Party in relation to the dispute.

## **16. ICT SECURITY**

- 16.1. The Start-up undertakes to perform the Agreement in compliance with ORLEN S.A.'s ICT security rules.
- 16.2. The Start-up shall have in place an ICT security policy expressly applicable to the services provided under the Agreement.
- 16.3. The Start-up shall ensure that the ICT infrastructure used in performing the Agreement is managed in accordance with the recognised best practice in ICT security.
- 16.4. Where a reasonable need arises, ORLEN S.A. shall grant access to ORLEN S.A.'s ICT resources to authorised persons on the Start-up's side, subject to the terms and conditions set out in Appendix 1 to these GTCC.
- 16.5. The Start-up shall promptly notify ORLEN S.A. of any ICT security breach or incident that has occurred in connection with such access granted to ORLEN S.A.'s ICT resources.
- 16.6. The Start-up shall be performing its obligations under the Agreement in such a manner as to prevent data confidentiality, integrity or availability from being compromised. Where the performance of the Agreement involves a risk of compromising such data security attributes, the Start-up shall notify ORLEN S.A. of such risk prior to commencing any work and shall enable ORLEN S.A. to take measures designed to ensure that those attributes are preserved.
- 16.7. With respect to matters referred to in this provision and the Appendix, the Start-up shall be responsible for the consequences of any acts of its employees or third parties it has engaged to perform any activities for ORLEN S.A. to the same extent as for its own acts.
- 16.8. In order to grant remote access to ORLEN S.A.'s ICT resources, a separate agreement shall be executed for the provision of remote access to such ICT resources.
- 16.9. If the Start-up breaches any ICT security rules, ORLEN S.A. may claim payment by the Start-up of a contractual penalty of PLN 100,000 (one hundred thousand zloty) for any such breach. The above right to claim the contractual penalty shall be without prejudice to ORLEN S.A.'s right to seek additional compensation in accordance with generally applicable laws if the amount of actual losses exceeds the contractual penalty amount set out herein.

## **17. MISCELLANEOUS**

- 17.1. The Parties are and shall remain independent business partners. No provision of these GTCC and the Agreement shall be construed as establishing any partnership, joint venture or agency relationship between the Parties or as granting exclusivity with respect to the performance of any work. Each Party shall be solely responsible for the payment of all remuneration due to its employees (in particular the Participants).
- 17.2. All notices and representations made by the Parties under the Agreement and related to the performance of the Agreement and these GTCC shall be delivered, in the prescribed form, to the contact addresses of the Parties specified in Section 4 of the Agreement ("Representatives").

- 17.3. All notices and representations of the Parties required to be made in writing under the Agreement shall be delivered to the registered office of the receiving Party in person against confirmation of delivery, by Poczta Polska registered mail or by courier service. A notice or representation shall be deemed duly given on the date when it is delivered in person against confirmation of delivery to the registered office of the receiving Party, or on the date stated on the return receipt if it is delivered by mail or by courier service.
- 17.4. Any notices and representations other than those referred to in Section 17.3 above may also be delivered by electronic mail to a Representative's email address, unless the Agreement provides for any restrictions in this respect. The Party receiving a notice or representation delivered in accordance with the preceding sentence should promptly confirm receipt of such notice or representation to the other Party.
- 17.5. The Parties agree to promptly notify each other, in writing or by electronic means, of any change in the contact details specified in Section 4 of the Agreement, failing which any notices and representations sent by the other Party to the previous address (i.e. the address specified in Section 4 of the Agreement or the address changed in accordance with the notification procedure defined in this Section) shall be deemed delivered (in the case of delivery by Poczta Polska postal service or courier service, upon the first attempted delivery). No such change in the Parties' contact details referred to shall require an amendment to the Agreement to be effective.
- 17.6. The following appendices form an integral part of these GTCC:
- 17.6.1. Appendix 1 – ICT security;
  - 17.6.2. Appendix 2 – Form of Agreement on Entrusting Personal Data Processing.

## Appendix 1 to the General Terms and Conditions of Cooperation

### ICT security

#### I. Rules of logical access from the Principal's internal ICT network.

1. The Principal shall grant the Contractor's authorised personnel logical access from the Principal's internal ICT network to its ICT resources using hardware provided by the Principal or owned by the Contractor that meets the requirements set out in the Principal's ICT security policy.
2. The access referred to in Section I.1 shall only be granted after the execution of the Agreement, for a period not longer than its term and after the security requirements set out in the Agreement have been complied with.
3. A list of the Contractor's personnel authorised to have the access referred to in Section I.1 above, the authorisation levels and statement of compliance with the requirements set out in the Agreement are included in Section II hereof.
4. Any change to such information presented in Section II of this Appendix shall be confirmed, within two business days, with a written request signed by the Contractor's representative and sent to the Principal's representative for written approval. Making such change shall not require the execution of any amendment to the Agreement.
5. Each person referred to in Section I.3 shall have an account created in each of the ICT resources made available to them and shall be duly authorised to access and use those resources.
6. The persons referred to in Section I.3 shall:
  - 6.1. observe the ICT security rules laid down in the Agreement;
  - 6.2. comply with the Principal's ICT security policies and procedures to the extent required for the performance of the Agreement;
  - 6.3. prevent unauthorised access to the Principal's ICT resources;
  - 6.4. protect the hardware and information processed using that hardware against unauthorised access;
  - 6.5. not disclose any current or previous personal passwords, working group passwords or other authentication methods used to access the Principal's ICT resources;
  - 6.6. use exclusively the communication protocols made available by the Principal;
  - 6.7. use the available ICT resources exclusively for the purpose of performing the Agreement, in accordance with their respective authorisations, exercising due care while using those resources;
7. The Contractor agrees to implement at its own expense and apply the procedures as well as the physical, organisational and technological security measures provided for in the Agreement (including protections against malicious software) to protect those of its own ICT resources which directly or indirectly participate in the performance of the Agreement.
8. The security measures applied by the Contractor shall be adequate to the ICT security risks, and shall prevent any unauthorised access to the Principal's ICT resources.
9. The Principal reserves the right to monitor and record the activities of the Contractor's personnel authorised to access the Principal's ICT resources in terms of their compliance with the applicable ICT security rules and procedures, as well as the right to immediately block such personnel's access if it is determined that they have breached the applicable ICT security rules, including, without limitation:
  - 9.1. disclosure of passwords to the ICT resources, provided to or used by that personnel;
  - 9.2. use of their respective authorisations to the ICT resources for purposes unrelated to the performance of the Agreement;
  - 9.3. failure to comply with the obligation to protect the hardware and technical means used to access the Principal's ICT resources;
  - 9.4. installation of software or reconfiguration of the hardware provided by the Principal without due authorisation, unless such activities fall within the scope of the Agreement. In such a

case, the reasons for such installation of additional software or reconfiguration of the hardware shall be notified to the person responsible for the performance of the Agreement on the Principal's side to obtain that person's approval. Any modifications referred to above shall be made in accordance with the procedures applied by the Principal;

9.5. failure to comply with these ICT security rules.

- 10. The Contractor shall promptly notify the Principal of any security breach or incident related to the ICT resources or Protected Information that has occurred in connection with such access granted to the Principal's ICT resources.
- 11. Upon expiry of the Agreement, the Contractor shall return to the Principal all the technical means provided to the Contractor and used to access the Principal's ICT resources.
- 12. The Contractor acknowledges that it shall be fully liable for any damage suffered by the Principal as a result of ICT security incidents caused by a breach or failure to comply with the rules set out in the Agreement and this Appendix by the personnel referred to in Section I.3.

**II. List of authorised personnel and statement of compliance with the requirements laid down in the Agreement.**

**1. List of the Contractor's personnel authorised to have logical access to ICT resources from the Principal's internal ICT network using the Contractor's hardware.**

No.	Full name	Authorisation level	Name of resource/service	Environment	Account name	Validity of authorisation	Hardware model and serial number
1.							
2.							
3.							
4.							

**Legend:**

**Authorisation level:** u – user, a – administrator, d – developer

**Name of resource/service:** host name and range of services to be accessed,

**Environment:** p – production, t – testing, d – development,

**Account name:** individual account name in the resources to be accessed,

**Validity of authorisation:** from..... to.....

PRINCIPAL

CONTRACTOR

.....  
 First name and surname (in legible script), date, signature  
 legible script), date, signature

.....  
 First name and surname (in



**2. Contractor’s statement**

Pursuant to Section 3 of the ‘Rules of logical access from the Principal’s internal ICT network’, attached as Appendix 1 to the Agreement dated ....., by and between

..... and

.....;

..... the Contractor confirms that:

1. It accepts and agrees to comply with the ICT security rules applicable to the performance of the Agreement.
2. The hardware with access to the Principal’s ICT resources, used in the performance of the Agreement, is compliant with the ICT security requirements, including:
  - a) With respect to the software installed and running on the hardware, i.e.:
    - software used to encrypt the entire hard disk;
    - antivirus software and personal firewall (with signatures kept up to date);
  - b) With respect to the hardware configuration:
    - the hardware is protected with a BIOS access password and an active safeguard requiring personalised logging into the operating system during each boot;
    - the option to boot the operating system from removable data storage devices has been disabled on the hardware;
    - no later than after a six-minute period of user inactivity, the hardware is automatically blocked by a password consisting of at least eight characters that meets the relevant complexity requirements: i.e. contains three out of the four character types (lower case letters, upper case letters, digits or special characters);
    - no IM (Instant Messaging) or P2P (Peer-to-Peer) software is run on the hardware;
    - no software enabling unauthorised interference with the Principal’s ICT resources has been installed or used on the hardware.
3. The Contractor’s personnel authorised to access the Principal’s ICT resources have been advised of the obligation to comply with the ICT security rules applicable to the performance of the Agreement and have signed relevant compliance statements.

CONTRACTOR

.....

Appendix 2 to the GTCC – Form of Personal Data Processing Agreement.

**PERSONAL DATA  
PROCESSING AGREEMENT**

made in \_\_\_\_\_ on \_\_\_\_\_

by and between:

\_\_\_\_\_, with its registered office at \_\_\_\_\_, \_\_\_-\_\_\_\_\_, entered in the business register of the National Court Register maintained by the District Court \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ Commercial Division of the National Court Register under entry number KRS \_\_\_\_\_, tax identification number (NIP): \_\_\_\_\_;

hereinafter referred to as the **“Controller”**,

represented by

1. \_\_\_\_\_
2. \_\_\_\_\_

and

\_\_\_\_\_, with its registered office at \_\_\_\_\_, \_\_\_-\_\_\_\_\_, entered in the business register of the National Court Register maintained by the District Court \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ Commercial Division of the National Court Register under entry number KRS \_\_\_\_\_, tax identification number (NIP): \_\_\_\_\_;

hereinafter referred to as the **“Processor”**,

represented by

1. \_\_\_\_\_
2. \_\_\_\_\_

each of them hereinafter referred to as a **“Party”** or collectively as the **“Parties”**.

## 1. DEFINITIONS

For the purposes of this Agreement, the Controller and the Processor agree that the following terms shall have the following meanings:

- 1) **Personal Data** shall mean data within the meaning of Article 4(1) of the GDPR, which is any information relating to an identified or identifiable natural person;
- 2) **Personal Data Processing** shall mean any operation or set of operations performed on Personal Data or sets of Personal Data entrusted for processing, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction within the meaning of Article 4(2) of the GDPR;
- 3) **Agreement** shall mean this processing agreement;
- 4) **Principal Agreement** shall mean \_\_\_\_\_<sup>1</sup> agreement of \_\_\_\_\_ whose subject matter consists of \_\_\_\_\_;
- 5) **GDPR** shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27th 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L of 2016, No. 119, p. 1);
- 6) **Personal Data Breach** shall mean a breach of security leading to the accidental or unlawful destruction, loss, modification, unauthorised disclosure of, or unauthorised access to, personal data transmitted, stored or otherwise processed;
- 7) **Potential Personal Data Breach Incident/Incident** shall mean any incident, either internal or external, affecting personal data security, which gives an indication of a potential Personal Data Breach.

## 2. REPRESENTATIONS BY THE PARTIES

The Parties represent as follows:

- 1) the Parties represent that this Agreement is entered into for the purpose of performing the obligations referred to in Article 28 of the GDPR in connection with the Principal Agreement,
- 2) the Controller represents that it is the controller of Personal Data<sup>2</sup> within the meaning of Article 4(7) of the GDPR, which means an entity which, alone or jointly with others, determines the purposes and means of Personal Data Processing,
- 3) the Processor represents that it has the means, experience, knowledge and qualified personnel to properly perform this Agreement, and provides sufficient guarantees that it shall implement appropriate technical and organisational measures so that the processing meets the requirements

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<sup>1</sup> Należy wskazać umowę biznesową do której jest zawierana niniejsza umowa

<sup>2</sup> Jeżeli dla danych powierzanych ORLEN S.A. S.A. jest także Procesorem na podstawie innej umowy zawartej ze spółką GK ORLEN lub SP ORLEN należy uwzględnić w ramach tego punktu

of the GDPR and protects the rights of the persons whose data will be processed under this Agreement.

- 4) the Processor represents that it is a processor within the meaning of Article 4(8) of the GDPR under this Agreement, which means that it will Process Personal Data on behalf of the Controller.

### **3. SUBJECT MATTER AND DURATION OF THE PROCESSING**

- 3.1. The Controller entrusts Personal Data to the Processor for Processing, and the Processor agrees to process Personal Data on documented instructions from the Controller in compliance with applicable laws and this Agreement.
- 3.2. This Agreement is entered into for the duration of the Principal Agreement and until all the obligations hereunder have been performed.

### **4. PURPOSE AND GENERAL RULES ON THE PROCESSING OF DATA**

- 4.1 The Processor may process Personal Data solely for the purpose provided for in this Agreement.
- 4.2 The purpose of the Personal Data Processing is \_\_\_\_\_, as referred to in the Principal Agreement.
- 4.3 The categories of persons whose data will be processed by the Processor under this Agreement shall be:
- a) [•]
- 4.4 The categories of Personal Data processed by the Processor under this Agreement shall be:
- a) [•]
- 4.5 The Processor agrees to process Personal Data on a continuous basis. In particular, the Processor shall perform the following activities with respect to the Personal Data entrusted to it: \_\_\_\_\_<sup>3</sup> (for the purposes set out in Section 4.2 above), disclosure to other entities in compliance with applicable laws, this Agreement or instructions from the Controller.
- 4.6 Personal Data shall be processed by the Processor in electronic form by IT systems and in paper form<sup>4</sup>.
- 4.7 When Processing Personal Data, the Processor shall comply with the rules set forth in this Agreement and the GDPR as well as other generally applicable Personal Data protection laws.
- 4.8 The Processor acknowledges that its processing of entrusted Personal Data within a scope or for a purpose different from that prescribed in Section 4.2–4.5 of this Agreement without an appropriate legal basis, shall constitute a breach

<sup>3</sup> collection, recording, structuring, storage, use (for the purposes set out in Section 4.2 above), disclosure to other entities in compliance with applicable laws, this Agreement or instructions from the Controller, erasure.

<sup>4</sup>Specify as appropriate

of the GDPR and this Agreement, and may constitute grounds for termination of this Agreement with immediate effect and for taking action against it as provided for in this Agreement or applicable laws.

## **5. SPECIFIC RULES ON ENTRUSTING THE PROCESSING OF DATA**

5.1 Prior to the commencement of Personal Data Processing, the Processor shall implement Personal Data protection measures referred to in Article 32 of the GDPR, in particular:

- a) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights or freedoms of natural persons, it shall implement technical and organisational measures to ensure security of the Processed Personal Data, as referred to in Article 32 of the GDPR. The Processor should properly document the implementation of these measures;
- b) it shall enable the Controller, upon the Controller's request, to review the technical and organisational measures in place and the documentation relating to those measures in order to ensure the processing is carried out in compliance with the law, and shall update those measures if, in the Controller's opinion, they are insufficient to ensure lawful Processing of Personal Data entrusted to the Processor;
- c) it shall ensure that all natural persons acting with the authorisation of the Processor who have access to Personal Data shall process the Personal Data only as per instructions issued by the Controller; the Controller hereby authorises the Processor to issue the instructions referred to above;
- d) it shall keep records of persons authorised to Process Personal Data in connection with the performance of the Principal Agreement.

The minimum formal and technical requirements for the security of Personal Data are set forth in Appendix 2 to this Agreement.

5.2 The Processor agrees to keep Personal Data and related protection measures confidential, also following termination of this Agreement, and agrees to ensure that persons with access to Personal Data Processing keep Personal Data and related protection measures confidential, also following termination of this Agreement or termination of employment with the Processor. To this end, the Processor shall only allow persons who have signed an undertaking to keep Personal Data and related protection measures confidential to process Personal Data.

5.3 The Processor shall not copy, reproduce or in any way distribute Personal Data, except to the extent that Personal Data is used for the purpose of performing this Agreement or the Principal Agreement.

- 5.4 The Processor agrees to inform the Controller immediately if, in the Processor's opinion, an instruction issued to the Processor constitutes a breach of the GDPR or other Personal Data protection laws.

## **6. FURTHER OBLIGATIONS OF THE PROCESSOR**

- 6.1 The Processor agrees to assist the Controller in ensuring compliance with the obligations set out in Articles 32 to 36 of the GDPR. In particular, the Processor agrees to provide the Controller with information and to comply with the Controller's instructions regarding the implemented measures of Personal Data protection and regarding any Personal Data breaches. Furthermore, the Processor shall:
- a) provide the Controller with information on any Personal Data breach within 24 hours of discovering an incident that constitutes a Breach of Personal Data entrusted to the Processor or a Potential Personal Data Breach Incident. The incident/breach report form is attached as Appendix 1 to this Agreement;
  - b) prepare, within 24 hours of discovering an incident constituting a Personal Data Breach, information required in a Personal Data Breach notification to the supervisory authority, listed in Article 33(3) of the GDPR;
  - c) maintain a data breach register to document any Personal Data Breaches, comprising the facts relating to the Personal Data Breach, its effects, and the remedial action taken;
  - d) carry out a preliminary assessment of the risks to the rights and freedoms of data subjects and communicate the results of the assessment to the Controller within 36 hours of discovering the incident constituting a Personal Data Breach;
  - e) provide all information necessary to make a notification to the data subject, listed in Article 33(3) of the GDPR, within 24 hours of discovering the incident constituting a Personal Data Breach or a Potential Personal Data Breach Incident;
  - f) designate persons responsible for taking steps to remedy the breach and take corrective action in consultation with the Controller;
  - g) maintain a record of all categories of Personal Data processing activities in accordance with Article 30(2) of the GDPR, and make it available to the supervisory authority upon request;
  - h) assess the risks to the rights or freedoms of data subjects/ evaluate the risk assessment carried out by the Controller;
  - i) assess whether the obligation to carry out an assessment of the impact of the envisaged processing operations on the protection of Personal Data applies in a given case,
  - j) provide the Controller with information necessary to carry out an assessment of the impact of the envisaged processing operations on the protection of Personal Data, referred to in Article 35 of the GDPR;
  - k) provide the Controller with information necessary for consulting the supervisory authority with regard to the data protection impact assessment referred to in Article 35 and Article 36 of the GDPR;
- 6.2 The Processor agrees to assist the Controller, through appropriate technical and organisational measures, in fulfilling its obligation to respond to requests from

data subjects in respect of the exercise of their rights set out in Articles 15 to 22 of the GDPR. In particular, the Processor agrees:

- a) where a data subject requests the right of access referred to in Article 15 of the GDPR, to prepare a report for the Controller enabling the Controller to provide the data subject with the information referred to in Article 15(1) of the GDPR.
- b) where a data subject requests the right to rectification referred to in Article 16 of the GDPR, to record the request by overwriting the Personal Data of the data subject in the Processor's systems,
- c) where a data subject requests the right to be forgotten referred to in Article 17 of the GDPR, to erase relevant personal data from all systems of the Processor that may contain Personal Data of the data subject, including, without limitation, from source data aggregation systems. 90 days after receiving the request, the Processor shall conduct a detailed analysis of whether the requesting party's data has been erased from all of the Processor's systems, and shall submit the results of the analysis to the Controller in the form of a report,
- d) where a data subject requests the right to restriction of processing referred to in Article 18 of the GDPR, to temporarily block the records pertaining to the data subject immediately but no later than 24 hours after the Controller issued an instruction to that effect,
- e) where a data subject requests the right to data portability referred to in Article 20 of the GDPR, to export to the Controller all Personal Data of the data subject which is processed electronically;
- f) where a data subject requests the right to object referred to in Article 21 of the GDPR, to provide relevant information to the Controller,

6.3 For the purpose of fulfilling the obligations referred to in the preceding Section 6.2, the Processor agrees to incorporate into its IT system functions enabling at least: to copy data, to delete data, to rectify data, to restrict the processing of data, to create a file enabling data portability, and to record objections.

6.4 The Processor agrees to make available to the Controller all information necessary to demonstrate compliance by the Controller and the Processor with the obligations referred to in Article 28 of the GDPR.

6.5 The Processor shall comply with any guidance or recommendations issued by the supervisory authority or an EU personal data protection advisory body on the Personal Data Processing, particularly with regard to the application of the GDPR.

6.6 The Processor agrees to notify the Controller, no later than 24 hours after the exact time of occurrence of each of the following events, of:

- (a) any proceedings, including, without limitation, administrative or judicial proceedings relating to the Processing of Personal Data by the Processor,
- (b) any administrative decision or ruling concerning Personal Data Processing addressed to the Processor,
- (c) any audit, check or inspection relating to the Processing of Personal Data by the Processor, particularly where such audit, check or inspection is conducted by the supervisory authority,

d) any binding request from a court, law enforcement agency, or other Polish or international governmental authorities concerning disclosure of or access to Personal Data, unless notifying the Controller of the same is not permitted under applicable laws.

## **7. RULES ON PROTECTING PERSONAL DATA TRANSMITTED IN ELECTRONIC FORM**

7.1 Where Personal Data needs to be exchanged in electronic form, the Processor permits the transfer of Personal Data via email, but only in the form of attachments, subject to the following:

- a) processed attachments containing Personal Data shall be encryption protected using the AES256 algorithm or a stronger algorithm agreed between the Parties (e.g. archiving software with an embedded encryption algorithm);
- b) the password (encryption key), providing protection against unauthorised decryption of the attachment, shall consist of at least 12 characters (containing two characters of each type, i.e. lowercase letters, uppercase letters, digits and special characters);
- c) the sender, after obtaining confirmation from the recipient that it has received the encrypted attachments, shall provide the recipient with a password (encryption key) by sending it via a channel other than electronic mail (email), preferably via a telephone call, observing relevant rules and measures to prevent unauthorised disclosure of the password;
- d) transmission of an encrypted attachment shall be between the Controller's email accounts and the Processor's email accounts provided in connection with the performance of this Agreement.

## **8. TRANSFER OF PERSONAL DATA**

- a) The Processor may not transfer Personal Data to third countries outside the European Economic Area unless the Controller has given the Processor prior written consent to such transfer, which consent shall be made in writing under pain of nullity.
- b) If the Controller gives the Processor prior consent to transfer Personal Data to a third country outside the European Economic Area, the Processor may only transfer such Personal Data if:
  - the country of final destination provides an adequate level of Personal Data protection equivalent to that applicable in the European Union; or
  - the Controller and the Processor or the Processor's subcontractor have entered into an agreement containing standard contractual clauses or have implemented another mechanism to make the transfer of data to a third country lawful.



## **9. SUBPROCESSING**

- 9.1 The Processor represents that it will not use the services of another processor to perform this Agreement without the Controller's prior consent given in writing under pain of nullity.
- 9.2 Where it is necessary for the Processor to subcontract Personal Data processing, the Processor shall obtain prior consent to such subprocessing from the Controller. The Processor shall provide the Controller with details of the subprocessor (company name and contact details of the subcontractor), information about the nature and duration of the subprocessing, the scope and purpose of the Processing of Personal Data by the subcontractor, the type (categories) of Personal Data and the categories of persons whose data are to be subprocessed.
- 9.3 Subcontracting of Personal Data Processing by the Processor shall only be permitted under a subprocessing agreement. In the subprocessing agreement, the subcontractor shall agree to comply with the same obligations and requirements as those imposed on the Processor under this Agreement. The agreement shall be signed in the same form as this Agreement.
- 9.4 In the subprocessing agreement entered into by the Processor with each of its subcontractors, the Processor shall ensure, notwithstanding the requirements set out in the second sentence of Section 9.7, that, without limitation:
- a) the Controller's rights under the subprocessing agreement shall be directly enforceable against the subcontractor,
  - b) the subcontractor to whom Personal Data Processing is subcontracted shall provide at least the same level of protection for Personal Data as the Processor,
  - c) in no event may the subcontractor further subcontract Personal Data Processing,
  - d) in no event may the subcontractor decide on the purposes and means of the Processing of Personal Data covered by the subprocessing agreement signed between the Processor and subcontractor,
  - e) where the data subject exercises its rights under the GDPR in relation to the Personal Data processed by the Processor or a subcontractor on behalf of the Controller, or where the Controller is required to take a stance on any request or notice of inspection or audit from the supervisory authority or another body of legal protection in relation to the Personal Data processed by the Processor or a subcontractor on behalf of the Controller, then the Processor and the subcontractor agree to provide all assistance required by the Controller to ensure compliance with any obligations resulting from the exercise of the aforementioned rights or from the request or notice of inspection or audit, including, without limitation, by immediately providing the Controller with all information, explanations and documents required by the Controller in relation to the Processing of Personal Data by the subcontractor.

- 9.5 If a subcontractor to whom Personal Data Processing has been subcontracted fails to comply with its obligations to protect Personal Data, the Processor shall be fully responsible towards the Controller for compliance with the obligations of the subcontractor.
- 9.6 The Processor shall notify the Controller of each instance of and the reason for termination of a subprocessing agreement no later than three (3) days after such termination.
- 9.7 The Processor shall maintain an up-to-date list of subcontractors to whom it has subcontracted Personal Data Processing. The Processor shall provide the list to the Controller upon request.

## **10. AUDIT AND INSPECTION OF THE PROCESSOR**

- 10.1 The Controller may verify the Processor's compliance with the Personal Data Processing rules under the GDPR and this Agreement by exercising its right to request, at any time during the term of this Agreement, any information or access to any documents, procedures and records relating to the entrusted Personal Data, including information about the location where Personal Data is processed by the Processor.
- 10.2 The Controller may also carry out audits or inspections of the Processor regarding compliance of the processing operations with the law and this Agreement through authorised employees of the Controller or a third-party provider of professional Personal Data and information security audit and assessment services ("Controller's Auditors").
- 10.3 The Controller shall notify the Processor of a planned audit or inspection in writing or via email at least seven (7) days prior to the scheduled start date of the audit or inspection, specifying, in writing or via email, the persons designated by the Controller to carry out the audit or inspection.
- 10.4 If the Controller obtains reasonable information that security of the Processing of Personal Data by the Processor or any of the Processor's subcontractors may be threatened or that a Personal Data Breach has occurred, the Controller may carry out audits or inspections notifying the Processor at least 1 (one) day prior to the scheduled start date of the audit or inspection.
- 10.5 The audit or inspection shall be carried out by the Controller's authorised Auditors at the Processor's site and any other locations where the Processor processes Personal Data under this Agreement. The locations referred to in the preceding sentence shall also include the locations where Personal Data is processed by the Processor's subcontractors.
- 10.6 During an audit or inspection, the Controller's Auditors may:
- a) inspect all documents and all information directly related to entrusting the processing under this Agreement,

- b) inspect devices, storage media and IT or ICT systems used for data processing,
  - c) request written or oral explanations from the Processor and Processor's employees to the extent necessary to establish the facts.
- 10.7 The Controller may carry out audits or inspections on business days, between 8am and 6pm, at the locations referred to above to verify the security of Personal Data Processing.
- 10.8 The Processor shall ensure the conditions and provide the means necessary for the Controller's Auditors to efficiently carry out the audit or inspection, and, without limitation, it shall make, by its own means, copies or printouts of the documents and information contained in the storage media, equipment or systems used for Personal Data Processing.
- 10.9 Upon completion of an audit or inspection, the Controller's Auditor shall provide the Processor with an audit report, or in the case of an inspection, with a written note.
- 10.10 If any irregularities, violations or other circumstances are discovered which the Controller considers to be in conflict with this Agreement or the laws in effect during the term of this Agreement ("Non-Compliance"), the Processor and each subcontractor to whom such Non-Compliance pertains shall, at its own expense, remedy such Non-Compliance within the time limit specified in the form of an oral or written recommendation by the Controller, as determined by the Controller's Auditor. The Processor agrees to inform the Controller immediately if, in the Processor's opinion, an instruction issued to the Processor constitutes a violation of the GDPR or other data protection laws.
- 10.11 For the avoidance of any doubt, the Processor and each of the Processor's subcontractors irrevocably consent to the audits and/or inspections referred to in this Section and agree to fully cooperate with the Controller and the Controller's Auditors in the course of the audits and inspections. Any actions taken by the Processor or any of the Processor's subcontractors to prevent or otherwise hinder activities of the Controller or the Controller's Auditors may constitute grounds for termination of this Agreement or the Principal Agreement.

## **11. LIABILITY OF THE PROCESSOR**

- 11.1 The Processor shall be liable for any loss or damage sustained by the Controller or any third parties as a result of Personal Data being processed by the Processor in contravention of the law or this Agreement, including, without limitation, as a result of providing access to Personal Data to unauthorised persons.
- 11.2 Subject to the provisions set out hereinbelow, the Processor shall bear liability towards the Controller in accordance with general rules (if the Processor fails to perform or improperly performs this Agreement, the Processor agrees to pay damages in accordance with general rules).

- 11.3 The Controller may claim the following contractual penalties against the Processor<sup>5</sup>:
- a) for a delay in reporting a breach within the time limit specified in Section 6 of this Agreement – PLN 100,000.00 for each hour of delay;
  - b) for failure to use any of the security measures and safeguards specified in this Agreement – PLN 100,000.00 for each identified case;
  - c) for breach of the obligation to obtain the Controller’s consent to subcontract Personal Data Processing to a subcontractor of the Processor – PLN 100,000.00 for each identified case;
  - d) for failure to include in a subprocessing agreement the provisions referred to in Section 9 of this Agreement – PLN 100,000.00 for each identified case;
  - e) for preventing the Controller from carrying out an audit or inspection referred to in Section 10 of this Agreement – PLN 100,000.00 for each case;
  - f) for breach of the obligation to obtain the Controller’s consent to transfer data outside the EEA – PLN 100,000.00 for each identified case;
  - g) for failure by the Processor and/or any of its subcontractors to perform an obligation referred to in Section 13.3 and 13.4 – up to PLN 100,000.00 for each breach.
- 11.4 Notwithstanding the obligations set out above, where proceedings (including court proceedings) are initiated against the Controller by a third party relating to a violation of the GDPR or other laws in connection with the Processing of Personal Data by the Processor or any of the Processor’s subcontractors, the Processor agrees to provide the Controller, at the Processor’s expense, with judicial protection on the terms stated by the Controller, and to bear all consequences of such proceedings, including, without limitation, the costs of any administrative decisions, court judgments, rulings and settlement agreements (“Recourse”).

## 12. REMUNERATION

The remuneration for the performance of the subject matter of this Agreement due to the Processor shall be included in the Remuneration provided for in the Principal Agreement.

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<sup>5</sup> Propozycja kary na podstawie doświadczeń Działu Bezpieczeństwa Informacji. Właściciel merytoryczny może podjąć decyzję o zmniejszeniu lub zwiększeniu kary na podstawie opinii Biura Prawnego i Działu Bezpieczeństwa Informacji.

### 13. TERM AND TERMINATION

- 13.1 This Agreement is concluded for the term of the Principal Agreement and expires fourteen (14) days after the performance, termination, expiry, cancellation or rescission of the Principal Agreement.
- 13.2 The Controller may terminate this Agreement without notice in the event of a material violation of the law or this Agreement by the Processor, including, without limitation:
- a) if the supervisory authority determines that the Processor or any of the Processor's subcontractors fail to comply with Personal Data Processing rules;
  - b) if it is demonstrated in a final judgment of a court of general jurisdiction that the Processor or any of its subcontractors fail to comply with Personal Data Processing rules;
  - c) if any Personal Data is processed by the Processor or any of its subcontractors in contravention of the purpose and scope of this Agreement or any subprocessing agreement entered into between the Processor and a subcontractor;
  - d) if any Personal Data is processed by the Processor and any of its subcontractors in contravention of the GDPR or the Controller's instructions;
  - e) if performance by the Controller of any audit or inspection activities referred to in Section 10 hereof is prevented or hindered;
  - f) if unauthorised persons are allowed by the Processor or any of the Processor's subcontractors to process Personal Data;
  - g) if a subprocessing agreement is entered into between the Processor and a subcontractor without the Controller's consent referred to in Section 9 hereof;
  - h) in the event of a breach of the obligations set out in Section 6 hereof (further obligations of the Processor).
- 13.3 In the event of occurrence of any of the circumstances referred to in Section 13.1 or 13.2 above, the Processor agrees to return to the Controller, immediately but not later than within .....<sup>6</sup> calendar days after the occurrence of such circumstances, all Personal Data entrusted to the Processor that remains valid as at the date of performance, termination, expiry, cancellation or rescission of the Principal Agreement, or, after obtaining the Controller's consent, to permanently delete all Personal Data entrusted to it under this Agreement, including from any storage media in the possession of the Processor, and to ensure that each of its subcontractors permanently deletes all Personal Data processed under a subprocessing agreement, including from any storage media in the possession of the subcontractor. The return or deletion

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<sup>6</sup> Należy ustalić z Przetwarzającym liczbę dni, np.: 7/14/30.

of Personal Data by the Processor and each subcontractor shall be confirmed by a personal data return certificate or personal data destruction certificate, as applicable, in the form set out in Appendix 2 to this Agreement. A scan of the personal data return or destruction certificate shall be sent by the Processor via email to daneosobowe@orlen.pl within three (3) business days of removal of the Personal Data.

- 13.4 Where destruction of Personal Data is performed at shredding facilities or through professional document destruction service providers ("Shredding Service Provider"), the Processor, or each subcontractor, shall draw up a certificate containing an aggregate list of the Personal Data sent to the Shredding Service Provider. A scan of the certificate, in the form set out in Appendix 3 to this Agreement, together with a Personal Data destruction certificate drawn up by the Shredding Service Provider, shall be sent by the Processor via email to daneosobowe@orlen.pl within three (3) business days of removal of the Personal Data.
- 13.5 The Controller may monitor and supervise the performance of the Processor's obligations set out in Section 13.3 and 13.4 above through audits or inspections carried out in accordance with Section 9 hereof (subprocessing).
- 13.6 The Parties agree that, despite expiry of this Agreement regardless of the circumstances referred to in Section 13.1 and 13.2 above, the provisions hereof that place or may place any obligation on the Processor, including, without limitation, the provisions (on cooperation and recourse) shall survive the expiry of this Processing Agreement.

#### **14. MISCELLANEOUS**

- 14.1 This Agreement shall become effective as of its date.
- 14.2 Any amendments to this Agreement shall be null and void unless made in writing.
- 14.3 Any matters not provided for in this Agreement shall be governed by the Civil Code of April 23rd 1964 (Dz.U. of 2018, item 1025) and the GDPR.
- 14.4 Any disputes relating to the performance of this Agreement shall be resolved by the court with jurisdiction over the registered office of the Controller.
- 14.5 All communications between the Parties relating to this Agreement shall be exchanged in accordance with Appendix 4 hereto.
- 14.6 Any amendments to the Appendices to this Agreement shall not require an annex to this Agreement. Any such amendments shall require a written consent of the persons named in Appendix 4 hereto.
- 14.7 This Agreement has been made in two counterparts, one for each Party.

**For the Controller**

**For the Processor**

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Appendices:

1. Appendix 1 – Form of incident/breach report
2. Appendix 2 – Return/destruction certificate
3. Appendix 3 – Destruction certificates
4. Appendix 4 – Contact details of the Parties for the purpose of performing this Agreement.
5. Appendix 5 – Minimum formal and technical requirements for personal data security.

**Form of personal data breach or potential personal data breach report –  
Processor**

<b>1. Processor's details:</b>	
<i>Processor's name and contact details</i>	
<i>Processor's data protection officer/designated person</i>	
<i>Telephone number</i>	
<i>Email address</i>	
<b>2. Date and time of the personal data breach or potential data breach incident.</b>	
<b>3. Place of the incident/breach.</b>	
<b>4. Description of the incident/breach.</b>	
<b>5. Description of the scope of personal data affected by the personal data breach or potential data breach incident.</b>	
<i>Categories of data subjects</i>	<i>Scope of personal data</i>
1.	•
2.	•
<i>Approximate number of people potentially affected by the incident</i>	
<i>Approximate number of personal data records potentially affected by the incident</i>	
<b>6. Persons/entities that may have gained unauthorised access to personal data.</b>	
<b>7. Consequences of the reported incident/breach (including potential consequences for data subjects).</b>	



<b>8. Description of the measures implemented to mitigate potential adverse effects of the incident/breach.</b>
<b>9. Conclusions or comments from the Processor.</b>
<b>10. Reasons for a delay in reporting.<sup>7</sup></b>

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<sup>1</sup> Complete if the report is submitted to the Controller more than 24 hours after the breach was discovered.

**Certificate of return/destruction of data by the Processor/Subcontractor.**

- 1. Date of operation:.....
- 2. Personal data entrusted under agreement ..... of ..... has been returned to the Controller/ destroyed in whole/in the part concerning.....
- 3. Type of storage medium .....
- 4. Method of return/destruction:.....
- 5. Certificate drawn up by:

I hereby confirm with my signature that the information provided above is true

.....  
Date and signature of the Processor/Subcontractor

**Certificate of transfer of Personal Data by the Processor/Subcontractor to a Shredding Service Provider.**

- 1. Provider’s details .....
- 2. Date of transfer .....
- 3. Personal data entrusted under agreement ..... of ..... in whole/in the part concerning.....
- 4. Type of storage medium .....
- 5. Method of destruction: .....
- 6. Certificate drawn up by:

I hereby confirm with my signature that the information provided above is true

Date and signature of the person receiving personal data (Shredding Service Provider’s representative)

.....

Date and signature of the person handing over personal data (Processor’s representative)

## Appendix 4

**Contact details of the Parties**

All correspondence regarding matters related to the Agreement shall be exchanged with the Controller using the following contact details:

**Inspektor Ochrony Danych ORLEN S.A. S.A. (Data Protection Officer), ul. Chemików 7, 09-411 Płock, Poland**

Phone: +48 (24) 256 00 00,

email: [daneosobowe@orlen.pl](mailto:daneosobowe@orlen.pl).

All correspondence regarding matters related to the Agreement shall be exchanged with the Processor using the following contact details:

....., ul. ...., .....

Phone: .....

email: [.....](mailto:.....)

The Parties agree that email is the preferred communication channel to handle current matters.

**1) Details of Parties' representatives:**

**The following persons shall represent the Processor in dealings with the Controller regarding the Agreement:**

.....

email:

**The following persons shall represent the Controller in dealings with the Processor regarding the Agreement:**

Data Protection Officer<sup>8</sup>

email: [daneosobowe@orlen.pl](mailto:daneosobowe@orlen.pl)

**2) Details for reporting violations to the Controller:**

email: [daneosobowe@orlen.pl](mailto:daneosobowe@orlen.pl)

## Appendix 5

## Technical and organisational measures

### MINIMUM FORMAL AND TECHNICAL REQUIREMENTS FOR PERSONAL DATA SECURITY

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<sup>8</sup> Details regarding ORLEN S.A. S.A.'s DPO are available in the Contact section of [www.orlen.pl](http://www.orlen.pl)

**Formal requirements:**

1. The Contractor undertakes to perform the Agreement in compliance with ICT security rules.
2. The Contractor shall have in place an ICT security policy that is, without limitation, expressly applicable to the services provided as part of performance of the Agreement.
3. The Contractor shall ensure that the ICT infrastructure and applications used in performing the Agreement are managed in accordance with the recognised best practice in ICT security.
4. The Contractor undertakes to immediately notify the Principal of any ICT security breaches or incidents directly affecting the entrusted personal data.
5. Where the performance of the Agreement involves a risk of compromising data security attributes (data confidentiality, integrity and availability), the Contractor shall notify the Principal of such risk prior to commencing any work and shall enable the Principal to take measures designed to ensure that those attributes are preserved.
6. The Contractor shall be responsible for the consequences of any acts of its employees or third parties it has engaged to perform any activities for the Principal to the same extent as for its own acts.

**Technical requirements (for the Contractor's ICT systems):**

1. The Contractor agrees to provide access control in ICT systems.
2. ICT systems may only be logged into using an individual user login and password or other means ensuring accountability.
3. The Contractor shall have operational mechanisms in place for anonymisation, pseudonymisation and erasure of data at the data owner's request.
4. The Contractor shall have safeguards in place for ICT systems against malware, including data theft or destruction.
5. The Contractor agrees to use encryption mechanisms, including but not limited to: computers, flash drives, smartphones, and during data transmission.
6. The Contractor shall ensure security of remote access to ICT systems by using secure and encrypted VPN connections.
7. The Contractor shall manage vulnerabilities in ICT systems, including but not limited to: infrastructure and application cyber security testing, update management procedures.
8. The Contractor shall manage business continuity through, without limitation:
  - 8.1. Creating backup copies and backup and recovery testing.
  - 8.2. Mechanisms ensuring high system availability.
9. The Contractor shall have systems in place to monitor the cyber security of ICT networks and infrastructure.
10. To the extent covered by the scope of the Agreement, the Contractor shall provide the following functions in ICT systems:
  - 10.1. for each person whose personal data is processed in an ICT system, the system shall ensure that all collected data of a data subject is exported in a structured, commonly used machine-readable format;
  - 10.2. The system shall enable recording information about the data subject's consent to personal data processing;

10.3. For each person whose personal data is processed, the ICT system shall ensure that the following are recorded:

- 10.3.1. the date when the data was first entered into the system;
- 10.3.2. ID of the user entering the data;
- 10.3.3. records of any data modifications.

The information referred to above shall be recorded automatically after the user approves the data entry operation in the system.

10.4. Where access to personal data is provided, the system shall ensure that the following are recorded:

- 10.4.1. information about the recipients;
- 10.4.2. date of access;
- 10.4.3. scope of the data accessed.