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| [\_\_\_\_] parts to be edited and/or references to be checked[\_\_\_\_] alternative clauses of the data supplier [\_\_\_\_] alternative clauses of the customer (\_\_\_\_) help function for input fields, options and alternatives(FRAMEWORK) AGREEMENT ONTHE PURCHASE AND USE OFPERSONAL ADDRESS DATAentered into by and between\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), registered office in \_\_\_\_\_\_\_\_\_\_(town or city)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)represented by \_\_\_\_\_\_\_\_\_\_\_(name)(hereinafter referred to as "Data Supplier")and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), registered office in \_\_\_\_\_\_\_\_\_\_(town or city)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)represented by \_\_\_\_\_\_\_\_\_\_\_(name)(hereinafter referred to as "Customer")either of them hereinafter referred to as a "Party" and together as the "Parties"Nouns are to be understood as gender neutral. The male form is used for reasons of convenience only. |
| 1. SUBJECT MATTER
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| * 1. The Data Supplier possesses a pool of address data of consumers as specified in Annex 1.1 (hereinafter "Data"). The Data Supplier is willing to sell the Customer a copy of the Data embodied in a file in the format specified in Annex 1.1 for use as agreed herein. The Customer intends to directly contact consumers from specific target groups for advertising purposes on the basis or by means of the Data.
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| * 1. The subject matter of this (Framework) Agreement is the contractual framework for the supply and provision of Data as per Clause 1.1 on the basis of specific purchase orders (see Clause 1.3) for use of the Data by the Customer, i.e. (i) selecting the Data supplied (cf. the specifications in Annex 1.1) for (ii) subsequently contacting consumers [by post/ electronically/ by phone] for advertising purposes of the Customer.
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| * 1. This Agreement establishes no delivery obligations of the Data Supplier and/or the Customer. The performance obligations will only be established by the specific purchase orders concluded under this Agreement. The form for placing specific purchase orders is enclosed in Annex 1.3; see also Clause 1.4. The Customer shall be under no obligation to place specific purchase orders. The Data Supplier must accept specific purchase orders placed by the Customer unless there are important reasons for rejecting them, with the Data Supplier having to claim and prove such reasons. The provisions of the agreements shall prevail over any conflicting provisions of the specific purchase order that may exist, unless the Parties explicitly agree otherwise in the specific purchase orders with reference to the derogation from the agreement.
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| * 1. The subject matter of specific purchase orders (see Clause 1.3) may be Data for selection by the Customer and for advertising for and by the Customer (i) by letter (white mailing), (ii) electronically (email) and/or (iii) by phone (landline or mobile). Supply of Data on the basis of specific purchase orders shall include the right to use the Data permanently for the agreed purposes; cf., however, the consumers' right to withdraw consent in Clause 5.2.
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| * 1. Subject to Clause 4 of the Agreement the Data Supplier may use its own data pools or those of third parties ("Subcontractors") for deliveries and services to fulfil the specific purchase orders. When using Subcontractors the Data Supplier shall ensure that they grant or secure appropriate rights, so that the Customer will be able to use the Data as agreed. For the avoidance of doubt the Data Supplier is the sole contracting party of the Customer, i.e. the Data Supplier does not merely act as a broker of third-party data pools. The Data Supplier shall be fully liable for performance under this Agreement, including with respect to any delivery or use of data sets of Subcontractors.
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| 1. CANCELLATION RIGHT
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| * 1. The Customer shall be entitled to cancel specific purchase orders in whole or in part. The Customer will notify the Data Supplier of such cancellation in writing (email shall be sufficient). The cancellation will become effective within 24 hours of receipt of the notification ("24-Hour Exit Option"). The Customer will not be charged for cancellations; the Data Supplier shall not be entitled to any claims for payment or compensation if the 24-Hour Exit Option is exercised.
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| 1. PRINCIPLES OF PERFORMANCE; FORMAL DATA PROTECTION LAW; DATA OWNERSHIP
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| * 1. The Parties expressly put on record that they are mutually bound by the general statutory and contractual fiduciary, protection and information duties.
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| * 1. The Data Supplier shall not be entitled to withhold and/or offset payment on whatever legal ground, unless the Data Supplier's (counter)claim was expressly accepted by the Customer or ascertained in a non-appealable/final manner by court.
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| * 1. The responsibilities for compliance with formal data protection obligations with respect to data processing are allocated between the Parties according to data processing stages as follows:
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| * + 1. Exclusively the Data Supplier shall be responsible for informing the consumers in connection with consent, and for obtaining the consumers' lawful consent (opt-in).
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| * + 1. For providing the consumers with data protection information each Party shall be responsible for its own sphere.
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| * + 1. With respect to data storage each Party shall be responsible for its own sphere.
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| * + 1. Depending on the sphere of processing the Parties shall be responsible for editing and erasure of Data, restriction of processing of Data and transfer of Data pursuant to Article 20 GDPR, if any.
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| * 1. The Parties represent that they have put all persons in charge of data processing under an obligation to maintain data secrecy as defined in Section 6 of the Austrian Data Protection Act [*Datenschutzgesetz/DSG*] and Article 29 GDPR before they start their work or that they are subject to a reasonable statutory obligation to maintain secrecy. The obligations of the persons in charge of data processing to maintain secrecy shall continue to apply even after they stop working for and leave the relevant Party.
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| * 1. The Parties warrant to each other that data processing will exclusively be carried out in a Member State of the European Union (EU) or the European Economic Area (EEA) contracting states.
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| * 1. Pursuant to Clause 1.4 data supply includes the Customer's right to use the Data permanently for the agreed purposes. The Parties understand that data ownership of the embodied data sets will be established for the Customer irrespective of the framework conditions of data protection law. Unless reselling Data is subject to statutory restrictions (in particular data protection law and/or the prohibition of spamming and cold calling), the Customer shall therefore be entitled to resell the Data.
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| * 1. To the extent that no ownership is established, the Parties agree that upon delivery of the Data the Customer will be granted an irrevocable, exclusive, (sub)licensable, transferable and unencumbered licence, which shall be unlimited as to nature, time and place, including the right of unrestricted processing and tagging.
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| 1. SUBCONTRACTORS AND LIABILITY FOR AND OF THE SAME
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| * 1. The Data Supplier shall, in principle, be entitled to use one or more Subcontractors to fulfil its contractual obligations (cf. Clause 1.5). The Subcontractors' registered offices must be within the EU. The Data Supplier shall provide the Customer with information on the identity and all other relevant facts regarding the Subcontractor(s) used by it not later than at the time of delivery of the Data.
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| * 1. The Data Supplier shall indicate which data sets come from which Subcontractor, so that the Customer will be able to assert claims, if any, also vis-à-vis the relevant Subcontractor (see Clause 4.3).
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| * 1. The Data Supplier shall bind the Subcontractors in writing to render performance to and be liable vis-à-vis the Customer in accordance with the obligations of the Data Supplier under this Agreement (contract between the Data Supplier and the Subcontractor for the benefit of the Customer). The agreements between the Data Supplier and the Subcontractor shall be surrendered to the Customer upon the Customer's first demand.
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| * 1. The Data Supplier shall in any case indemnify and hold harmless the Customer with respect to the fact that it uses Subcontractors.
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| 1. OBJECTIVE AND LEGAL QUALITY OF DATA
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| * 1. If the deliveries or services agreed in specific purchase orders fall short of the delivery volume or other quantity or the agreed quality, the Customer shall be entitled, at its option, to demand immediate subsequent performance by the Data Supplier or the legal consequences stated in Clause 5.2. Duplicate data shall be considered only one data set delivered and may therefore cause short deliveries.
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| * 1. If the Customer does not demand immediate subsequent performance in the case of a short delivery (Clause 5.1), the fee (Clause 6) will be reduced pro rata, unless the cause for the short delivery lies exclusively in the Customer's legal sphere of control. In the case of short delivery in terms of quantity and/or quality of more [than 25%] of the Data owed the Customer shall be entitled to claim non-fulfilment of the specific purchase order as a whole and reversal of the transaction; in that case the Data Supplier shall be fully liable for direct and indirect damages, including but not limited to additional costs of replacement, unless the Data Supplier can prove that it is not at fault.
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| * 1. If the Customer orders additional data sets by means of additional specific purchase orders, irrespective of whether directly related or later, or for other campaigns, the Data Supplier shall ensure that those data sets do not overlap with data sets delivered earlier under this Agreement, i.e. that no duplicate data will be delivered.
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| * 1. In the case of excess deliveries by the Data Supplier the Customer shall not be required to pay for the same. For the rest, the provisions of the agreements shall apply to excess deliveries.
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| * 1. The Data Supplier represents that with respect to all Data delivered it has been ensured that the Customer will be able to use the Data lawfully in accordance with the agreement and/or the specific purchase order (Clauses 1.3 and 1.4). This shall in particular be ensured by legally effective declarations of consent of the consumers (so-called "Opt-Ins") and a double Opt-In process by the Data Supplier. Accordingly, the Data must always be or have been collected with the Opt-In of the relevant consumer, and such Opt-In must cover contacts by the Customer under the specific purchase order for advertising purposes in a legally effective and provable manner. In this respect the Data Supplier must observe the legislation in force, including recent court decisions. Information on and the Opt-In itself shall, in particular, include the collection and processing of the categories of data listed in Annex 1.1 for the Customer's advertising purposes as per the specific purchase order, an unlimited storage period in the form of personal data until withdrawal of consent. In addition, the consumers shall be informed about their right to withdraw their consent at any time when the Opt-In is obtained. In addition, the Data Supplier must provide the consumers with data protection information as per Clause 3.3.2. The Data Supplier shall indemnify and hold harmless the Customer in this respect.
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| * 1. If consent is given by a written declaration that concerns other matters as well, the request for consent must be made in a comprehensible and easily accessible form using clear and simple language, so that it can be clearly distinguished from the other matters; otherwise parts of the declaration of consent may not be binding.
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| * 1. When assessing whether the Opt-In was selected by the consumers voluntarily, the question of whether, among other things, fulfilment of a contract, including the provision of a service, depends on the consent to processing of personal data, which is not required for fulfilment of the contract, must be taken into account to the greatest extent possible.
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| * 1. Consumers have the right to withdraw their Opt-In or consent to processing of their personal data at any time. The lawfulness of the processing done up until the time of withdrawal shall not be affected by withdrawal of consent. The Data Supplier shall ensure that withdrawing consent will be as easy as selecting the Opt-In and that the consumers will be informed accordingly about the option to withdraw their consent at the time the Opt-In is obtained.
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| * 1. With every delivery the Data Supplier will enclose documentation evidencing the wording of the declarations of consent and the double Opt-In process. This shall, in particular, apply to any data sets that may have been provided by third parties and/or Subcontractors.
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| * 1. The Customer shall be entitled to ask the Data Supplier for subsequent delivery to the Customer of all details of the collection (generation) of specific data sets within [five business days], in particular when the Customer has concerns about the legally effective consent or other concerns about lawful use of the Data by the Customer. This obligation shall survive termination of the Agreement.
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| * 1. The Data Supplier represents that the Data contains no data sets which the Data Supplier (including Subcontractors) is prohibited from using by a cease and desist order or other order issued by a court, irrespective of whether it has become non-appealable/final or not, the use of which would violate any undertakings to cease and desist and/or with regard to which a complaint has been made by a consumer concerned or a consumer protection organisation or any other association, even if only one.
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| * 1. Data or data sets which are not in conformity with the agreement shall be deemed not delivered and the provisions of Clause 5.1 or 5.2 will apply. In addition, the Customer shall be entitled to resort to the statutory warranty provisions and to assert other statutory claims on account of default. Statutory duties of the Customer, if any, to inspect the Data or to notify defects shall be excluded.
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| 1. FEE
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| * 1. The Customer shall pay the Data Supplier the fee stipulated in the relevant specific purchase order as per Clause 1.3.
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| * 1. If "Contact" billing has been agreed in a specific purchase order (only for data sets for telephone marketing purposes), it is not the delivery quantity itself that is subject to a fee but only the number of consumers who have ultimately been contacted successfully by use of the actual delivery quantity; for this purpose a Contact is established with a consumer if they are actually talked to and where not only a third person or an answering machine was reached or the number was busy or unavailable. If, in addition, successful reaching of a certain number of recipients is the subject matter of a specific purchase order, the Data Supplier shall be required to additionally supply data sets in accordance with the contractual specifications until the envisaged number of Contacts is reached. In this connection the comprehensible records of the Customer, which the Customer shall deliver to the Data Supplier within three months of the month in which the Data was used, shall be decisive. On the basis of such records the Data Supplier shall issue an invoice that is in compliance with the law. For a period of three years from the later of (i) transmission of Data and (ii) last delivery of records of the Customer the Data Supplier may claim a right to inspection of all records of the Customer by an auditor who is subject to a duty to maintain secrecy. The costs of the auditor shall be borne by the Data Supplier; the total actual costs of the auditor shall, however, be reimbursed by the Customer if an inspection of the books reveals that the records reported to the Data Supplier fall short of the actual contacts that must be paid for by [more than 5%]. The Data Supplier shall be entitled to charge the Customer any costs that may have to be reimbursed and the additional fee payable resulting from the inspection of the books within six months of such inspection.
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| * 1. If the Data Supplier is (also) commissioned to generate leads and if it is paid by the Customer for each data set so generated and delivered, the fee entitlement shall depend on the quality of the leads: if within six months of delivery of the leads it turns out (e.g. in the course of an attempt to contact the leads) that the leads have an error rate that is not insubstantial, e.g. because they cannot be reached under the name stated or at the address or phone number provided, the Data Supplier's fee shall be reduced according to the error rate.
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| * 1. Fees shall be net prices plus value added tax.
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| * 1. The invoices to be issued by the Data Supplier in compliance with the law shall be payable upon receipt without any deduction within [30/ 60] days. Payments shall be made, without exception, by transfer to an account with a credit institution in the EU to be advised by the Data Supplier.
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| * 1. The Customer shall, in particular, be entitled to statutory rights to withhold payment, if any, of fee entitlements of the Data Supplier if the Data Supplier has failed to deliver the requested evidence regarding Opt-In.
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| * 1. In the case of late payment due to the payer's fault the creditor shall be entitled to claim interest from the end of the payment period on the outstanding amount at the statutory rate applicable between entrepreneurs.
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| 1. LIABILITY PROVISIONS
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| * 1. The Data Supplier represents that it holds the relevant rights and/or authorisations required for performance under this Agreement. This means, in particular, that no proprietary rights of third parties will be directly or indirectly infringed upon, i.e. that either no such rights exist or that such rights have been granted comprehensively by third parties. [If Third Parties assert claims vis-à-vis the Customer for infringement of rights due to a violation of provisions of this Agreement, the Data Supplier shall indemnify the Customer in this regard upon first demand, irrespective of fault.]
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| * 1. To the extent that the Parties do not meet the representations and warranties expressly stated in this Agreement, they shall indemnify and hold harmless each other, irrespective of fault.
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| * 1. Unless expressly agreed otherwise in the Agreement, the Parties shall be liable in accordance with the statutory provisions.
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| * 1. The Parties shall release each other from any liability between them regarding the processing of Data of data subjects if they share responsibility for the cause triggering liability. This shall also apply with respect to any fine that may be imposed on either Party for any violation of data protection provisions, subject to the proviso that the Party on whom the fine was imposed must have exhausted the appeals against the decision on the fine first. If, thereafter, the relevant Party remains burdened with a fine in whole or in part which does not correspond to its internal share of responsibility for the violation, the respective other Party shall indemnify it against the fine to the extent of the other Party's share of responsibility for the violation sanctioned by the fine.
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| 1. TERM
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| * 1. This Agreement, being a Framework Agreement, may be terminated as of the end of any quarter by giving three months' notice.
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| * 1. Specific purchase orders (Clause 1.3) shall become effective upon receipt by the Data Supplier, unless they are objected to for important reason (cause) within [three business days]. Those specific purchase orders constitute specific obligations, which means that there is no right to terminate them by notice.
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| * 1. The right of cancellation (Clause 2) and of dissolution for important reason (cause) both of the Agreement and of specific purchase orders shall remain unaffected.
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| * 1. Since the Parties assume that the Customer is the owner of the Data (Clause 3.6), interest-free dissolution of such ownership shall remain unaffected by termination (unless a reverse transaction takes place).
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| * 1. Apart from the provisions of the Agreement which expressly survive termination of the Agreement, also the following provisions shall remain unaffected: this clause, [\*to be supplemented\*].
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| 1. PLACE OF JURISDICTION; APPLICABLE LAW
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| * 1. All disputes arising out of or in connection with this Agreement (including the issue of its valid conclusion and existence) shall exclusively be decided by the court having jurisdiction over [the Customer / the Data Supplier], depending on the amount in dispute (courts of law).
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| * 1. Austrian law shall apply in any case; the conflict of laws rules and UN Sales Law shall be excluded.
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| 1. **OTHER PROVISIONS**
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| * 1. The Parties waive their right to avoid the Agreement on account of mistake (including a mistake in calculation) [but not on account of *laesio enormis* [translator's note: under the legal concept of *laesio enormis* a contract may be challenged based on the argument that the value of the item delivered is less than 50% of the consideration paid]] or frustration of contract or any other present or future grounds for avoidance and root defects.
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| * 1. This Agreement and all its documents, including, without limitation, the Annexes to which it refers or which it states to be integral parts hereof contain all contractual arrangements made by and between the Parties. [General Terms and Conditions of Purchase, if any, and similar pre-worded contract terms shall not apply. No oral side agreements exist.
 |
| * 1. Modifications of or amendments to this Agreement, including the abolishment of the requirement of written form, shall be made in writing in order to be effective.
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| * 1. If any provision of this Agreement is or becomes ineffective, void, unlawful or unenforceable, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective, void, unlawful or unenforceable provision(s) shall be replaced by a provision which comes as close as possible to the will of the Parties to the extent permitted by law and which reflects the commercial effect of the ineffective, void, unlawful or unenforceable provision(s) in the best possible way.
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| * 1. This Agreement will be executed in two (2) counterparts, each of which will be deemed an original and of which each Party will be given one.
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| * 1. The undersigned warrant that the Party for which they sign will be bound by their signatures *ipso jure*.
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| [Place], [date]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Data Supplier |
| [Place], [date]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Customer |