

TOLUNA START COMMUNITIES TERMS ('Terms')

The provision of the Services shall be exclusively governed by these Terms. Any use of the Toluna Start DIY service shall be governed by the applicable terms found at www.tolunastart.com. Unless expressly stated to the contrary, the Terms shall prevail over any SOW to the extent of any inconsistency.

Definitions

In these Terms the following definitions shall have the following meanings:

Affiliate: means in relation to a party to this Agreement, any corporation or other entity that controls, is controlled by, or is under common control with, a party. A corporation or other entity shall be regarded as in control of another corporation or entity if it owns or directly or indirectly controls 50% or more of the voting securities or other ownership interest of the other corporation or entity, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation or other entity.

Agreement: means these Terms and any SOW under it.

Applicable Laws: all applicable laws, statutes, regulation and market research codes of practice from time to time in force.

Application: means the software program as well as certain documents, graphics and images for automated on-line survey and panel management called Toluna Start Communities.

Blind Community: means a Community which is not branded with the Client's trade marks or logos such that the respondents do not know that the Client is associated with the Community.

Branded Community: means a Community which is branded with the Client's trade marks/and or logos and the respondents are aware that the Client is associated with the Community and that the Community is being run by or on behalf of the Client.

Client Content: means all files, software, scripts, images, graphics, audio, video, text, data, music, sound, photographs, or other objects, Survey questions, information, messages or other materials communicated, submitted or transmitted through the Application or Services by Client, the respondents of Client's Surveys, or on Client's behalf whether by Toluna or any other third party.

Community: means the online respondent community that the Client wishes Toluna to host on the Platform.

Community Members: mean the members of the Community, whether existing customers or other respondents of the Client or recruited by Toluna and/or Toluna sources.

Domain Name: means the unique part of the URL at which the Community is hosted.

EU GDPR: means the General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and any other directly applicable EU legislation relating to privacy and/or data protection.

Data Protection Legislation: means any legislation relating to privacy and/or data protection as applicable to the processing of personal data under this Agreement (including any SOW), including, but not limited to (and to the extent applicable); (i) the UK GDPR (ii) the EU GDPR; (iii) the LGDP and; (iv) USA Data Privacy Laws and the terms "**personal data**", "**special categories of personal data**", "**data controller**", "**process**", "**data processor**", "**data subject**", "**personal data breach**", "**joint data controllers**" and "**supervisory authorities**" shall have the meaning ascribed to them in the EU GDPR.

LGDP: means the General Personal Data Protection Act Law No. 13.709 / 2018 (Lei Geral de Proteção de Dados Pessoais)

Minors: means individuals under the age of majority in his or her place of residence.

Platform: means the Toluna licensed servers that host the Application.

Services: means the implementation, support, training, Community management or other additional services as specified in a SOW or as may be requested by Client from time to time during the Term and set forth in a separate addendum agreed to and executed by both parties.

Statement of Work or SOW: means a statement of work setting out the specification and commercial arrangements concerning Client's use of the Application, using the template set out in Appendix B.

SOW Effective Date: means the effective date of a SOW, as specified in each SOW.

SOW Initial Term: means the minimum period for which a SOW is in force, specified in each SOW.

Standard Contractual Clauses or SCC's: means the Standard Contractual Clauses for the transfer of personal data to third countries pursuant to the GDPR in accordance with the EC Decision EU 2021/914 on 4 June 2021 (as may be amended or replaced by the European Commission from time to time)

Surveys: means research surveys conducted via the Application by either Toluna or the Client or other Client authorised users of the Application.

Term: means the duration that this Agreement is in full force and effect.

Toluna Generic Content: means any intellectual property rights (other than the Client Content) that arises or is obtained or developed by Toluna and/or third parties and which may be developed independently of the Services (including the Application) and includes without limitation, any of the following, whether created before, during or after the Agreement: any model or sample that may be used or provided to Client to create content for Client's use of the Application, including, without limitation, Survey and email invitation templates, website content, Community Member terms & conditions, privacy policy, sweepstakes or contest rules, as well as all computer software or programs, models or systems, and analysis, used in Toluna's performance of the Services, whether or not such content, methodologies or software are patentable or copyrightable and where such content was not developed and created by Toluna exclusively for Client pursuant to and as expressly contemplated in a SOW.

UK GDPR: has the meaning given to it in section 3(10) of the Data Protection Act 2018 (as supplemented by section 205(4) of that Act).

USA Data Privacy Laws: means any US state law concerning the processing of personal data, as implemented in the relevant US state, including, but not limited to: **the California Consumer Privacy Act 2018, Cal. Civ. Code §§ 1798.100 et seq. (as amended) the Virginia Consumer Data Protection Act, the Colorado Privacy Act and/or New York Shield Act.**

1. **Services Licence:** Client wishes to use the Application hosted on the Platform for the purposes of running a Community and to allow certain dedicated users to access the Community and certain data hosted on the Platform pursuant to these Terms. During the Term of this Agreement, and subject to Client's payment of all applicable fees hereunder, Toluna hereby grants to Client a non-transferable, non-exclusive licence to use the Application as well as username and password protected access to store and retrieve Client Content.
2. **Client Covenants and Restrictions.**
 - 2.1 Client shall be solely responsible and liable for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any Client Content, howsoever communicated, submitted or transmitted through the Application or Services. Client's right and licence to use the Application is subject to:
 - (a) Client's compliance with the Data Protection Legislation and Applicable Laws; and
 - (b) the following restrictions:
 - (i) although Toluna is not responsible for any such content or communications, Toluna reserves the right to take any action it deems necessary or appropriate in its sole discretion, with respect to any such content or communications of which Toluna may become aware, at any time and without notice to Client;
 - (ii) Client acknowledges and agrees that Toluna does not control the Client Content and makes no representation or warranty regarding its accuracy, integrity or quality;
 - (iii) Client may not modify, edit, copy, reproduce, create derivative works of, enhance, reverse engineer, decompile, alter, duplicate or otherwise attempt to decipher any code in connection with the Application or any other aspect of Toluna's technology;
 - (iv) Client shall not upload, post, email, distribute, communicate, transmit, or otherwise make available any viruses or similar malicious software that may damage the operation of a computer, the Application or the Services; and
 - (v) Client may not assign, transfer, resell, distribute, or otherwise use the Application except as specifically agreed herein.
 - (c) Client may inform its clients, employees and Community Members that the Application is powered by Toluna.
 - (a) No other rights are granted by Toluna hereunder except as expressly set forth in this Agreement.
 - 2.2 Client shall not access and/or use the Application or Services:

- (a) to send any unsolicited commercial email or invitation;
 - (b) to send Surveys, polls, or other materials to Minors (unless agreed in the relevant SOW). In any event, Client shall not take any action to harm Minors in any way, and shall not send Surveys, polls, or other materials to Minors that would subject Toluna to any local or international law, rule or regulation governing children's privacy or otherwise related to protecting Minors;
 - (c) in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the Application or any networks or security systems of Toluna and/or (ii) to collect, store and/or disclose any of the following: (i) any financial information about monetary transactions of an individual or business, including without limitation information used to derive estimates of credit risks e.g. a bank account or credit card number, credit ratings or reports, financial statements and payment histories; (ii) a government-issued identification number (e.g., Social Security or National Insurance Number, driver's license number, state identification number, or passport number); (iii) information regarding an individual's sexual orientation or sex life, religion, or health or medical condition, including Protected Health Information, as defined in 45 Code of Federal Regs. 160.103, or any Special Categories of Personal Data, or similar sensitive data as prescribed under Applicable Laws (such as under the NAI Code); (iv) unique biometric data or digital representation of biometric data; (v) maiden name of the individual's mother and; (vi) individual's digitised or other electronic signature.
 - (d) to communicate any message or material that is deemed harmful, abusive, harassing, threatening, indecent, obscene, racially, ethnically or otherwise objectionable, hateful, tortuous, libellous, defamatory, slanderous or otherwise unlawful;
 - (e) in a manner which infringes any patent, trademark, copyright or other intellectual property rights of any third party;
 - (f) in a manner which breaches any Applicable laws, including without limitation any applicable Data Protection Legislation; or
 - (g) in a manner which constitutes or encourages conduct that could be a criminal or civil offence under any applicable law or regulation.
- 2.3 Client shall comply with all Applicable Laws (including without limitation any Data Protection Legislation), market research guidelines and codes of practice in the conduct of such use of the Application or Services and without limitation, shall not use the Application or Services for marketing, promotional, selling or influencing the opinions or decisions of any Community Member.
- 2.4 Client shall be responsible for choosing the Domain Name and for conducting trade mark clearance searches in respect of the Domain Name to ensure that the Domain Name does not infringe any third party intellectual property rights.
- 3. Intellectual Property Rights/Publicity.**
- 3.1 Client shall own all rights, title and interest in and to any Client Content. Client grants to Toluna a limited, non-exclusive, royalty-free licence to host the Client Content solely for all reasonable and necessary purposes contemplated by this Agreement. This Agreement does not transfer or convey to Toluna or any third party any right, title or interest in or to the Client Content or any associated intellectual property rights, but only a limited revocable right of use in accordance with this Agreement.
- 3.2 In the course of performing the Services, Toluna may provide to Client or use on Client's behalf Toluna Generic Content. The Toluna Generic Content shall remain the property of Toluna. To the extent that Toluna provides Toluna Generic Content to Client, Toluna hereby grants to Client a non-exclusive, revocable, royalty-free, Term based licence to use the Toluna Generic Content, and to alter and make derivative works thereof solely in connection with Client's use of the Application.
- 3.3 Toluna may:
- (a) issue a press release announcing Client's selection of Toluna Start™ Communities, subject to Client's prior approval of such press release;
 - (b) display Client's logo on the tolunacorporate.com website and on marketing materials, including PowerPoint presentations, subject to compliance with Client's instructions regarding proper use; and
 - (c) allow Toluna to include a general description of projects for which Client has used Toluna Start™ Communities on the tolunacorporate.com website, subject to Client's prior written approval of such description.
- 3.4 Any and all goodwill associated with the use of the Domain Name will accrue to the Client and where Toluna has registered the Domain Name on the Client's behalf, Toluna shall transfer the Domain Name to the Client when the Community ends.

4. Term and Termination.

4.1 **Term of this Agreement:** This Agreement shall commence on an applicable SOW Effective Date and shall (subject to earlier termination under this clause 4) remain in full force and effect until all SOW's under this Agreement have expired. Upon expiry or termination of all SOW's under this Agreement, this Agreement shall terminate and be of no further effect.

4.2 Each SOW shall commence upon the SOW Effective Date and continue until expiry of the SOW Initial Term, whereupon each SOW will automatically renew for a further period of equal duration to the relevant SOW Initial Term ("**SOW Renewal Term**").

4.3 Either party may terminate a SOW by giving the other party at least sixty (60) days written notice prior to the end of a SOW Initial Term or SOW Renewal Term.

4.4 **Termination for Cause:** Either party may terminate this Agreement under the Terms hereto and a SOW by:

(a) providing the other Party with notice in writing if the other party commits a material breach of any of its obligations under this Agreement or a SOW and, if such breach is reasonably capable of remedy, fails to remedy such breach within thirty (30) days of receipt of such notice. Failure by Client to pay Fees or costs when due hereunder shall be deemed a material breach of this Agreement and if remediable, the remedy period under this clause 4.4(a) shall be reduced to seven (7) days; or

(b) by giving the other Party notice in writing if the other Party becomes the subject of an Insolvency Event. An "**Insolvency Event**" means in respect of any Party: (a) other than for the purposes of a bona fide reconstruction or amalgamation, such Party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that Party being otherwise dissolved; or (b) the appointment of an administrator of, or the making of an administration order in relation to, any party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue; or (c) that Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or (d) that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

4.5 **Effect of Termination:** Upon termination of this Agreement:

(a) Toluna shall within sixty (60) days delete or destroy any personal data in accordance with Schedule 1 or Schedule 2 as applicable. Save for any breach by Toluna of clause 10 or Schedule 1 or Schedule 2 (as applicable), Toluna shall not be liable for any damages resulting from a termination of this Agreement as provided for herein; without prejudice to any claim arising prior to such termination; and

(b) Client will immediately discontinue all access to and use of the Application save for the purposes of downloading and exporting Client Content, for which purposes, access to the Application will remain open for a period of thirty (30) days following the termination date.

5. **Fees.** Client is responsible for all fees as set forth in the SOW. Incentive costs are due within seven (7) days of the date of the invoice. With the exception of incentive amounts, Client shall make all payments due to Toluna within thirty (30) days of the date of invoice. In the event that Client fails to pay any amounts due under this Agreement by the due date and the Client has failed to remedy this during the remedy period set out in clause 4.4(a), Toluna may, without limiting any other right that it may have at law or equity, and without further notice to Client, suspend or terminate the provision of any of the Services (including Client's use of the Application) until all payments have been received. All sums payable under this Agreement unless otherwise stated are exclusive of VAT, which Toluna shall add to its invoices at the applicable rate.

6. **Confidential Information:** Unless expressly authorised in writing by the other Party, neither Party shall disclose to any third party any non-public information or materials provided by the other Party under this Agreement and reasonably understood to be confidential either because it was identified as "Confidential" or "Proprietary", it has commercial value, or because it is not generally known in the relevant trade or industry ("**Confidential Information**"). No party shall use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that (i) is in or becomes available through the public domain, (ii) is already lawfully in the receiving party's possession, (iii) was known to the receiving party prior to the date of disclosure, (iv) becomes known to the receiving party from a third party having an apparent bona fide right to disclose the information, or (v) Confidential Information that the receiving party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, providing receiving party provides disclosing party timely notice of such court order or subpoena. Furthermore, Client will keep in strict confidence all passwords and other access information to the Application.

7. **WARRANTIES DISCLAIMER:** TOLUNA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR

PURPOSE. OTHER THAN AS SPECIFICALLY SET FORTH HEREIN, TOLUNA MAKES NO WARRANTY THAT THE APPLICATION WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE, NOR DOES TOLUNA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE APPLICATION OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE APPLICATION. CLIENT UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED (INCLUDING PLUG-INS) THROUGH THE USE OF THE APPLICATION, IS DONE AT THE SOLE RISK OF THE CLIENT AND THAT CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO INFORMATION OR ADVICE, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM TOLUNA OR THROUGH THE APPLICATION SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

8. **LIMITATION OF LIABILITY:** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS THE LIABILITY OF EITHER PARTY IN RESPECT OF; (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE (INCLUDING NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR CONTRACTORS); (B) FRAUD AND/OR FRAUDULENT MISREPRESENTATION; OR (C) LIABILITY WHICH MAY NOT OTHERWISE BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. TOLUNA'S ENTIRE LIABILITY TO CLIENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER ARISING FROM CONTRACT, TORT, NEGLIGENCE OR OTHERWISE SHALL BE LIMITED IN AGGREGATE TO AN AMOUNT EQUAL TO THE FEES RECEIVED BY TOLUNA FROM CLIENT FOR THE PORTION OF THE SERVICE IN QUESTION AS SET OUT IN THE SOW. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE; PURE ECONOMIC LOSS, COSTS DAMAGES OR CHARGES; LOSS OF PROFITS; LOSS OF REVENUE; LOSS OF CONTRACTS; AND LOSS OF BUSINESS AND/OR GOODWILL, HOWSOEVER IT ARISES OUT OF OR IN CONNECTION WITH THIS AGREEMENT. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY CLIENT MORE THAN FOUR (4) WEEKS AFTER THE DISCOVERY OF THE DAMAGE AND IN ANY EVENT AFTER TWO (2) MONTHS AFTER THE CAUSE OF ACTION AROSE (OR WHEN CLIENT SHOULD HAVE BEEN REASONABLY AWARE OF SUCH CAUSE OF ACTION) PROVIDED THAT THIS PROVISION SHALL NOT APPLY TO ANY CLAIM ALLEGING A BREACH OF EITHER PARTY'S CONFIDENTIALITY, BREACH OF APPLICABLE LAW AND PROPRIETARY RIGHTS IN THE SERVICES, WHICH SHALL HAVE THE FULL TIME PERIOD ALLOWED UNDER APPLICABLE LAW.

9. **INDEMNIFICATION:**

9.1 TOLUNA SHALL, AT ITS SOLE EXPENSE, INDEMNIFY, DEFEND AND HOLD THE CLIENT HARMLESS WHILST USING THE APPLICATION FROM AND AGAINST ANY LOSS, COST, DAMAGES, LIABILITY OR EXPENSE ARISING OUT OF OR RELATING TO ANY BREACH SOLELY BY TOLUNA OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (EXCLUDING IN RELATION TO ANY DOMAIN NAME). THE INDEMNITY PROVIDED UNDER THIS CLAUSE 9.1 SHALL NOT APPLY TO THE EXTENT THAT ANY SUCH CLAIM ARISES OUT OF OR RESULTS FROM THE CLIENT'S, ITS AFFILIATES', AGENTS' OR EMPLOYEES'; (A) NEGLIGENCE OR INTENTIONAL MISCONDUCT; (B) MATERIAL BREACH OF THE REPRESENTATIONS, WARRANTIES, UNDERTAKINGS AND COVENANTS UNDER THIS AGREEMENT; OR (C) USE OF THE APPLICATION IN MANNER INCONSISTENT WITH THE USE PERMITTED BY TOLUNA UNDER THIS AGREEMENT.

9.2 CLIENT SHALL, AT ITS SOLE EXPENSE, INDEMNIFY, DEFEND AND HOLD TOLUNA AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY LOSS, COST, DAMAGES, LIABILITY OR EXPENSE ARISING OUT OF OR RELATING TO ANY USE OF THE APPLICATION OR THE DOMAIN NAME INCLUDING IN PARTICULAR, BREACH OF CLAUSE 2, AND ANY INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY VIRTUE OF THE USE OF THE DOMAIN NAME AND THE HOSTING OF THE COMMUNITY AT THE CORRESPONDING URL AND BREACH OF APPLICABLE LAWS, INCLUDING THE DATA PROTECTION LEGISLATION.

9.3 The indemnified party ("**Indemnified Party**") shall: (a) notify the indemnifying party ("**Indemnifying Party**") in writing of any claim against it in respect of which it wishes to rely on the indemnity for claim under this clause 9 ("**Claim**"); (b) allow Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld; (c) provide Indemnifying Party with such reasonable assistance regarding the Claim as is required by Indemnifying Party, subject to reimbursement by Indemnifying Party of the Indemnified Party's costs so incurred; and (d) not, without prior consultation with Indemnifying Party, make any admission relating to the Claim or attempt to settle it, provided that Indemnifying Party considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10. **Personal Data**

10.1 For Branded Communities the additional clauses in Schedule 1 shall apply; for Blind Communities the additional clauses in Schedule 2 shall apply; and for Communities which are both Branded Communities and Blind Communities the additional clauses in both Schedule 1 and Schedule 2 will apply.

10.2 Client acknowledges that the personal data processed under this Agreement will be transferred to other Toluna Affiliates and third parties as set out in the table below:

Toluna Office	Services	Purposes	Mechanism for transfer under the GDPR
DPO@toluna.com Toluna USA Inc.	ALL	Hosting and back up	EU Standard Contractual Clauses
DPO@toluna.com Toluna Canada Ltd	Toluna Start (all)	Community management	Adequate country
DPO@toluna.com Toluna Technology Limited, Israel	ALL	Provision of analytics services (incl, TolunaAnalytics™)	Adequate country
DPO@toluna.com Toluna Romania Srl	ALL	Support and maintenance	Member of the EU
DPO@toluna.com Toluna India Pvt Limited	ALL	Support and Maintenance	EU Standard Contractual Clauses
https://aws.amazon.com/contact-us/compliance-support/ AWS and its affiliates https://aws.amazon.com/compliance/gdpr-center/	Toluna Start diy (USA) Toluna Start Managed communities (Ireland)	Cloud Hosting and back up services for Toluna	EU Standard Contractual Clauses, adequate country and/or member of the EEA

- 10.3 If the Client or its third party processors migrate an existing Community to the Application, Client shall obtain all the necessary and appropriate consents required by applicable Data Protection Legislation to enable; (i) the lawful transfer of such personal data to Toluna; and (ii) the use by Toluna of such personal data, for the duration and purposes contemplated under this Agreement. Client shall ensure that Toluna is lawfully permitted to process such personal data for the purposes contemplated under this Agreement, including but not limited to; Toluna uploading such individuals' personal data to the Application; and Toluna sending such individuals email, text, or phone Surveys or any requests to participate in such Surveys.
- 10.4 In the event a party hereto suffers a breach of the security of its' systems, servers and/or facilities, or any unauthorised access to, or use and/or disclosure of the personal data processed on and/or downloaded from the Application ("**Security Breach**"), while in such party's possession, the party suffering the Security Breach will promptly notify the other party, but in no event later than seventy (72) hours, after such party first learns of or discovers the Security Breach. In the event of a Security Breach, each party will; (i) use its best efforts to mitigate any harmful effect(s) of the Security Breach; (ii) use commercially reasonable efforts to make available sufficient resources and data for each party to determine the full impact and root cause of the Security Breach; and (iii) fully co-operate with the other party in investigating the cause(s) of any Security Breach and in providing notice to affected individuals and/or the appropriate legal and/or regulatory agencies, as required by any Data Protection Legislation or applicable laws and codes of practice.
- 11. Additional Terms.**
- 11.1 **Authority.** Each party hereby represents and warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party.
- 11.2 **Assignment.** Client may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void.
- 11.3 **Force Majeure.** Neither party shall be deemed in default of the Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reason of any act of God, fire, natural disaster, act of government, strikes or labour disputes, or supplies or any other similar act or condition beyond the reasonable control of such party ("**Force Majeure Event**"), save that non-payment of Toluna invoices shall not be an event of Force Majeure.
- 11.4 **Dispute resolution and Choice of Law.** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales. The Parties to this Agreement irrevocably agree that the courts of England

and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

- 11.5 **Waiver and Amendment.** No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties hereto. The failure of either party to seek relief for the other party's breach of any duty under this Agreement shall not waive any right of the non-breaching party to seek relief for any subsequent breach.
- 11.6 **Notices.** All notices, demands or consents required or permitted under this Agreement shall be in writing. Notice shall be considered delivered and effective: (a) on the date of receipt if personally delivered or delivered by email; (b) on the third business day following delivery by the United Kingdom postal system if by registered post; and (c) on the day of delivery to or rejection by addressee if sent by internationally recognised carrier.
- 11.7 **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the others shall remain in full force and effect.
- 11.8 **No Third Party Beneficiaries.** A person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, save that any Affiliate of Toluna may enforce its terms.
- 11.9 **Neutral Construction.** Each party warrants and represents that it has sought and received legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a party or parties on the grounds that the party or parties drafted or was more responsible for drafting a provision(s).
- 11.10 **Entire Agreement.** Each party to this Agreement acknowledges that this Agreement constitutes the entire Agreement of the parties with regard to the subject matter addressed in this Agreement, that this Agreement supersedes all prior or contemporaneous agreements, discussions, or representations, whether oral or written, with respect to the subject matter of this Agreement, and that this Agreement cannot be amended except by a writing signed by all parties hereto. Each party to this Agreement further acknowledges that no promises, representations, inducements, agreements, or warranties, other than those set forth herein, have been made to induce the execution of this Agreement by said party, and each party acknowledges that it has not executed this Agreement in reliance on any promise, representation, inducement or warranty not contained herein.
- 11.11 **Captions and Headings.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.
- 11.12 **Affiliates.** Without binding any party other than Toluna or Client to the provisions of this Agreement, in this Agreement, a reference to anything being provided or done, or any right of, Toluna includes a reference to such a thing being provided or done by, or being a right of, Toluna's Affiliates.
- 11.13 **Operational and Support and Toluna Security Measures.** Toluna uses security measures and provides customer and operational support for the Application. A copy of these measures is available online at <https://tolunacorporate.com/legal/community-operation-support-security/> and can be provided as a pdf on request.

SCHEDULE 1 – Additional Clauses for Client Branded Communities

1. Each party acknowledges and agrees that for the purposes of this Agreement that the Client is the "data controller" and Toluna is the "data processor" as regards all personal data which is contained in the Client Content.
2. In its capacity as data processor, Toluna will:
 - (a) process the personal data only in accordance with Client instructions, the Data Protection Legislation, Applicable Laws and as contemplated under this Agreement and not for any other purpose;
 - (b) put in place appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of the personal data and against accidental loss, destruction and damage;
 - (c) take all reasonable steps to ensure that all Toluna's staff who will have access to or process the personal data are obliged to keep the personal data confidential;
 - (d) assist the Client at the Client's cost, in responding to any request from a data subject ("**DSAR**") and in ensuring compliance with its obligations under Data Protection Legislation regarding security, breach notifications, impact assessments and consultations with the supervisory authorities or regulators, but the Client acknowledges and agrees that Toluna has provided a tool on the Application pursuant to which a Community Member may make a DSAR via is/her online account and Toluna shall respond and deal with such DSAR accordingly;
 - (e) notify the Client without undue delay on becoming aware of a personal data breach;
 - (f) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement, unless required by any Applicable Law to store the personal data; and
 - (g) maintain complete and accurate records and information to demonstrate its compliance with clause 10 and this Schedule 1.
3. Toluna undertakes to inform Client in writing no later than thirty (30) days in advance of replacement of any sub-processor listed in clause 10.2, engagement of any new sub-processor or change of location of the processing ("**Replacement**"). If Client objects to such Replacement, Client shall no later than within seven (7) days of its receipt of the notice, provide Toluna with a written explanation of the grounds of its objection. Client shall not object to changes that may be required under Applicable Law. The Parties undertake to discuss in good faith possible adjustments with the aim of enabling Client to approve any such Replacement. Should the Parties not be able to reach mutual agreement within a reasonable time, Client may without penalty terminate, upon written notice, the relevant SOW affected by such objection. If Client does not object to the engagement of the Replacement, then Toluna is free to engage such Replacement as it sees fit. In the event of any termination under this paragraph 3, Toluna will, as Client's sole and exclusive remedy, refund the pro rata share of the unused portion of the fees Client has pre-paid to Toluna under the applicable SOW and with no continuing obligation for fees owed thereafter under such SOW.
4. Prior to transferring the Community Member personal data to a country for processing outside the EEA or the UK, Toluna will ensure that:
 - (i) it has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies; and
 - (iii) Toluna complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred.
5. In respect of a Branded Community where the Client has migrated some or all of the Community members to Toluna, Client and Toluna may agree that the Client can access the personal data of all the Community Members (including those recruited by Toluna). In respect of processing such personal data, Client shall:
 - (a) process such personal data in accordance with the provisions of the Data Protection Legislation;
 - (b) shall display its current privacy notice on the Application (as reviewed and approved by Toluna legal counsel) ("**Privacy Notice**");
 - (c) ensure that any processing of such individuals' personal data shall be in accordance with the Privacy Notice;
 - (d) provide Toluna with any assistance reasonably required by Toluna in order for Toluna to comply with its obligations under clause 10 of the Terms and this Schedule 1; and
 - (e) keep the personal data secure in accordance with Art 32 GDPR and strictly confidential.
6. If required under the Data Protection Legislation, the parties shall complete and execute into SCC's (Module 2 C2P).

SCHEDULE 2 – Additional Clauses for Blind Communities

1. It is acknowledged and agreed between the parties that the Application is a Blind Community. In compliance with the Data Protection Legislation, the Client shall not process (or attempt to process or request) any personal data of the Community Members or allow any of its authorised users of the Application to process, attempt to process or request any personal data of the Community Members. Notwithstanding the foregoing, it is further acknowledged and agreed that Toluna is recruiting the Community Members solely for and on behalf of the Client, accordingly, each party acknowledges and agrees that for the purposes of this Agreement that the Client and Toluna are "joint data controllers" as regards all personal data which is contained in the Client Content
2. In its capacity as joint controller, each party will:
 - (a) process the personal data in accordance with the Data Protection Legislation and as reasonably contemplated under this Agreement and not for any other purpose;
 - (b) put in place appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of the personal data and against accidental loss, destruction and damage;
 - (c) take all reasonable steps to ensure that all its' staff who will have access to or process the personal data are obliged to keep the personal data confidential;
 - (d) notify the other controller without undue delay on becoming aware of a personal data breach concerning the Community Members;
 - (e) maintain complete and accurate records and information to demonstrate its compliance with clause 10 and this Schedule 2; and
 - (f) save for as set out under clause 10.2 of the Terms, no party shall transfer any personal data outside the country in which the Community Member resides unless the following conditions are fulfilled:
 - (i) such party has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies; and
 - (iii) Toluna complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred.
3. Toluna shall respond to any data subject request from a Community Member and ensure compliance with its obligations under Data Protection Legislation regarding security, breach notifications, impact assessments and consultations with the supervisory authorities or regulators.
4. Client shall assist Toluna at the Client's cost, in any assistance reasonably required by Toluna in order for Toluna to comply with its obligations under the Terms, including this Schedule 2.
5. Upon termination of this Agreement, Toluna shall not transfer any personal data in connection with such Community Members to Client or to any third party unless it has first obtained the prior consent of such Community Members in accordance with the Data Protection Legislation. Regardless of whether or not the personal data of the community Members are transferred upon termination of the Agreement, Toluna shall delete or erase such personal data (including any copies thereof) in accordance with its data retention and destruction policies.
6. If required under the Data Protection Legislation, the parties shall complete and execute into SCC's (Module 1 C2C).