

Confidential Information relating to proprietary tools, and software (including any source code of a software) owned by a Party and disclosed to the other Party under this Agreement shall remain confidential and not disclosed or used (except in relation to the Services hereunder).

9. **Independent Contractor.** Each Party agrees that its relationship with the other is that of an independent contractor and nothing in this Agreement shall be construed as creating a partnership, joint venture or employer-employee relationship. Neither SUB nor any employees and consultants engaged by SUB for performing the Services shall be entitled to any of the benefits that TCS may make available to its employees, such as group insurance, profit-sharing, or retirement benefits. Each Party shall be solely responsible for complying with all applicable local, state, and federal laws which are applicable to that Party, including but not limited to immigration laws and regulations governing work authorization, obligations such as payment of federal, state, and local taxes, social security, disability, and other contributions attributable to the rendition of Services hereunder. Each Party shall indemnify, hold harmless and defend the other Party from all claims, liabilities, damages, taxes, fines, or penalties sought or recovered by any governmental entity, including but not limited to the Internal Revenue Service or any state taxing authority, arising out of such Party's alleged failure to pay such taxes or make such contributions. Nothing in this Agreement shall be deemed to constitute SUB or TCS the agent of the other. Neither TCS nor SUB shall be or become liable or bound by any representation, act, or omission whatsoever of the other.

10. **Limitation of Liability.**

- 10.1 Subject to the specific provisions of this Section 10, it is the intent of the Parties that each Party will be liable to the other Party for any actual damages incurred by the non-breaching Party because of the breaching Party's failure to perform its obligations in the manner required by this Agreement or the applicable Statement of Work.

10.2 Waiver of Consequential Damages

SUBJECT TO THE PROVISIONS OF Section 10.1 above, Section 10.2(b) below and SECTION 10.4 BELOW, NEITHER PARTY WILL BE LIABLE FOR INDIRECT OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF PROFITS), WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. (b) Section 10.2(a) shall not limit or exclude TCS' right and ability to claim as own damage, and for the purposes of this Agreement direct damage of TCS shall include, any of the following: (i) any damage suffered by TCS Germany (including any claims brought against TCS Germany under or in connection with the Prime Contract; and (ii) any damage suffered by Customer or any of its affiliates; but in each case only to the extent related to the Services and/or Works provided hereunder.

10.3 Cap on Direct Damages.

Subject to Section 10.4 below, each Party's total liability to the other, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), will not exceed in the aggregate an amount equal to the total Charges paid and payable to SUB pursuant to all of the Statement of Work(s) for proper performance of the Services described in such Statement of Work(s), provided that SUB's liability shall not be less than 5 million Euros.

10.4 Cap on Direct Damages in certain exceptional cases.

Notwithstanding anything to the contrary contained in Section 10.2 and 10.3, no limitation or exclusion of liability shall apply to damages caused by (a) willful misconduct or gross negligence of a Party (b) Indemnification obligations of a Party; (c) damages occasioned by a Party's breach of its obligations with respect to Confidential Information or (d) damages occasioned by improper or wrongful termination or abandonment of the work by SUB under this Agreement or any Statement of Work.