

RWE General Terms and Conditions for Purchase of Goods and Services (USA) – 05/2025

1. Contract and Term

- 1.1 Any **RWE group company** may be named in and raise a **written** purchase order (**order**). An **order** is an **offer** by **RWE** to purchase the goods, services and/or deliverables as described in the **order** (**goods, services, goods/services**) from the **Contractor** named in the **order** (**Contractor**). **Orders** for **goods/services** placed by **RWE** are subject to these conditions (together the general terms and conditions (**GTC**)) and severally a **condition** (**condition**). **RWE** is the company stated in an **order** (**RWE**); **RWE group** are all the affiliated companies of RWE AG as described by of § 15 German Stock Corporation Act (AktG) (**RWE Group**); and an **RWE Group company** means any of them (**RWE Group company**).
- 1.2 The **Contractor** **accepts** **RWE's** offer either by expressly giving **RWE** a notice of **acceptance** in **writing** (including returning a signed **order**) or impliedly by fulfilling the **order** (in whole or part) in each case within fourteen (14) calendar days of the date of the **order** (**accept, acceptance**).
- 1.3 On and with effect from **acceptance** (**start date**), a **contract** is made between the **Contractor** and **RWE** which is comprised of and is subject to the contents of the **order** and these **GTC** (**contract**).
- 1.4 The **contract** begins on the **start date** and ends when all obligations under the **contract** have been fulfilled (**term**).
- 1.5 Terms and conditions of the **Contractor**; any acknowledgement from the **Contractor** of or correspondence relating to an **order**; any of the **Contractor's** quotes or proposals; **order acceptance** or terms and conditions set out in any of them; and any other deviation from **RWE's** **GTC** are expressly disclaimed and excluded from this **contract**.
- 1.6 The **order** prevails over any of the **conditions**.

2. Interpretation

- 2.1. In these **GTC**:
 - (a) Writing (**writing**) includes an SAP order signed with electronic signature or a simple SAP order without electronic signature.
 - (b) a day is a calendar day unless described as a business day. A business day is any day excluding: Saturdays, Sundays and any other day when banks are required or permitted to be closed (including federal holidays) in the United States.
- 2.2. A reference to **applicable law** means all law, statute or regulation in force which relate to this **contract**, the **goods/services**, **RWE's** site and the **delivery place** (including those relating to health and safety, competition, anti-trust, anti-money laundering, anti-corruption/anti-bribery, foreign trade, export control and sanction laws) (**applicable law**).

3. Non-Exclusivity/Group Benefit

- 3.1. The purchase of **goods/services** by **RWE** pursuant to this **contract** is on a non-exclusive basis and may be for the benefit of any **RWE group company**.

4. Contractor Obligations

- 4.1. The **Contractor** shall comply with:
 - (a) **RWE's** procurement policy (including sustainability) and other relevant policies

(including health and safety and security) of **RWE**;

- (b) **RWE's** reasonable directions;
- (c) local procedures and processes of **RWE** if the **Contractor** accesses **RWE's** property; and
- (d) The **Contractor** shall comply with all relevant health and safety laws and regulations, and the health and safety requirements established by **RWE** at the project site.

- 4.2. The **Contractor** shall deliver such **goods** as are necessary for the proper provision of the **services** and provides such **services** as are necessary for the proper supply and use of the **goods**.

5. Delivery

- 5.1. Unless otherwise agreed in the **order**, the **Contractor** is responsible (at its sole cost and risk including the cost to insure) for all transport, loading, collection, handling, storage, packing, unloading, unpacking, reception at site and supplying proof of **delivery** in each case as is reasonably necessary for the supply of the **goods/services** (**deliver, delivery**) and obtains and pays for all import permits or licences required for any part of the **goods** or the **Contractor's** equipment delivered duty paid (as defined in the Incoterms 2020).
- 5.2. Any signature from **RWE** on any delivery note or other documentation presented in connection with the **delivery** of the **goods/services** is evidence of receipt only and is not evidence that the correct quantity of **goods** has been **delivered** or that **goods/services delivered** otherwise comply with the requirements of this **contract**.
- 5.3. The **Contractor** shall comply with any relevant safety laws and regulations, policy and procedures and **RWE's** reasonable instructions.

6. Delivery Date

- 6.1. Time is of the essence in the **delivery** of **goods** and performance of **services**. Without prejudice to **RWE's** rights, if the **Contractor** considers that it cannot **deliver** the **goods/services** on the **delivery date**, the **Contractor** must immediately notify **RWE** of the delay as well as the circumstances causing the delay.

7. Standards/Quality

- 7.1. The **Contractor** shall **deliver** good and marketable title, free from encumbrances on all **goods/services**, and is knowledgeable and experienced in proving the **goods/services** and fully licensed and authorized to perform **services** at the project site in compliance with all applicable codes and **applicable law**.
- 7.2. **Contractor** is an independent contractor and will perform **services** as an independent contractor and as such shall have and maintain complete control over and be responsible for all of its personnel and operations. Neither **Contractor** nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or subcontractor of **RWE**. Neither this **GTC** nor any **order** shall be deemed to create any form of business organization between **Contractor** and/or **RWE** nor is either granted any right or authority to assume or create any obligation or responsibility on behalf of the other.
- 7.3. The **goods/services** shall:
 - (a) comply with all relevant **applicable law**;
 - (b) adhere to the technical, functional and performance specifications, descriptions or quality standards set out in the **order** or any

- other document supplied to the **Contractor** by **RWE**;
- (c) be of satisfactory quality, fit for the purpose generally ascribed to such **goods/services** and also for the purpose specified by **RWE** and free from any defects;
 - (d) be provided with all due skill in a manner consistent with the standards of care, diligence and skill ordinarily exercised by other professionals under similar circumstances in accordance with customarily accepted sound professional practices;
 - (e) not infringe **RWE's** intellectual property rights (including copyright) (**IPR**) or that of any third party; and
 - (f) correspond to any description or previous sample supplied by the **Contractor**.
- 7.4. The **goods** shall be:
- (a) **delivered** in the quantity as set out in the **order**;
 - (b) free from defects in materials and workmanship, fit for their intended purpose, and comply with all relevant statutory and regulatory requirements;
 - (c) new and free from any lien, charge or other encumbrance; and
 - (d) fit for use in conjunction with the **services** (if applicable) and for any other purpose which is indicated in the **order** or otherwise made known to the **Contractor** (in each case either expressly or by implication).
- 7.5. The **Contractor** shall pass on the benefit of all manufacturers' and any other relevant third-party warranties and guarantees to **RWE** in relation to the **goods/services**.
- 8. Inspection and Testing**
- 8.1. The **Contractor** shall allow **RWE** to inspect and test the **goods/services** (and if necessary, re-test and re-inspect) where and when **RWE** deems it is appropriate to do so or as otherwise required by **applicable law**. **RWE** may also include testing and inspection requirements in its **order**.
- 8.2. Where **RWE** tests or inspects or attends the **Contractor's** tests or inspections, the **Contractor** shall co-operate with **RWE** and give **RWE** access to all relevant places, documents and any other information. If a fault is found, **RWE** may recover any of its costs from the **Contractor** to re-inspect and/or re-test. If, to resolve a dispute or otherwise, **RWE** arranges an independent person to test, inspect, re-test or re-inspect the **goods/services**, then the **Contractor** and **RWE** are each bound by the outcome of such independent test or inspection. Any test or inspection that **RWE** attends or arranges is not an admission or an acceptance by **RWE** that the **goods/services** comply with this **contract**.
- 9. Title and Risk**
- 9.1. Title to **goods** passes to **RWE** on the earlier of payment or **delivery** to the **delivery place**.
- 9.2. Where title in the **goods** passes to **RWE** and where the **goods** have not yet been **delivered** to **RWE**, the **Contractor** shall:
- (a) keep the **goods** separate from any similar **goods** owned by the **Contractor** or any third party;
 - (b) properly store, protect and identify the **goods** as **RWE's** property; and
 - (c) **deliver** the **goods** to **RWE** on request and if the **Contractor** does not, **RWE** may enter any of the **Contractor's** premises or those of the

- Contractor's** suppliers or of any other third party where **RWE** reasonably considers that the **goods** are stored and repossess them.
- 9.3. Whether or not title has passed, on **delivery**, **RWE** may install or otherwise use the **goods** in the ordinary course of **RWE's** business.
- 9.4. Risk in the **goods** only passes to **RWE** on safe and complete **delivery** to the **delivery place**.
- 9.5. Where, in the provision of the **services** such as dismantling or repairing, materials (including asset components) are created or identified and the removal of them is not part of the **services** then title in them remains with **RWE** and risk in them remains with the **Contractor**.
- 10. Price, Invoicing and Payment**
- 10.1. In consideration for and upon the successful **delivery** of the **goods/services** **RWE** pays the price in the fixed price amounts, at the rate and/or at the frequency set out in the **order (fee)**.
- 10.2. The **fee** is inclusive of all other costs, taxes, and fees and or duties including freight, insurance and other **delivery** costs. The **Contractor** takes into account all materials and activities required to supply the **goods/services**, all its costs and expenses, and all its obligations under this **contract** in setting the **fee**.
- 10.3. The **Contractor's** invoices must show date, invoice number, the **Contractor's** name and address, order number, and the **fees**. The **Contractor** supplies all other information or supporting documentation that **RWE** may reasonably require with the invoice or otherwise upon request.
- 10.4. **RWE** pays invoices within thirty (30) days from the date of receipt. If **RWE** disputes an invoice, **RWE** may withhold payment of the disputed amount until resolution of the dispute.
- 10.5. **RWE** may at any time set off any of the **Contractor's** liability to **RWE** or to any **RWE group company** against any liability that **RWE** or any **RWE group company** may owe to the **Contractor** in each case in relation to this **contract** and **RWE** informs the **Contractor** if **RWE** makes any such set off.
- 10.6. Any payment does not affect any rights or obligations of either the **Contractor** or **RWE** and does not mean that **RWE** accepts that the **Contractor** has fully complied with its obligations under this **contract**.
- 11. Change and Variation**
- 11.1. **RWE** may, in writing, request a change to these **GTC** and/or an **order** (including a **delivery date** or a **delivery place**) in each case at any time prior to the **delivery date**.
- 11.2. If any **RWE** requested changes cause a demonstrable increase or decrease in the cost or schedule of any **work** under an **order**, an equitable adjustment shall be made in writing to the order price and/or delivery schedule as applicable.
- 12. Warranty**
- 12.1. The **Contractor** warrants and guarantees that **goods/services** are and will remain compliant with this **contract** for a minimum of twenty-four months from **delivery** or any longer period if set out in the **order (warranty period)**.
- 12.2. Where any **goods/services** are repaired or replaced, the **warranty period** commences again on **delivery** of any repaired or replaced **goods/services**.

13. Default and Remedy

13.1. If the **Contractor** does not comply with any **applicable law** or any of these **GTC** (including if **goods/services** are not **delivered** or completed by the **delivery date**) or if during the **warranty period**, **RWE** finds a defect in design, materials or workmanship (together or separately a **default**), then the **Contractor** is liable for the **loss** suffered by **RWE** as a result of that **default**.

13.2. After notifying the **Contractor** of the **default**, **RWE** may, at its option and without prejudice to any other rights and remedies in this **contract** or at law, on written notice to the **Contractor**:

- (a) suspend **delivery** of **goods/services** for any period reasonable in the circumstances;
- (b) ask the **Contractor**, at **RWE's** discretion, to replace/rectify the **default** within a reasonable time period required by **RWE** where possible; and/or
- (c) if **RWE** does not think the **Contractor** will be able to replace/rectify the **default** or if the **Contractor** has tried to do so and failed, **RWE** may itself replace/rectify the **default** or ask a third party to do so; or
- (d) if **RWE** does not consider that it is possible or appropriate for the **Contractor** to replace/rectify the **default** or if **RWE** asks the **Contractor** to do so and the **Contractor** fails, reject the **goods/services** (in whole or part) and/or rescind or terminate the **contract** (in whole or part); or
- (e) **accept** the **default** in consideration for a reduced **fee** appropriate to take account of the nature and extent of the **default**.

13.3. The **Contractor** pays to **RWE** the value of:

- (a) the **goods/services** paid by **RWE** for any cancelled/rejected **goods/services** or if **RWE** terminates or rescinds the **contract**; plus
- (b) any direct cost incurred by **RWE** in relation to the **default** including any additional cost to **RWE** to replace or rectify the **Contractor's** delay or failure.

13.4. Where **RWE** gives the **Contractor** notice that the **Contractor** is in **default**, **RWE** may, at its discretion and if to do so mitigates **RWE's** loss and in any event without affecting **RWE's** rights, use and/or receive the benefit of any **goods/services** that the **Contractor** may already have **delivered**, whether they are in **default** or not, in the usual course of **RWE's** business until the **Contractor** replaces and/or rectifies the **default**.

13.5. Where the **Contractor's default** causes **loss** to any third party, then the **Contractor** indemnifies and defends **RWE** for any **loss** incurred and/or suffered by or awarded against **RWE** by such third party and no maximum liability cap applies to this indemnity.

14. Insurance

14.1. Without prejudice to any rights or obligations under the **contract** or at law, the **Contractor** shall maintain insurance in full force and effect, at no charge to **RWE**, for the **term** and for the period of time over which the **Contractor** has continuing liabilities under this **contract** or applicable law, such insurance policies as are appropriate and adequate for its liabilities under the **contract** but in the least, the following minimums:

- (a) Workers' Compensation Insurance in accordance with statutory requirements, including coverage for employers' liability with a limit of not less than \$1,000,000 and such other forms of insurance which the **Contractor** is required by **applicable law**.

(b) Commercial General Liability Insurance, written on "occurrence" policy forms, including coverage for premises / operations, products / completed operations, broad form property damage, blanket contractual liability, and personal injury, with no exclusions for explosion, collapse and underground perils, or fire, with primary coverage limits of no less than \$1,000,000 any one occurrence for injuries or death to one or more persons or damage to property including products and completed operations and an annual aggregate limit of not less than \$2,000,000, except \$1,000,000 annual aggregate for products/completed operations. The commercial general liability policy shall also insure punitive damages to the extent commercially available and allowed by **applicable law**;

(c) Automobile Liability Insurance including coverage for owned, leased, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. To the extent that the **Contractor** does not own any automobiles, contingent liability for hired, leased and non-owned automobiles may be obtained through endorsement to the general liability policy required in **condition 14.1(a)** above.

14.2. Deductibles applying under any insurance are for the **Contractor's** account where such deductibles relate to loss for which the **Contractor** is responsible under the **contract**.

14.3. Where the **Contractor** receives insurance proceeds from the **Contractor's** insurers relating to an insured event under this **contract**, the **Contractor** pays to **RWE** such sums as are claimed from and/or are due and payable to **RWE** from such insurance proceeds and/or uses them solely to replace/rectify any associated **default**.

15. Exclusions and Limits of Liability

15.1. Neither the **Contractor** nor **RWE** excludes or limits liability for:

- (a) fraud, willful misconduct, or gross negligence; or
- (b) death or personal injury or third-party property damage caused by negligence; or
- (c) indemnification for third party **IPR** claims.

15.2. Neither the **Contractor** nor **RWE** is liable by reason of any **default** for any indirect or consequential loss arising out of or in connection with this **contract**. Indirect and consequential loss includes but is not limited to: economic loss such as loss of indirect profit, loss of revenue, loss of goodwill, loss of production or loss of anticipated savings. This condition 15.2 does not apply in respect of any liquidated damages which are payable under this **contract**.

15.3. Except for **condition 16.1**, any liability of **RWE** to the **Contractor** or the **Contractor** to **RWE** in contract, tort (including negligence) or breach of statutory duty, misrepresentation or otherwise arising out of or in connection with this **contract** in each case is limited in the aggregate to a sum equal to double the sum of the **fees**. **RWE's** cap on liability to the **Contractor** excludes **RWE's** liability to pay the **Contractor fees** which are or become due and payable for **goods/services** that the **Contractor** delivers under the **contract**. The **Contractor's** cap

on liability to **RWE** excludes the cost to the **Contractor** to fix a **default** in the **goods/services**.

15.4. Each cap on liability excludes:

- (a) any debt or liability where a separate maximum liability is stated in this **contract**; and
- (b) sums recoverable and/or recovered from insurers in relation to the insurance that is required to be taken out under this **contract** subject to a maximum of the value of minimum level of insurance which this **contract** requires.

15.5. The **Contractor** and **RWE** each has an obligation to take such steps as it is reasonably practicable to do so to mitigate any loss, costs or expense which the **Contractor** or **RWE** may suffer or incur as a result of a **default** and nothing in this **condition** limits or excludes this obligation.

16. Termination

16.1. **RWE** may terminate this **contract** at will at any time by giving **written** notice to the **Contractor**.

16.2. Either the **Contractor** or **RWE** may terminate the **contract** immediately by notice if:

- (a) the other is in material breach of any of its obligations under the **contract** and the breach is not capable of remedy; or
- (b) the other is in material breach of any of its obligations and fails to remedy the breach (if capable of remedy) within fourteen (14) days of a **written** notice requesting such remedy (a breach is considered capable of remedy if time is not of the essence in performance of the obligation and if the person in default can comply with the obligation within the thirty (30) day period given to comply); or
- (c) the other becomes insolvent, bankrupt, is in liquidation, administration or receivership, makes an arrangement with its creditors, is unable to pay its debts or suffers possession or sale by an encumbrancer of any of its assets or is subject to orders or events leading to any of the foregoing or suffers any analogous event; or
- (d) ceases or threatens to cease to trade or ceases to comply or threatens to cease to comply with its obligations under this **contract** in each case for thirty (30) consecutive days; or
- (e) demonstrably commits an unlawful restraint of competition or any other breach of anti-trust or anti-competitive **applicable law**; or
- (f) otherwise a right to terminate accrues pursuant to any **condition** of this **contract** or at law.

16.3. Where **RWE** may terminate the **contract**, **RWE** may instead terminate the **contract** in respect of part only of the **goods/services** and, in which case, the **contract** continues in respect of the **delivery** of the remaining **goods/services**.

17. Consequences of Termination

17.1. Termination or expiry of the **contract** will not affect any rights or liabilities accrued as at the date of expiry or earlier termination and will not prejudice other rights or remedies (under these **GTC** or otherwise).

17.2. On termination or expiry, the **Contractor** shall:

- (a) immediately **deliver** to **RWE** any **goods/services** that **RWE** has paid for;
- (b) discontinue the provision of further **goods/services**; and

- (c) promptly return or provide to **RWE** any and all of **RWE's** or **RWE group's** confidential information, personal data and/or property including **IPR** then in the **Contractor's** or the **Contractor's staff's** possession or control.

17.3. On any termination or expiry and subject to **condition 17.4**, **RWE** pays the **Contractor** the **fees** due and payable pro rata for any **deliverables delivered** (and not cancelled, disputed, or rejected) and not yet paid for as at the date of expiry or termination.

17.4. On any early termination **RWE** has no liability to the **Contractor** to pay the **Contractor** for any other sums including any indirect or consequential loss arising out of or in connection with such termination except that if **RWE** terminates at will or if the **Contractor** terminates because **RWE** is in material breach or is insolvent then **RWE** pays the **Contractor** for any cost or expense the **Contractor** is already contractually committed to and directly incurred by the **Contractor** on the reasonable expectation that the **contract** does not terminate prior to the expiry of its **term** provided that the **Contractor** provides on request documentary evidence of such cost and expense and provided further that **RWE** shall not pay the **Contractor** any sum that exceeds the sum equivalent to 90% of the **fees** for the balance of the **term** and which would have been due and payable had the **contract** not terminated early.

17.5. Where **RWE** terminates for the **Contractor's default**, **RWE** may recover from the **Contractor**, to the extent not already recovered, the sums set out at **condition 13 (Default and Remedy)**.

18. Contractor's Staff

18.1. The **Contractor** shall indemnify and defend **RWE** and **RWE group** on a full indemnity basis against any loss, liability, damage, expense, settlement, claim, fine, demand, proceeding, judgment, charge, fine, penalty, demand, or cost (including legal and expert fees and costs) (**loss**) suffered or incurred by **RWE** (and/or any **RWE group company**) as a result of any failure by the **Contractor** or its **staff** to comply with the **Contractor's** obligations under these **GTC**.

18.2. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor default**.

19. RWE Materials Ownership

19.1. All information, specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data or other proprietary information or **IPR** (whether **written**, oral or otherwise and including personal data) (**RWE materials**) obtained by the **Contractor** or made available to the **Contractor** by **RWE** or on **RWE's** behalf remains **RWE's** property and does not become the **Contractor's** property.

19.2. The **Contractor** shall:

- (a) properly store and protect them and identify **RWE materials** as **RWE's** property; and, either
- (b) deliver **RWE materials** to **RWE** upon request and if the **Contractor** does not, **RWE** may enter any of the **Contractor's** premises or those of the **Contractor's** suppliers or of any other third party where **RWE** reasonably considers that **RWE materials** are stored and repossess them, or
- (c) upon request by **RWE** or upon the termination of these **GTC** without request by **RWE**, destroy them.

20. Intellectual Property Rights

- 20.1. All the **Contractor's** intellectual property rights (**IPR**) existing on or prior to the **start date** remain vested in the **Contractor** and all **RWE's IPR** existing on or prior to the **start date** remain vested in **RWE**.
- 20.2. The **Contractor** hereby grants to **RWE** a perpetual, transferable, irrevocable, non-exclusive, royalty free, worldwide licence to use any of the pre-existing **Contractor's IPR** which are necessary for **RWE** and any **RWE group company** to derive the benefit of the **goods/services** and this **contract**.
- 20.3. The **Contractor** hereby acknowledges and agrees that (from the **start date** or, for **IPR** not existing at the **start date**, immediately upon the date on which such **IPR** comes into existence) **RWE** owns and the **Contractor** hereby assigns with full title guarantee all **IPR** (including copyright), free from encumbrances, in any **goods/services** created or developed by the **Contractor** or by others on the **Contractor's** behalf in relation to this **contract** or otherwise resulting from the **delivery** of the **goods/services** (including new or bespoke computer code and including any new versions (e.g. updates, upgrades, releases, patches and bugfixes)).
- 20.4. Where any software is created or developed for **RWE**, **RWE** solely owns and the **Contractor** supplies to **RWE** the source code for software created or developed.
- 20.5. Any rights granted by **RWE** to the **Contractor** or the **Contractor's staff** to use **RWE's IPR** cease on expiry or earlier termination of the **term**.
- 20.6. The **Contractor** shall defend and indemnify **RWE** and the **RWE group** from and against any **loss** incurred by and/or awarded against **RWE** and/or any **RWE group company** in each case as a result of or in connection with:
- a breach by the **Contractor** or the **Contractor's staff** of **RWE's IPR**; and
 - any claim or action that **goods/services** (in whole or part) infringe the **IPR** or any other rights of a third party.
- 20.7. The **Contractor** and **RWE** each notify the other of any alleged or actual third party **IPR** claim as soon as is reasonably practicable upon becoming aware of any such claim.
- 20.8. Neither the **Contractor** nor **RWE** make any admission as to liability or agree to any settlement or compromise of any third party **IPR** claim without the prior **written** consent of the other, such consent not to be unreasonably withheld, conditioned or delayed.
- 20.9. The **Contractor** may, on written request to **RWE** and at the **Contractor's** cost and expense and on providing adequate financial security to **RWE** for any debt or liability under the indemnity, have the conduct of or settle all negotiations and litigation arising from any third party **IPR** claim and **RWE** shall, at the **Contractor's** request and expense, give the **Contractor** reasonable assistance in connection with those negotiations and litigation.
- 20.10. If any third party **IPR** claim is made or, in the **Contractor's** opinion, is likely to be made against the **Contractor** or **RWE** then without affecting any rights or obligations the **Contractor** shall promptly and at its own expense either:
- procure for **RWE** and/or **RWE group** the right to continue using the **goods/services** or **IPR** (or any part of them) in accordance with this **contract**; or
 - modify or replace the infringing **goods/services** (or any part of them) so as to avoid

the infringement or alleged infringement and as if they were defective and so as to comply with the **condition 13 (Default and Remedy)**; or

- pay to **RWE** all sums as set out at **condition 13 (Default and Remedy)** as if the **goods/services** were defective.

20.11. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor default**.

21. Confidentiality

- 21.1. The **order**, these **GTC**, any **RWE materials** or any other technical or commercial information of a confidential nature (either marked as such or which, by its nature, can reasonably be considered to be confidential) which the **Contractor** receives from **RWE** (or from a person acting on **RWE's** behalf) either expressly or impliedly or otherwise gleaned by the **Contractor** (including any information relating to **RWE's** business or financial or other affairs or those of a member of **RWE group** or **RWE's** or their customers or suppliers and including any personal data or information relating to information systems and/or networks) is strictly confidential (**confidential information**). The **Contractor** shall not use **confidential information** except as is necessary in the performance of the **Contractor's** obligations under this **contract** and shall not disclose **confidential information** (in whole or in part) to any other person without **RWE's** prior **written** consent.
- 21.2. The **Contractor** shall keep **RWE confidential information** confidential and safe and maintain and apply appropriate technical and organizational measures, processes and procedures to safeguard against any unauthorized access, **loss**, destruction, theft, use or disclosure of personal data and all **confidential information**. The **Contractor** shall not retain the **confidential information** longer than is required for the performance of the **Contractor's** obligations under this **contract** or as otherwise may be required or permitted by law.
- 21.3. The **Contractor** may disclose confidential information if and to the extent that:
- the **Contractor** considers it is necessary to disclose confidential information to the **Contractor's staff** or group companies for the purpose only of performing the **Contractor's** obligations under this **contract** or professional advisers, auditors and bankers, in each case provided that the **Contractor** places similar conditions of confidentiality on those persons;
 - the **Contractor** is required to do so by law or any securities exchange or regulatory or governmental body to which the **Contractor** is subject, wherever situated provided that the **Contractor** notifies **RWE** in advance in writing as soon as it is reasonably practicable and legally able to do so;
 - it is or comes into the public domain through no fault of the **Contractor**; or
 - it was previously disclosed to the **Contractor** by others without any obligation of confidence.
- 21.4. To the extent permitted by law, the **Contractor** shall promptly delete, destroy or return **confidential information** and any data stored on the **Contractor's** infrastructure promptly to **RWE** (including all copies) at **RWE's** request and on request, certify any such deletion, destruction or return.

- 21.5. The **Contractor** shall not make any announcement or publicity statement relating to **RWE**, the **RWE group**, the **contract** or any part of it or its subject matter without **RWE's** prior **written** approval (except as required by **applicable law** or by any legal or regulatory authority in which case the **Contractor** will give **RWE** as much advance warning of this as it is reasonably practicable to do so).
- 21.6. The **Contractor** shall defend and indemnify **RWE** and the **RWE group** from and against any **loss**, incurred by **RWE** and/or any **RWE group company** as a result of or in connection with a breach by the **Contractor** or the **Contractor's staff** of this **condition**.
- 21.7. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor default**.
- 21.8. The obligations in this **condition** apply during the **term** as well as for a period of three (3) years after the expiration or earlier termination of this **contract**.

22. Data Protection

- 22.1. **RWE Data** means data acquired directly or indirectly from or created about **RWE** and data generated, collected, or developed in connection with Contractor's provision of the Services. **Data protection laws** means, as applicable, all current or future U.S. Federal, State, and local laws, including any amendments or regulations thereto, concerning the processing, privacy, access, exchange or security of **personal information**, and all such laws governing privacy, data security, data or security breach notification, including state consumer protection laws, state data breach notification laws, the California Consumer Privacy Act of 2018 (CCPA), the Virginia Consumer Data Protection Act, the Colorado Privacy Act, the Utah Consumer Privacy Act, Connecticut Public Act No. 22-15, the Massachusetts Data Security Regulation (201 CMR 17.00 et seq.), the New York DFS Cybersecurity Regulation (23 NYCRR 500), the New York SHIELD Act (N.Y. Gen. Bus. Law § 899-aa & § 899-bb), Nevada Revised Statutes Chapter 603A. **Personal information** means **RWE Data** that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or is otherwise subject to or protected by any **data protection laws**.
- 22.2. **Contractor** shall process **personal information** in accordance with the terms and conditions of this **contract** and applicable **data protection laws** as necessary for the provision of the **goods, services, goods/services** under the **order**, and specifically agrees to: (i) process **personal information** only on behalf of **RWE** and pursuant to **RWE's** instructions for the specific business purpose of performing the **order** pursuant to the **contract**; (ii) not retain, use, or disclose **personal information** for any other purpose other than for the specific business purpose of performing the **order** pursuant to the **contract**; and (iii) not retain, use or disclose **personal information** outside the direct business relationship between **RWE** and **Contractor**.
- 22.3. **Contractor** shall ensure that each of its employees, agents, contractors and each person who processes **personal information** are subject to a duty of confidentiality as appropriate to maintain the levels of security and privacy protection required under this **contract** and applicable **data protection laws**, and **Contractor**

shall limit access to **personal information** to those individuals who need to know such information for purposes of performance pursuant to the **order**.

- 22.4. In the event **Contractor** receives a request from an individual in connection with exercising their rights under applicable **data protection law** with respect to **personal information** (e.g., a data deletion request, a data access request) (**consumer request**), **Contractor** shall promptly, within three (3) business days of receiving the **consumer request**, notify **RWE** in writing. **Contractor** agrees to assist and take appropriate measures to assist **RWE** with all **consumer requests** which may be received from any individual in relation to any **personal information**.
- 22.5. The **parties** agree that, as soon as the **personal information** is no longer needed for the agreed upon purpose in connection with the **order**, **Contractor** will promptly and securely destroy all **personal information** (including all copies thereof) unless otherwise required by law.

23. Information Security and Critical Infrastructure

- 23.1. If applicable to the **order**, **RWE** may ask the **Contractor** from time to time to answer questionnaires issued by or on behalf of **RWE**, participate in interviews, and provide evidence in each case relating to: information security, critical infrastructure protection and data protection (such as the RWE Prequalification Information Security IT/OT (PIO) or the RWE Data Protection Questionnaire (DPQ) and/or where relevant, the Data Protection Agreement (DPA)). The **Contractor** warrants that its answers are and shall remain true and accurate. Any breach of this warranty or the provision of any false information by the **Contractor** is a material breach of the **contract** and **RWE** may terminate for **Contractor's default**.
- 23.2. The **Contractor** shall not access nor permit anyone to access **RWE's** computing systems without **RWE's** express written authorization.
- 23.3. Where applicable and authorized by **RWE** in advance and in writing, **RWE** may provide the **Contractor** with access to **RWE's** computing systems.
- 23.4. Where **RWE** provides such access the **Contractor** employs anti-virus/anti-malware procedures, physical security measures, and complies with IT/OT policies and procedures that align with **RWE's** security requirements- including the Cybersecurity Standard for Suppliers which can be downloaded at <https://www.rwe.com/en/products-and-services/supplier-portal/general-conditions/terms-of-delivery-and-service/>.
- 23.5. The **Contractor** may use any access granted to it only to **deliver** the **goods/services** and any such access must be through **RWE's** agreed security gateways and/or firewalls.
- 23.6. **RWE** may terminate the **Contractor's** access to **RWE's** systems at any time without notice to the **Contractor**.
- 23.7. The **Contractor** shall immediately notify **RWE** (csirt@rwe.com) of and provide assistance with any suspected, actual or threatened security incidents or security breaches, unusual or malicious activity or events and/or vulnerabilities of which the **Contractor** becomes aware that may affect **RWE's** systems in any way or lead to unauthorised access to **RWE's** systems or impacts the provision of **goods/services** to **RWE**. The **Contractor** implements and notifies **RWE** of recovery measures to minimise the impact on **RWE** systems and restore compliance.

23.8. Any breach of this **condition** is a material breach and **RWE** may terminate any **contract** with the **Contractor** for **Contractor default**.

24. Marketing and Advertising

24.1. The **Contractor** may not, without **RWE's** prior written consent use:

- (a) any information concerning this **contract**; or
- (b) photographs of **RWE's** sites, facilities or personnel,

in each case for reference or marketing purposes.

24.2. The **Contractor** may not use **RWE's** trade names, trademarks or logos or those of any **RWE group company** either individually or in combination with the **Contractor's** trade names or trade names of others.

25. Code of Conduct

25.1. **RWE** and **RWE group** are committed to the **RWE Code of Conduct (RWE Code of Conduct)** set out at: <https://www.group.rwe/en/the-group/compliance/code-of-conduct/>.

25.2. The **Contractor** hereby accepts the Principles of Conduct contained in the **RWE Code of Conduct** as a basis for cooperation between the **Contractor** and **RWE**.

25.3. **RWE** also expects the **Contractor** to commit to support and implement (and that the **Contractor** will procure that its **staff** support and implement) the principles on human rights, labor relations, environmental protection and combating of corruption which are established within the framework of the United Nations Global Compact Initiative (www.unglobalcompact.org).

26. Human Rights

26.1. **RWE** and **RWE Group** are committed to its corporate policy to protect human rights, employment rights and the environment throughout its own business activities and also within its supply chain including: protecting employees from being exploited, providing decent working conditions; occupational health and safety; and adherence to international human rights standards (together or severally **human rights**).

26.2. **RWE** complies with **applicable law** in respect of these **human rights** (which includes but is not limited to complying with the German Supply Chain Due Diligence Act ("**LKSG**") and expects members of its supply chain to also commit to these principles and to comply with **applicable law**.

26.3. **RWE** refers to its Human Rights Appendix which applies within the **RWE Group** and can be consulted under <https://www.rwe.com/en/products-and-services/supplier-portal/general-conditions>.

26.4. **RWE** expects the **Contractor** to and the **Contractor** agrees to:

- (a) accept and comply with the principles and all obligations contained in the Human Rights Appendix in its own business and towards its own supply chain; and
- (b) operate and maintain throughout the **term** suitable policies and procedures to comply with and prevent the infringement of **human rights** by the **Contractor** or any of its **staff**.

26.5. In order to assess and determine the risk of violation of **human rights** associated with the supply chain, **RWE** may from time to time submit and the **Contractor** promptly replies to any **RWE** questionnaire regarding typical risk areas and preventive and remedial actions required within the business area of the **Contractor**.

26.6. The **Contractor** warrants that each of the statements set out in its responses to any such questionnaire are true and accurate and that the **Contractor** operates consistently with the **Human Rights Appendix**.

26.7. The **Contractor** further acknowledges that **RWE** is induced and enters into this **contract** in reliance upon these statements.

26.8. The **Contractor** promptly informs **RWE** of any incident, violation of or increased risk of potential violation of any **human rights** in its supply chain and **RWE** expressly reserves its rights to apply **conditions 33 (Records)** and **34 (Audit)** to assess the **Contractor's** compliance with this **condition** and the **Human Rights Appendix**.

27. Responsibilities as an Employer

27.1. The **Contractor** shall comply and procure that its **staff** comply with all **applicable law** relating to labor and employment law, including discrimination, equality, minimum wage, employee health, safety and welfare, and allows all **Contractor's staff** all rights under **applicable law**.

27.2. The **Contractor** warrants to **RWE** that all its **staff** performing the **Contractor's** obligations under the **contract** have all necessary rights to work and/or work permits.

27.3. Without prejudice to the general obligations in **conditions 27.1** and/or **27.2** or otherwise to comply with **applicable law** in relation to the **Contractor's staff**, the **Contractor** warrants that it:

- (a) has effective procedures to verify the age of employees at the time they are recruited;
- (b) keeps adequate proofs of checks regarding the age of employees, such as ID and personnel records;
- (c) complies with local legal requirements in relation to the minimum age of employees;
- (d) employs employees under the age of 18 only on non-hazardous or daytime work;
- (e) allows employees to leave the place of work after working hours;
- (f) treats all employees in a humane manner, including not subjecting a worker to physical or verbal abuse;
- (g) treats all employees in an acceptable manner in relation to their personal documents, including not requiring employees to lodge deposits or original documents such as ID papers and training certificates;
- (h) treats all employees in an appropriate manner over access to and from the place of work;
- (i) ensures that all employment is voluntary; and
- (j) procures compliance with any applicable working time laws or regulations.

27.4. The **Contractor** shall at all times during the **term** properly enforce such policies and procedures and carry out periodic monitoring of its compliance with such policies and procedures on an annual or more frequent basis.

27.5. In the event that the **Contractor** engages any third party **staff** in relation to any activity connected with this **contract** (including, without limitation, where the **Contractor** sub-contracts to any third party), the **Contractor** ensures that provisions equivalent to this **condition** are included within the **contract** or terms of engagement under which the **Contractor** so appoints that third party.

27.6. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor's fault**.

28. Modern Slavery

- 28.1. The **Contractor** shall comply with all **applicable laws** and regulations relating to anti-slavery and human trafficking, including but not limited to Modern Slavery Act 2015.
- 28.2. The **Contractor** supports and enacts the principles set out in the **RWE** Anti-slavery and human trafficking policy: <https://www.rwe.com/en/policy-statements> and has its own measures in place to ensure that its organization and supply chain is free from Modern Slavery and human trafficking.
- 28.3. The **Contractor** warrants, represents and undertakes that neither the **Contractor** nor any of the **Contractor's staff** has:
- (a) committed an offence under any applicable modern slavery laws or regulations;
 - (b) been notified that it is subject to an investigation relating to an alleged offence or prosecution under any applicable modern slavery laws or regulations; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under any applicable modern slavery laws or regulations.
- 28.4. The **Contractor** shall notify **RWE** immediately in **writing** if it becomes aware or has reason to believe that it or any of its **staff** or supply chain have breached or potentially breached any modern slavery associated obligations under this **contract** or at law, such notice to set out full details of the circumstances concerning the breach or potential breach of **Contractor** obligations.

29. Code of Conduct and Employer Responsibility Infringements

- 29.1. If the **Contractor** becomes aware of or has reason to believe that it or any of its **staff** have breached or have potentially breached any of the **Contractor's** responsibilities referred to at **condition 22** (*Data Protection*), **23** (*Information Security and Critical Infrastructure*), **25** (*Code of Conduct*), **26** (*Human Rights*), **27** (*Responsibilities as an Employer*) and/or **28** (*Modern Slavery*), then the **Contractor** shall notify **RWE** of the breach or potential breach and take steps to rectify the breach or potential breach.
- 29.2. **RWE** has the right to use appropriate measures to determine whether there is a breach of this **contract** including pursuant to **condition 34** (*Audit*). If such breach or a potential breach is so determined, **RWE** may without prejudice to any rights or obligations under this **contract**:
- (a) issue the **Contractor** with a warning to provide as soon as reasonably practicable a detailed action plan to address the potential breach or where necessary to remediate the actual breach and which, if appropriate, is implemented immediately; and/or
 - (b) suspend this **contract** until the breach/potential breach is addressed or where necessary the actual breach is remedied.
- 29.3. Where the **Contractor** is given adequate opportunity to address a potential breach or to remedy an actual breach and the **Contractor** has in either case, in **RWE's** opinion, failed to do so, the **Contractor** is in material breach of this **contract** and **RWE** may terminate this **contract** for **Contractor's default**.
- 29.4. The **Contractor** shall indemnify and defend **RWE** and **RWE group** against all **loss** incurred or suffered by **RWE** and/or any **RWE group company** as a

result of a breach of the **Contractor's** responsibilities in **condition 25** (*Code of Conduct*), **26** (*Human Rights*), **27** (*Responsibilities as an Employer*) and/or **28** (*Modern Slavery*) or any breach of related **applicable law**.

30. Combating Corruption

- 30.1. The **Contractor** undertakes not to give or receive, offer or ask for, directly or indirectly, to anyone, any payment or benefit that constitutes undue financial or other advantage of any kind.
- 30.2. The **Contractor** complies with all **applicable law** relating to anti-bribery and anti-corruption and the **Contractor** ensures that neither the **Contractor** nor the **Contractor's staff** engage in any activity, practice or conduct which constitutes an offence under such **applicable law**.
- 30.3. The **Contractor** shall indemnify and defend **RWE** and the **RWE group** against all **loss** incurred and/or suffered by **RWE** and/or the **RWE group** as a result of a breach by the **Contractor** or the **Contractor's staff** of this **condition**.
- 30.4. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor default**.

31. Sanctions

- 31.1. **Sanctions** means any economic or financial sanctions, import or export control regimes or trade embargoes implemented, administered, or enforced by the European Union (EU), its member states, the United Nations Security Council, the United Kingdom or the United States of America, unless they or compliance with such **sanctions** constitutes a violation of any applicable blocking law (**sanctions**).
- 31.2. The **Contractor** warrants that neither the **Contractor** nor any of the **Contractor's** group companies nor, to the best of the **Contractor's** knowledge, any directors or officers of the **Contractor** or any of the **Contractor's** group companies is:
- (a) a person against whom **sanctions** have been imposed;
 - (b) owned or controlled by a person against whom **sanctions** have been imposed; or
 - (c) located in or has been registered in or has its registered office in, a country or territory against which **sanctions** applicable to itself or its government have been imposed (currently including, but not limited to, Cuba, Iran, North Korea, Syria, Crimea and the so-called Donetsk and Luhansk People's Republics).
- 31.3. The **Contractor** complies with all **sanctions** and export control requirements applicable to it and its business activities as far as actions in connection with this **contract** are concerned.
- 31.4. The **Contractor** does not sell, supply or transfer items received from **RWE** to third parties if this results in the **Contractor** or **RWE** violating any **sanctions** or export control regulations.
- 31.5. The **Contractor** does not act or omit to act so as to result in **RWE** violating any **sanctions** or export control regulations.
- 31.6. The **Contractor** immediately informs **RWE** in **writing** if the **Contractor** becomes aware of any event or matter which may result in a violation of **sanctions** or export control regulations by the **Contractor** or by **RWE** relating to the **contract**.
- 31.7. The **Contractor** indemnifies and defends **RWE** and **RWE group** against all **loss** incurred or suffered by **RWE** and/or **RWE group** as a result of a breach by

the **Contractor** or the **Contractor's staff** of this **condition**.

- 31.8. Any breach of this **condition** is a material breach and **RWE** may terminate this **contract** for **Contractor default**.

32. Warranty and Representation

- 32.1. The **Contractor** warrants and represents that:
- (a) it has legal capacity to enter into this **contract** and ability to **deliver** the **goods /services**;
 - (b) the entering into and/or fulfilment of this **contract** does not breach or contravene any **applicable law** or contractual requirements or obligations that apply to the **Contractor**.
 - (c) it has and will maintain all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the **contract** and in respect of the **goods/services**.

33. Records

- 33.1. The **Contractor** maintains during the **term** such records relating to the **goods/services** as may be necessary to trace the supply chain and to demonstrate compliance with its obligations under this **contract** including: correct invoicing, information security, obligations of confidentiality and data protection and keeps them for as long as **applicable law** permits.

34. Audit

- 34.1. **RWE** and/or **RWE's** auditors may access the **Contractor's** premises and any premises of the **Contractor's staff** or supply chain during normal working hours upon giving reasonable notice as appropriate in the circumstances and audit and/or inspect all matters (including all records) at the **Contractor's** premises and/or at those of the **Contractor's staff** relating to the supply of the **goods/services** to **RWE** and the **Contractor's** compliance with its obligations in this **contract**, including the **Contractor's** operations, facilities, working conditions, security measures, procedures and systems. The **Contractor** provides appropriately qualified **staff** to support such audits.

35. Assignment

- 35.1. The **Contractor** shall not assign or otherwise transfer any of the **Contractor's** rights and/or obligations under the **contract** without **RWE's** prior written consent.
- 35.2. **RWE** may assign or sub-license any of **RWE's** rights under this **contract** within the **RWE group** without the **Contractor's** prior consent.

36. Subcontracting

- 36.1. The **Contractor** shall not subcontract any of its obligations under the **contract** or change subcontractors without **RWE's** prior written consent, other than to the extent expressly set out in an **order**.
- 36.2. Any appointment of a subcontractor does not affect the **Contractor's** obligations and liabilities.
- 36.3. The **Contractor** is primarily liable for any act or omission of the **Contractor's staff** and **subcontractors**.

37. Entire Agreement

- 37.1. This **contract** constitutes the whole agreement between the **Contractor** and **RWE** and supersedes all previous arrangements or agreements, including any terms and conditions of **Contractor**,

between the **Contractor** and **RWE** relating to the subject matter of this **contract**.

- 37.2. Neither the **Contractor** nor **RWE** has relied on and neither the **Contractor** nor **RWE** has any right or remedy in respect of any statement, representation, assurance or warranty other than as expressly set out in this **contract**.

38. Cumulative Remedies

- 38.1. The rights, powers and remedies conferred on the **Contractor** or **RWE** by this **contract** and the remedies available to the **Contractor** or **RWE** are cumulative and are additional to any right, power or remedy which the **Contractor** or **RWE** may have under **applicable law** unless otherwise stated in the **contract**.

39. Waiver

- 39.1. No failure or delay by the **Contractor** or **RWE** to exercise any right or remedy provided under this **contract** or by law constitutes a waiver of that or any other right or remedy, nor does it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy precludes or restricts the further exercise of that or any other right or remedy.
- 39.2. No act or omission of either the **Contractor** or **RWE** is or is deemed to be a waiver or release of a right or remedy unless expressly notified in writing.

40. Severance

- 40.1. If any court or competent authority finds that any **condition** (or part of any **condition**) of these **GTC** is invalid, illegal or unenforceable, that **condition** or part-**condition**, to the extent required, is deemed to be severable and the validity and enforceability of the other **conditions** in these **GTC** is not affected.
- 40.2. If any invalid, unenforceable or illegal provision of these **GTC** would be valid, enforceable and legal if some part of it were amended, the **Contractor** and **RWE** shall seek to agree the minimum modification necessary to make it legal, valid and enforceable and align with the original commercial intent of the **condition**. If no agreement is reached, **RWE** may terminate the **contract** with no liability.

41. No Partnership

- 41.1. Nothing in these **GTC** and no action taken pursuant to them constitutes or is deemed to constitute a relationship between the **Contractor** and **RWE** of partnership, association, joint venture or other co-operative entity.

42. Costs and Expenses

- 42.1. The **Contractor** and **RWE** each bear their own respective costs and expenses incurred in the preparation, execution and implementation of the **contract**.

43. Third Party Rights

- 43.1. To the extent to which any **goods/services** provided pursuant to this **contract** are for the benefit of a company in **RWE group**, that company may enforce the **contract** subject to and in accordance with any applicable US law.
- 43.2. Any **loss** that is suffered by any of **RWE group** companies as a result of a breach of the **contract** or any tort or statutory duty in relation to it is recoverable by **RWE** as a loss and is not deemed to be an indirect or consequential loss merely because the loss is suffered by **RWE group**.

44. Adequacy of Damages

44.1. The **Contractor** acknowledges and agrees that damages alone may not be an adequate remedy for any breach of this **contract**. Accordingly, **RWE** may invoke the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this **contract**.

45. Notices

45.1. Any notice given under this **contract** is in writing and in each case is delivered personally or sent by recognized commercial delivery carrier to the postal addresses set out in the **order** or otherwise notified.

46. Electronic Signature

46.1. The **Contractor** and **RWE** agree that electronic signature to the **contract** or changes to it by authorized representatives in accordance with the **contract** is as conclusive of the **Contractor's** and **RWE's** respective intentions to be bound by the **contract** or amendments to it as if signed by hand.

47. Language

47.1. The language of this **contract** is English and all notices, documents, correspondence and any other information exchanged between the **Contractor** and **RWE** in relation to it shall be in English unless agreed otherwise by **RWE** in **writing**.

48. Counterparts

48.1. The **order** may be executed in any number of counterparts, each of which when executed constitutes a duplicate original. All the counterparts together with these **GTC** constitute one **contract**. No counterpart is effective until each of the **Contractor** and **RWE** executes and delivers at least one counterpart.

49. Escalation

49.1. If a dispute arises out of or in connection with the **contract**, the **Contractor** and **RWE** notify each other and seek to resolve the dispute through negotiations between the **Contractor's** and **RWE's** respective representatives who have the authority to settle it.

50. Governing Law and Jurisdiction

50.1. This **contract** shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts- of-law thereof. **Contractor** and **RWE** hereby irrevocably consent and agree that any dispute arising out of this Agreement shall be resolved through litigation brought in the United States District Court for the Southern District of New York (Manhattan), or if jurisdiction does not lie, in the courts of the State of New York located in New York, New York, having jurisdiction, by execution and delivery of this Agreement.