

# Schedule 1 – Terms and Conditions of the CAROL Application

## I. Definition and scope

- 1.1. The Terms and Conditions apply to the CAROL Agreement.
- 1.2. The capitalized terms used but not defined in the Terms and Conditions shall have the respective meanings assigned to them in the CAROL Agreement.
- 1.3. In the event of any inconsistency between the provisions of the CAROL Agreement and the Terms and Conditions, the provisions of the CAROL Agreement shall prevail.

## II. CSP outsourcing chain, Resource Operator

- 2.1. The use of the CAROL Application implies the storage of Client information on an external cloud computing infrastructure. As such the use of CAROL is considered as an IT outsourcing relying on cloud computing according to the CSSF Circular 22/806 dated 22 April 2022 on outsourcing arrangements (the “Outsourcing Circular”).

### A. CSP outsourcing chain

- 2.2. The Client is in contract with ARC which acts as Cloud Service Provider (“CSP”) towards the Client within the meaning of the Outsourcing Circular and provides the Client capability to use CAROL (Software as a Service).
- 2.3. ARC has sub-contracted with Arendt Digital Services, a Société à responsabilité limitée, incorporated under the laws of Luxembourg, having its registered office at 9, rue de Bitbourg L-1273 Luxembourg, Grand Duchy of Luxembourg (hereinafter referred to as “ADS”) the capability to deploy CAROL and other applications on the infrastructure of Microsoft Azure via the infrastructure of ADS. As such ADS delivers a platform service and acts as

CSP vis-à-vis ARC (Platform as a Service). Where necessary, ADS will assist ARC in ensuring the rights of the Client resulting from the Outsourcing Circular. ADS has the contractual right to use Microsoft Azure. ADS has sub-contracted with ARC at cost (i.e. without any profit margin being realized).

- 2.4. Microsoft Corporation (“Microsoft”) provides the service Microsoft Azure which includes processing, storage, networks and other fundamental computing resources to ADS. As such Microsoft acts as cloud service provider within the meaning of the Outsourcing Circular (Infrastructure as a Service) towards ADS and ARC indirectly.
- 2.5. ARC, ADS and Microsoft shall collectively be referred to as the “Cloud Service Providers” or the “CSPs”.
- 2.6. ARC oversees ADS and ADS oversees Microsoft to ensure that all contractual obligations between ARC and the Client are continuously met.
- 2.7. ARC will notify the Client reasonably in advance of any change of service provider in the contractual chain.

### B. Resource Operator

- 2.8. Since infrastructure resources are virtually unlimited for CAROL, the only manageable resource in CAROL via the Client interface is the creation and the administration of users, the Client is considered for the purpose of this agreement as being the “Resource Operator”.

## III. Technical aspects of the CAROL Application

### A. Storage capacity / Offsite backup of data

- 3.1. Depending on the relevant text field, the number of possible characters is limited.

- 3.2. The CAROL Application, the content of the Compliance Control Plan and any attached document or external reference (the "Content") will be hosted on Microsoft Azure, a cloud computing service created by Microsoft. The relevant servers will be exclusively located in the European Economic Area.
- 3.3. ARC will maintain and process all data, information, content, documents and other materials in relation to the Client, its Affiliates, their customers, clients or other service providers of the Client or relevant Affiliates, including but not limited to Confidential Information and Personal Data (the "Client Data") in the European Economic Area.
- 3.4. All Content stored by the Client and Client's User information that the Root User can administer in the user management tab is not accessible by ARC, unless the Root User specifically grants access to one or more ARC users.
- 3.5. Upon request from the Client, ARC may activate IP filtering rules at application level to limit the access to a defined range of allowed IP addresses. By default, IP filtering rules are not activated.
- 3.6. Upon request from the Client, ARC may restrict any upload of file and limit the CAROL library function to the storage of a folder or directory path. By default, the upload of documents is activated.
- 3.7. The CAROL Application only records the Client's Users' username in server log files at log-on. All Content and data is backed up as per the backup policy in place.
- 3.8. The Client expressly acknowledges and agrees that the storage of its content on the CAROL Application is a feature allowing to document controls made by the Client. The CAROL Application is however not a document management tool and the Client hereby agrees that it will at all times keep on its own server a copy of the documents it uploads on the CAROL Application.
- 3.9. ARC reserves the right to prohibit the Client from uploading documents.
- 3.10. ARC will make information available to the Client and, at the Client's request, to any regulatory authority having jurisdiction over the Client or its Affiliates (including securities regulators and authorities regulating the resolution of insolvent financial entities) ("Regulators")

for the purpose of monitoring the CAROL Application on an ongoing basis. Relevant documents are available for inspection and review at ARC's offices. If requested by the Client, ARC shall cooperate fully with the Client's regulators and their designated persons. ARC shall provide such information as the Client reasonably requires for reporting to regulators.

## **B. Security**

### **a. Information security measures**

- 3.11. ARC will implement and maintain, and will cause its subcontractors to implement and maintain, appropriate standards and measures, including but not limited to internationally recognized information security standards and technical and organizational measures designed to ensure the availability, integrity, resilience, accuracy, traceability, security and confidentiality of Client Data in its possession or under its control.

### **b. Firewall protection**

- 3.12. The CAROL Application is protected by a security solution designed to address the most sophisticated cybersecurity threats. Good industry practices are used to ensure that no viruses or similar items are coded or introduced into any part of the CAROL Application.
- 3.13. ARC undertakes to use its best efforts to maintain a high level of security and

confidentiality of data stored. Data stored is protected through both restrictions of access using optional Two Authentication Factors, password complexity checks and appropriate state-of-the-art software against hacking.

**c. Login**

- 3.14. Each Client's User has a unique username and password.
- 3.15. ARC makes available the CAROL Application to the Client by setting up a "Root User" account for the Client, and providing to the Client with Root User login details for that account within five (5) business days following the signature of the CAROL Agreement.

**d. Security Incidents**

- 3.16. ARC will notify the Client promptly (but no later than 24 hours after its occurrence) with a detailed description of any actual or suspected loss, unavailability, theft, alteration, unauthorized destruction, use or disclosure of Client Data and any unauthorized access to, or attempt (whether successful or unsuccessful) to gain unauthorized access to, Client Data stored on ARC's (and its subcontractors') information systems (the "Security Incident"). Security Incident and, to the extent known, its impact on the Client. ARC will investigate any such actual or suspected security incident and notify the Client of the results of such investigation and cooperate with any investigation conducted by the Client. In addition, ARC will provide the Client with a remediation plan acceptable to the Client to mitigate the effects of the Security Incident and prevent similar incidents in the future. ARC will, upon reasonable request and at its own expense, work with the Client to coordinate and jointly implement (including with subcontractors) the Security Incident Management Plans.

**e. Incidents related to Information and Communications Technology ("ICT")**

- 3.17. In the event of any ICT-related incident, as defined by CSSF Circular 24/847, that could materially impact the Client, ARC will notify the Client in no event later than twenty four (24) hours after becoming aware of the incident.

- 3.18. Upon notifying the Client of an ICT-related incident, ARC will provide the Client with all relevant information necessary to assess, classify, and address the incident. This includes, but is not limited to, the nature of the incident, the duration of the incident, the type of data affected, the actions taken to mitigate the incident, and any steps recommended for the Client to further contain or mitigate effects.
- 3.19. ARC will continue to inform the Client of any significant developments during the incident response process and after the incident has been resolved. This includes providing updates on remedial actions taken and new information uncovered in the post-incident review.
- 3.20. ARC will assist the Client in complying with its regulatory reporting obligations to its clients, internal stakeholders as well as the supervisory authority by providing timely, accurate, and detailed information as required for such reports.
- 3.21. ARC will liaise with the other CSPs to resolve the incident and comply with any

related regulatory requests or requirements.

- 3.22. ARC will cooperate with any inquiries conducted by the Client or its designated representatives related to the notified incidents, including providing access to relevant records and personnel.

**f. ICT awareness training**

- 3.23. Where ARC considers it appropriate, it will ensure that ARC employees working on the CAROL Application for the Client (and, where applicable, employees of subcontractors) attend information security training.

**C. Availability of CAROL Application**

- 3.24. The CAROL Application is built on a set of solutions to optimize its availability rate. Despite this, in the event of unavailability, a tested and validated recovery procedure will be applied. ARC and ADS will ensure corrective action is initiated within the hour during business hours.

**a. Planned maintenance**

- 3.25. Every night at 1 a.m. Luxembourg time the CAROL Application performs an automatic overnight processing of data during which no access to the CAROL Application is possible.
- 3.26. From time to time, ARC also has to interrupt the CAROL Application temporarily for planned maintenance reasons.
- 3.27. ARC undertakes to limit such interruptions to a minimum duration and frequency. In case of any such planned maintenance, the Client will be informed beforehand and at least thirty-six (36) hours before the interruption.

**b. Unplanned maintenance**

- 3.28. In addition to planned maintenance, there may be events that from time to time will make the CAROL Application inaccessible for a limited period of time due to unforeseen software, hardware,

network, power and/or Internet outages.

- 3.29. Access shall be deemed to be available notwithstanding:

- any loss or interruption of the CAROL Application due to failure of telecommunications or digital transmission links and Internet slow-downs or failures or any other cause to the extent that the same are beyond the

- reasonable control of ARC and provided ARC in setting up the CAROL Application has applied good industry practice to avoid or mitigate such situations (i.a. by securing redundant hosting locations); or
- any loss or interruption of services resulting from actions or inactions of the Client or the Client's Users, or their respective equipment or service providers.
- 3.30. In the event that the CAROL Application at any time ceases to be available due to unplanned maintenance, ARC shall:
- notify the Client of the fact within four (4) hours after ARC has detected that CAROL Application has ceased to be available by notifying the Client by any means;
  - work diligently and continuously to make the CAROL Application available as soon as practicable thereafter.

#### **D. Technical support – Audit trail**

- 3.31. Any request for technical assistance in relation to the functioning of the CAROL Application will be communicated to ARC by using either the Contact Form available in the CAROL Application, or by sending an e-mail to [CAROL@arendt.com](mailto:CAROL@arendt.com) or by calling your ARC contact person.
- 3.32. History of the actions of Client's Users is accessible to the Client from its interface.

#### **E. Future changes and IT developments**

- 3.33. ARC has the right to implement software improvements, correct bugs and implement new functionalities which can be automatically applicable to the Client ("Updates") or which can require specific authorization from each Client ("Upgrades"). Updates will not generate any further expenses at the charge of the Client while the subscription of new functionalities (Upgrades) may be subject to an additional fee payment. In this case, the Agreement will be completed by way of an appropriate addendum describing the new functionality and agreed fee payment.

## **F. Miscellaneous**

- 3.34. The CAROL Application uses up-to 256-bit encryption (signature hash) with a 2048-bit SSL certificate for the Client's Users' session (public key).
- 3.35. The CAROL Application allows the definition of a specific period of time during which a Client's User is authorized.

## **IV. IT requirements to access CAROL**

- 4.1. The Client must use software, systems and equipment that are compatible with the CAROL Application and shall ensure that its network and systems comply with the following specifications:
  - the CAROL Application and all of its features work well at least with the following Internet browsers: Microsoft Edge, Firefox, Google Chrome;
  - the CAROL Application is optimized with a screen resolution of 1024x768 pixels or with a higher resolution. For the proper functioning of the CAROL Application, Client's Users shall enable Cookies and JavaScript. Nevertheless, ARC does not warrant a correct display of the CAROL Application on smartphones and tablets, even at equivalent resolution.
- 4.2. The use of other Internet browsers, suboptimum screen resolutions or Internet browser zoom functionality may alter the CAROL Application normal display and layout.

## **V. Use of CAROL – extent and limitations**

### **A. Continuous access to the CAROL Application**

- 5.1. ARC does not warrant that the Client's use and/or access to the CAROL Application will be uninterrupted.
- 5.2. ARC does not warrant or represent that the CAROL Application will be

compatible with any application, program or software not specifically and expressly identified as compatible by ARC as indicated in Section IV (IT requirements to access CAROL).

- 5.3. ARC is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and the Client acknowledges that the CAROL Application may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.4. ARC shall not be held liable for the inability of the Client to access or use the CAROL Application due to the Client's lack of necessary equipment for accessing and/or using the CAROL Application, including without limitation, for acquiring, installing and maintaining all telephone equipment, Internet access, hardware, software, firewall protection and other equipment as may be necessary to connect to, access, and/or use the CAROL Application.
- 5.5. ARC shall not be held liable for the inability of the Client to access or use the CAROL Application due to the Client's incorrect functioning of its Internet connection and/or for procuring, maintaining and protecting the Client's network connections and IT equipment and for all problems, conditions, delays, delivery failures and all other loss or damage suffered by the Client arising from or relating to the Client's network connections or IT equipment or caused by its Internet connection.
- 5.6. ARC shall not be held liable for the content of any postings, data, or content published, posted and/or stored by the Client on the CAROL Application or any other use of the CAROL Application made by the Client's Users.
- 5.7. The Client acknowledges and agrees that the CAROL Application may not be wholly free from defects, errors and bugs, and ARC gives no warranty or representation that the CAROL Application will be wholly free from such defects, errors and bugs.

### **B. Non-competition**



- 5.8. The Client expressly recognizes that it will not access or use all or any part of the CAROL Application and/or the CAROL Services in order to build a product or service which competes with the CAROL Application and/or the CAROL Services.
- 5.9. The Client shall not, and warrants that the Client's Users shall not:
  - resell, rent, lease, sublicense or transfer use of or access to the CAROL Application;
  - copy, modify, reproduce, republish, distribute, transmit or use for commercial or public purposes the CAROL Application or its content.
- 5.10. If ARC has reasons to believe that the Client is using the CAROL Application and/or the CAROL Services for any of the above illegal or disruptive purposes, ARC may immediately terminate the Agreement for breach of contract in accordance with Section VII (Term and Termination).

## VI. Access restrictions

- 6.1. The Client will keep confidential the Root User access code communicated by ARC and the access codes generated by CAROL upon creation of additional Client's Users by the Root User and to limit the communication of such access codes to the Client's Users.
- 6.2. The Client will implement appropriate security and control procedures necessary to limit access to the CAROL Application and/or the CAROL Services to Client's Users or to terminate access in case of formal resignation, dismissal of a Client's User or in any other case which would have as a consequence that the user can abuse of its access to the CAROL Application to copy, modify, reproduce, republish, distribute, transmit or use for commercial or other purposes the information and the documents stored on the CAROL Application.
- 6.3. User account and access to CAROL cannot be granted by the Client to natural or legal persons using an email domain which does not belong to the Client or the Client's Group ("Third Parties"), except as expressly agreed in writing between the Client and ARC.

- 6.4. Access by a Third Party must be limited in time in order to allow the Third Party to accomplish its contractual engagement.
- 6.5. ARC will monitor the number of Client's Users created identifying Third Parties confirming start date and termination date of each Third Party access.
- 6.6. Communication of Client User personal login and password to multiple persons including other employees of the Client is formally prohibited.
- 6.7. The Root User will have the possibility to restrict access to the CAROL Application by defining an appropriate IP range with a view to prevent Client's Users to connect from places other than those decided by the Client.

## VII. Term and Termination

- 7.1. The Agreement enters into force on the Commencement Date indicated in article 10. (Entry into force – Duration) of the CAROL Agreement. The Agreement continues for an initial period of one year ("**Initial Term**") and, thereafter, the Agreement shall be automatically renewed for successive periods of twelve (12) months (each a "**Renewal Period**"), unless the Agreement is terminated by either Party by registered letter with acknowledgment of receipt at least sixty (60) days before the end of the Initial Term or any Renewal Period.
- 7.2. Without prejudice to any other rights or remedies to which the Parties may be entitled, each Party may terminate the Agreement without recourse to the courts if:
  - the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing of the breach;
  - in case of an event of force majeure as provided for under Section XV. (Force Majeure);
  - in case of weaknesses regarding the security of confidential, personal or otherwise sensible data or information;
  - in case of an assignment as provided for under Section XVII. (Assignment);

- where instructions are given by the competent authority in charge of the supervision of the Client.
- 7.3. The Client may terminate the Agreement in whole or in part for any of the reasons contemplated under Article 28 (7) of the EU Digital Operational Resilience Act (Regulation (EU) 2022/2554) (“DORA”), provided that Client will be required to pay the remaining fees for the then current term of the Agreement unless Client otherwise has, pursuant to the existing terms of the Agreement, the right to terminate the Agreement: (a) without the payment of such termination fee, or (b) with the payment of a smaller termination fee.
- 7.4. Upon termination of the Agreement, for whatever reasons, the Client and the Client’s Users’ right to access and use the CAROL Application will cease and the Client acknowledges that ARC will deny the Client and the Client’s Users access to the CAROL Application and/or its content.
- 7.5. At the Client’s request, upon termination of the Agreement ARC will, at the Client’s option, promptly: (a) return Client Data to the Client in a format and on a medium reasonably acceptable to the Client and at no additional cost; or (b) delete and destroy Client Data (including any copies thereof on ARC’s backup media and servers). Notwithstanding the foregoing, ARC may retain Client Data to the extent required by applicable law or (except in the case of Personal Data processed in its capacity as a data processor) its internal data archiving or record retention requirements, provided that (i) ARC will not use or access such Client Data for any other purpose and (ii) ARC will in any event continue to protect Client Data so retained in accordance with the Agreement.
- 7.6.

disbursements (e.g. out-of-pocket expenses, if any, notary fees, publication fees, disbursements, registration fees and generally any external service provider fees or specific expenses, such as travelling and translation costs).

- 8.4. Any re-assessment of the use of the CAROL Application and/or the CAROL Services due to a change in the Client’s status or activities will also be invoiced on a time spent basis.
- 8.5. ARC shall be entitled to increase the annual fees or the fees for CAROL Services at the start of each Renewal Period upon ninety (90) days’ prior notice to the Client.

## **B. Payment default**

- 8.6. Without prejudice to the right for ARC to terminate the Agreement, if ARC has not received payment of the fees within thirty (30) days after the due date and without prejudice to any other rights and remedies of ARC:

## **VIII. Financial Conditions**

### **A. Fees**

- 8.1. The annual fee payable by the Client for the right to use the CAROL Application is due as from the Commencement Date and upon receipt of the corresponding invoice.
- 8.2. Fees are payable within thirty (30) calendar days as from the receipt of an invoice.
- 8.3. ARC fees are exclusive of VAT and



- ARC may, without being liable to the Client, disable the Client's password, account and access to all or part of the CAROL Application and ARC shall be under no obligation to provide any or all of the CAROL Services while the invoice(s) concerned remain unpaid; and
- interest shall accrue on such due amounts without prior formal notice at a rate equal to three times the legal interest rate in force in Luxembourg beginning on the first day following the day on which the amount is due and shall continue to run until the amounts due are fully paid.

## **IX. Limitation of Liability**

- 9.1. To the fullest extent authorized by applicable law, this section sets out the entire liability of ARC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client, in respect of:
  - any breach to the Agreement;
  - any use made by the Client of the CAROL Application and/or the CAROL Services or any part of them; and
  - any representation, statement, act or omission arising under or in connection with the Agreement.
- 9.2. ARC makes its very best efforts to complete and keep current the Regulation Mapping of CAROL Application and to create and maintain the lines of the standard Compliance Control Plan. ARC will not take any liability for the use that the Client makes of the standard Compliance Control Plan, for the way it describes its controls and performs them, for its assessment of its conformity. ARC will not take any liability for the use that the Client makes of the Settings tab which allow the Client to customize the Compliance Control Plan.
- 9.3. ARC shall only be liable to the Client for any direct damage suffered by the Client and arising, with the exception of Section XII. (Confidential Information – Data Processing – Marketing) sub-section A. (Confidential Information) under or in connection with the gross negligence or willful misconduct of ARC in the performance of the Agreement. The

Client expressly acknowledges and agrees that no such liability can be invoked for any consequences arising from ARC having or not included any document in the Regulation Mapping.

- 9.4. To the fullest extent authorized by applicable law, ARC shall not be liable for any indirect or consequential damage, including commercial damage, claim, expenses, charges, costs, any loss of profits, loss of business, operating loss, loss of opportunity or corruption of data or information, suffered by the Client and arising under or in connection with the performance or contemplated performance of the Agreement.
- 9.5. The Client assumes sole responsibility for results obtained from the use of the CAROL Application and/or the CAROL Services, and for conclusions drawn from such use. ARC shall bear no liability for any damage caused by errors or omissions in any information or instructions provided to ARC by the Client in connection with the CAROL Application and/or the CAROL Services, or any actions taken by ARC at the Client's direction. All warranties or representations of any kind are, to the fullest extent permitted by applicable law, excluded from the Agreement.
- 9.6. In any case and without prejudice to the above, ARC total liability arising under or in connection with the performance or contemplated performance of the Agreement shall be limited to the total subscription fees paid by the Client for the CAROL Application and/or the total fees paid for the CAROL Services during the twelve (12) months immediately preceding the date on which the claim arose.
- 9.7. The foregoing states the Client's sole and exclusive rights and remedies, and ARC's (including ARC employees, agents and sub-contractors) entire liability.

## **X. Indemnification**

- 10.1. The Client shall defend, indemnify and hold ARC harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and attorney's fees)

suffered by ARC, including in the context of claims brought by third parties against ARC, and arising out of or in connection with the Client's unauthorized use of the CAROL Application and/or the CAROL Services.

## **XI. Change of Client's regulated status**

- 11.1. The Client undertakes to inform ARC if any change of the Client's status or activities may affect the appropriate use by the Client of the CAROL Application and/or the provision of the CAROL Services by ARC, including in case of events which would have an impact on the compliance assessment of the Client. Upon such notification, the Parties undertake to negotiate in good faith the terms of a new agreement that will take into account the necessary changes to be undertaken to adapt the access by the Client to the CAROL Application and/or the provision by ARC of the CAROL Services.

## **XII. Confidential Information – Data Processing – Marketing**

### **A. Confidential Information**

- 12.1. For purposes of the Agreement “**Confidential Information**” shall mean all confidential information which is either clearly labelled as such or identified as Confidential Information in this clause, including, without limitation, all data of the Client, the content of the Compliance Control Plan, computer programs, code, including login/access code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, any software related source or object codes, technical data, data output of such software, documentation, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and information marked “Confidential”, or if disclosed verbally, is identified as confidential at the time of disclosure.

- 12.2. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving Party; (ii) was rightfully known or becomes rightfully known to the receiving Party without confidential from a source other than the disclosing Party; (iii) is independently developed by the receiving Party without the participation of individuals who have had access to the Confidential Information which independent development can be shown by written evidence; (iv) is approved by the disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing Party; and (v) the receiving Party is compelled to disclose by law or by any court of competent jurisdiction or by any regulatory or administrative body; provided, however, that prior to any such compelled disclosure, the receiving Party will (a) assert the confidential nature of the Confidential Information against the third party seeking disclosure and (b) cooperate fully with the disclosing Party in protecting against any such disclosure and/or use of the Confidential Information. The receiving Party will be entitled to disclose the Confidential Information, but only as, and to the extent, necessary to legally comply with such compelled disclosure.
- 12.3. During the term of the Agreement and for a period of two (2) years thereafter, each Party agrees to maintain the other Party's Confidential Information in confidence to the same extent that it protects its own similar Confidential Information, but in no event using less than reasonable care, and to use or make such Confidential Information available to any third party only as permitted under the Agreement.
- 12.4. Each Party agrees to only disclose the other Party's Confidential Information to its employees: (a) with a need to know basis; and (b) who are informed of the non-disclosure/non-use obligations imposed by this section.
- 12.5. Each of the Parties agrees not to disclose to any third party the terms of the Agreement, including pricing, without the prior written consent of the other Party hereto, except to advisors, auditors or investors on a need-to-know basis under

circumstances that reasonably ensure the confidentiality thereof, or to the extent required by law.

## B. Data Protection

- 12.6. In accordance with the provisions of the data protection law applicable to the Grand-Duchy of Luxembourg (including the Luxembourg law of 1st August 2018 organising the national commission for data protection and the general system on data protection, as amended from time to time) and the Regulation n°2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR") (collectively hereinafter the "Data Protection Laws"), the Parties acknowledge that each of them may collect, store and process, by electronic or other means, the other Party's representatives', employees' and/or ultimate beneficial owners' (the "Data Subjects") personal data for the purposes outlined below.
- 12.7. The personal data processed by the Parties may include in particular name, email and/or postal address, date and place of birth, nationality, profession, contact details, preferred language, or any other personal data of the Data Subjects necessary for, and in relation with, the performance of the Agreement (altogether the "Personal Data").
- 12.8. Each Party may at its discretion refuse to communicate Personal Data to the other Party. In this case, the other Party may however reject the conclusion or the performance of the Agreement if the relevant Personal Data is necessary to the execution of the Agreement.
- 12.9. Each Party, as a legal person, undertakes and guarantees to process Personal Data and to supply such Personal Data to the other Party in compliance with the Data Protection Laws.
- 12.10. Personal Data supplied by the Parties is processed in order to enter into and execute the subscription to the CAROL Application and the CAROL Services, for the legitimate interests of the Parties and to comply with the legal obligations

imposed on the Parties. In particular, the Parties will process the Personal Data of each other Party's representatives, employees and/or beneficial owners for the purpose of handling queries, managing the files, the monitoring and management of the business relationship and sending related communications with the other Party, client relationship management and complying with any applicable legal obligations such as anti-money laundering and terrorism financing requirements.

12.11. In accordance with the conditions laid down by the Data Protection Laws, the Parties acknowledge the right of the Data Subjects to:

- i. access their Personal Data concerning them that is processed by the other Party;
- ii. ask for their Personal Data to be rectified where it is inaccurate or incomplete;
- iii. object to the processing of their Personal Data for any processing carried out on the basis of the legitimate interests;
- iv. restrict the use of their Personal Data;
- v. ask for erasure of their Personal Data;
- vi. ask for Personal Data portability if certain conditions provided under the Data Protection Laws are met.

12.12. The Parties also acknowledge the existence of their right to object to the use of the Personal Data for marketing purposes

12.13. The Data Subjects may exercise the above rights by sending an email to [dpo@arendt.com](mailto:dpo@arendt.com) or by writing to our Data Protection Officer. ARC appointed a DPO, who can be contacted at the following address:

Arendt Regulatory & Consulting S.A.  
Attention: Nathalie Bloch  
Data Protection Officer  
41A, avenue J.F. Kennedy  
L-2082 Luxembourg  
Grand Duchy of Luxembourg

12.14. In the event of a dispute on the processing of their Personal Data or on the exercise of their rights and where the Party concerned does not address that claim in accordance with the Data Protection Laws, the Data Subjects are entitled to lodge a complaint with the *Commission Nationale pour la Protection des Données* (the "CNPD") at the following address: 15, Boulevard du Jazz, L-4370 Belvaux, Grand-Duchy of Luxembourg; or with any competent data protection authority of its EU Member States of residence.

12.15. The Personal Data may be transferred to other entities or individuals (the "Recipients") located in and outside the European Economic Area (the "EEA"). The Personal Data will not be transferred to any country outside the European Union which does not ensure an adequate level of protection by virtue of an adequacy decision of the European Commission unless specific measures (such as adequate contractual arrangements) have been taken by in order to ensure that the requirements of the applicable Data Protection Laws have been fulfilled. In this respect, the Party concerned will have a right to request copies of the relevant document for enabling the Personal Data transfer(s) towards such countries by writing to the other Party.

12.16. We may also transfer the Personal Data to other third parties, such as governmental or regulatory agencies including tax authorities, in or outside the European Union, in accordance with applicable laws and regulations. In any case, any transfer of the Personal Data will be made in compliance with the strict professional secrecy rules under Luxembourg law.

12.17. Each Party will retain the Personal Data of the other Party's representatives for no longer than required for the purposes of its processing, subject to the statutory limitation periods.

## C. Marketing

12.18. The Client hereby authorizes ARC to identify and refer to the Client as one of its customers in its promotional material.

The Client may request that ARC ceases to identify the Client in its promotional material at any time by notifying ARC in this respect. Such a request may take thirty (30) business days to process. The Client acknowledges that the promotional material already communicated to the public at the time of the notification will not be recalled by ARC and will thus remain in the public.

### **XIII. Money Laundering**

- 13.1. The Client acknowledges that, pursuant to Luxembourg law, ARC is subject to rules and regulations pertaining to the combat against money laundering and terrorism financing and therefore that it has the obligation i.a. to identify and verify the identity of its clients and, where applicable, of their beneficial owner(s), obtain information on the purpose and nature of the business relationship and conduct ongoing monitoring of the business relationship.
- 13.2. The Client acknowledges that the rules and regulations mentioned above require ARC, under certain conditions, to report any suspicious activity to the relevant Luxembourg authorities. In the event that ARC has any such suspicion, the obligation to report to the relevant authorities will prevail, notwithstanding any confidentiality obligations. ARC will not be liable for any loss which may arise as a result of any such disclosure taking place to the relevant authorities or the consequences derived therefrom.
- 13.3. The Client undertakes to provide ARC on first demand and without delay with any information and/or document required in order to enable ARC to fulfil its obligations pursuant to the rules and regulations mentioned above.
- 13.4. The Client undertakes to inform ARC without delay with up-to-date information in case any information provided to ARC in the above context has changed (including changes in relation to its beneficial owners) and to provide ARC with the relevant documents pertaining thereto.

### **XIV. Non Solicitation**

- 14.1. During the term of the Agreement, and at any time during the period of twelve (12) months following termination, the Client shall not directly or indirectly, engage or solicit the employment or engagement of any employee, director, consultant or independent contractor of ARC at the date of termination of the Agreement or who was such an employee, director, consultant or independent contractor at any time in the twelve (12) months preceding the date of termination of the Agreement and in each case who worked or has participated in the provision of the CAROL Application and/or CAROL Services to the Client or has confidential information relating to the business of the Client or any group of the Client. Any breach of this clause will give rise to an indemnity equal to twenty-four (24) months of remuneration to be paid by the hiring Party to ARC.

### **XV. Force Majeure**

- 15.1. In the event that either Party is prevented from or delayed in performing any of its obligations under the Agreement or from carrying on its business, by unforeseeable external acts, events, omissions or accidents and beyond its reasonable control including without limitation natural disaster, terrorism, fire, explosion, power blackout, failure of a utility service or transport or telecommunications network, accident, breakdown of machinery, earthquake, flood, riot, embargo, storm, malicious damage, war acts or default of suppliers or sub-contractors, acts of regulatory or governmental authorities, actions, orders or decrees of governmental bodies (a "Force Majeure Event") the Party who has been so affected shall have no liability to the other Party provided the latter is immediately notified of such a Force Majeure Event and its expected duration and shall use its reasonable efforts to resume performance of its obligations under the Agreement.
- 15.2. Upon receipt of such notice, all obligations under the Agreement shall be immediately suspended. The Client has



no entitlement and ARC has no liability for:

- any costs, losses, expenses, damages or the payment of any part of the contract price during a Force Majeure Event suffered by the Client; and
  - any delay costs in any way incurred by the Client due to a Force Majeure Event.
- 15.3. If the period of non-performance exceeds one (1) month from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may by giving written notice immediately terminate the Agreement as provided in Section VII. (Term and Termination) of the Terms and Conditions.
- 15.4. A Force Majeure Event does not relieve a Party from liability for an obligation which arose before the occurrence of that Force Majeure Event.

## **XVI. Waiver**

- 16.1. A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2. The waiver by any of the Parties of any action, right or condition described in the Agreement, or of any breach of a provision of the Agreement, shall not constitute a waiver of any other occurrences of the same event unless in writing by the Party purporting to give the same.

## **XVII. Assignment**

- 17.1. The Client shall not, without the prior written consent of ARC, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 17.2. ARC may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement with the prior consent of the Client.

## **XVIII. Intellectual property right and rights granted to the Client's Users**

- 18.1. For the purpose of this Section XVIII, "**Intellectual Property Rights**" shall mean all current and future author's rights, copyrights, patents, trademarks (whether or not registered), or rights in databases, inventions, or trade secrets, know-how, processes, rights in designs, topographies, trade and business names, domain names, documents, and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any relevant jurisdiction.
- 18.2. ARC is the owner or the licensee of any Intellectual Property Rights in connection with the CAROL Services.
- 18.3. The Client agrees not to copy or use, in portion or in all, any of the Intellectual Property Rights of ARC in any manner, without the prior written consent of ARC.
- 18.4. All documentation belonging to ARC is subject to Intellectual Property Rights and may not be copied or reproduced without its written consent. The Client recognizes and agrees that the Intellectual Property Rights on the CAROL Application, all portions, reproductions, application fixes, developments, enhancements, and modifications, or any other material thereof provided to the Client in relation to and/or in the context of the CAROL Services, are (i) the exclusive intellectual property of ARC and (ii) are to be considered by the Client as strictly confidential and (iii) are provided to the Client in the utmost confidence. ARC grants to the Client's Users the non-exclusive and non-transferable right to access and use the CAROL Application, in accordance with the provisions of the Agreement solely for use in relation to the Client's internal control process, for the Client's business purposes for the entire duration of the Agreement. This license is valid for the entire duration of the Agreement and for the Luxembourg territory. This license does not include the right for the Client to commercialise or otherwise transfer or sublicense the CAROL Application.



18.5. Notwithstanding the above, the Agreement does not grant the Client any Intellectual Property Rights in the CAROL Application.

## **XIX. Notices and communication**

- 19.1. Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by registered mail to the other party at its address set out in the Agreement, or such other address as may have been notified by that Party for such purposes, or sent by fax to the other Party's fax number as communicated by such Party.
- 19.2. ARC will otherwise communicate with the Client by e-mail, mail, and fax. Unless otherwise notified in writing by the Client, ARC will assume that the Client agrees to communicate by e-mail or fax.
- 19.3. ARC cannot guarantee that third parties may not obtain access, read and then modify information and documentation transmitted by e-mail. ARC assumes no liability for damages to the Client or to third parties resulting from the transmission of e-mails. No changes may be made to any document transmitted via e-mail without our prior written approval.
- 19.4. ARC may accept to receive instructions by phone only if such instructions are confirmed in writing.
- 19.5. In case of incident or in case of regulatory requirements, the Client should contact ARC by sending an e-mail at CAROL@arendt.com, or by writing to Arendt Regulatory & Consulting at: Arendt Regulatory & Consulting S.A.  
41 Avenue J-F-Kennedy  
L-2082 Luxembourg  
Grand Duchy of Luxembourg

## **XX. Cooperation with Arendt & Medernach**

- 20.1. As ARC is part of Arendt & Medernach, the leading law firm in Luxembourg, it may ask Arendt & Medernach to provide the Client with assistance for specific legal questions or for the drafting of legal documentation. Should there be a need for such legal work, ARC would inform the Client beforehand.

20.2. ARC invoices will reflect and identify the time spent by Arendt & Medernach on any such questions.

20.3. The Client hereby expressly authorizes ARC to ask Arendt & Medernach for any information or document that the Client may have confided to them in the course of its working relationship, if any, when required for the purpose of ARC assignments and the Client hereby expressly authorises Arendt & Medernach to provide ARC with such information and/or document. In the same manner, the Client authorizes ARC to share with Arendt & Medernach any information or documentation obtained in the course of ARC assignment with the Client, so as to always ensure a smooth and consistent level and quality of service towards the Client. The Client hereby acknowledges that such authorizations shall include the transfer of the Client's personal data.

## **XXI. Severability and amendments**

- 21.1. Each of the provisions of the Agreement is several and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 21.2. Invalidity or unenforceability of one or more provisions of the Agreement shall not affect any other provision of the Agreement.
- 21.3. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the Parties as closely as possible.
- 21.4. The Agreement may not be amended unilaterally by either Party.
- 21.5. By way of exception to the above, ARC reserves the right to amend the Terms and Conditions unilaterally at any time on any objectively justifiable grounds including for example if the technical specifications of the CAROL Application have been amended, technological developments or constraints resulting

from the commercial relationship between ARC and the Client or a legislative or regulatory change.

- 21.6. Any variation, modification or amendment to these Terms and Conditions shall be deemed valid once received by the Client and if the latter tacitly accepts them. The Client is considered to have tacitly accepted the modification or amendment if ARC does not receive, within thirty (30) days as from the sending of the amendment or modification, a letter from the Client refusing such modification or amendment to the Terms and Conditions. The latest version of the Terms and Conditions shall be released on ARC's website <https://www.arendt.com/carol>

## **XXII. Governing Law**

- 22.1. The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with Luxembourg law.

## **XXIII. Jurisdiction**

- 23.1. All disputes or claim arising out of or in connection with the Agreement or its subject matter or formation shall be settled exclusively by the district court of the city of Luxembourg, Grand-Duchy of Luxembourg.

## **XXIV. Guaranteed access to information**

- 24.1. The internal audit function, the statutory auditor of the client and the competent authorities, in the context of the implementation of their supervisory powers, have a guaranteed access to the information relating to the outsourced functions using a risk-based approach in order to enable them to issue a well-founded opinion on the adequacy of the outsourcing.

