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## TERMS AND CONDITIONS

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Date: 7 August 2018, Version 2.3

### General terms and conditions of POLYAS International GmbH for the use of the voting software "POLYAS"

#### 1. Contract parties, area of application

1.1. POLYAS International GmbH, Alte Jakobstraße 88, 10179 Berlin ("POLYAS") provides the voting software "POLYAS", a software for conducting online voting and ballots ("voting software").

1.2. These general terms and conditions ("GTCs") apply to the provision of the FREE and PREMIUM versions of the voting software.

1.3. These GTCs solely apply to the use of the voting software by users who are entrepreneurs in terms of § 14 BGB or associations ("election organizers"), but not by consumers. The consumer as defined by § 13 BGB is any natural person who conducts a legal transaction for purposes that can neither be primarily attributed to their commercial nor their independent professional employment.

1.4. To this contract apply solely the GTCs of POLYAS. Contradictory conditions, or conditions of the election organizer deviating from these GTCs, will not be incorporated into this agreement unless their validity is explicitly agreed upon in writing by POLYAS.

1.5. The contract language is German.

#### 2. Subject matter

The item of this contract is the provision of the voting software "POLYAS" (hereafter "voting software"), as well as the storage space for storing the data required for holding the election and the data created by the voting software regarding the use of the voting software by the election organizer. Moreover, the provision / conveyance of rights of use of the voting software to the election organizer.

#### 3. Conclusion of the contract

3.1. Creating a user account is required to use the voting software. After successful registration, the customer receives the access data, consisting of a user name and password.

3.2. Election organizers, who are signed in with their user account, make a binding offer by clicking the button "start election".

3.3. The product presentation on the POLYAS website does not constitute any binding proposal to conclude a contract on the use of the voting software. Rather it concerns an non-binding invitation for the election organizer to utilize POLYAS to hold an online vote.

3.4. A contract on the use of the voting software is only concluded when POLYAS explicitly declares acceptance of the offer as per item 3.3, or when POLYAS activates the election in the customer account of the election organizer.

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### 4. Services of POLYAS

4.1. The extent of the individual services as well as any fees stem from the service descriptions from the time of assignment. If the customer receives an individual quote and/or a service description from POLYAS, this becomes part of the contract.

### 5. Provision of the voting software

5.1. As of the period agreed upon in the assignment, POLYAS retains the voting software for use by the election organizer on a server in accordance with the following regulations.

5.2. POLYAS ensures that the voting software

- ✓ is suitable for the purposes intended by the election organizer and
- ✓ is free of defects during the contract period, especially viruses and other corrupt software that impede the efficiency of the voting software for contractually agreed use.

5.3. POLYAS establishes a user account for the election organizer through which the election organizer can configure the voting software in accordance with the extent owed under item 4. The user account is accessed by entering the user name and password that the election organizer received from POLYAS via email or another agreed medium upon conclusion of the contract. The election organizer must immediately change all user names and passwords into names and passwords only known to them. Additional security measures are defined in item 9.3.

5.4. POLYAS is authorized to modify the voting software, especially with regard to making technical developments, to improve the security or stability of the voting software. Should major alterations occur in the functionality of the software, POLYAS will inform the election organizer of this at least two weeks beforehand.

### 6. Rights of use of the voting software

6.1. The election organizer receives simple, non-transferable rights of use to the voting software - limited to the duration of the election – to the extent necessary for the contractual use of the voting software. Should new versions or updates of the voting software be released during the election period, the right of use extends to these as well.

6.2. The election organizer is authorised during the election period to grant the voters rights of use as per item 6.1, to the extent necessary for voter participation.

6.3. Any additional rights of use are not provided.

### 7. Provision of the necessary server environment

7.1. The voting software is completely installed and operated on POLYAS' own hardware, or on hardware rented by POLYAS. The electoral roll, ballot box, validator and election committee client are installed on different servers in accordance with the separation of powers. Access to the voting system for the voters is granted through the voting portal of the election organizer via a link.

7.2. The server environment employed for provision is located in various data centers in Germany.

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### 8. Technical requirements, handover point, availability

8.1. A common and updated internet browser is a technical requirement. For a comfortable user experience, Java Script and Cookies should be activated.

8.2. The handover point for the voting software is the respective uplink by the data centers used by POLYAS.

8.3. Definite availability of the voting software and server environment is only ensured if such has been agreed upon in the extent of services defined in item 4 and/or the separately agreed Service Level Agreement. The parties understand "availability" to mean the technical usability of the voting software at the handover point.

8.4. Hours of availability: Our office can be reached Monday to Friday from 9:00 am to 5:00 pm (CET) by e-mail or telephone.

### 9. Obligations and responsibilities of the election organizer

9.1. The election organizer provides POLYAS with all information required to render the services to the extent stated in item 4.

9.2. The election organizer is responsible for the fulfilment of the technical, legal and organizational conditions so that the voters can use the online voting platform.

The election organizer is especially responsible for:

- ✓ ensuring that the voters have access to a computer with internet access and are able to retrieve an "https protocol",
- ✓ ensuring that the legal requirements for the use of the voting software are fulfilled and adhered to, and
- ✓ ensuring that the voters can clearly identify themselves for partaking in the vote via the voting software

9.3. The election organizer will fulfil all duties and obligations required to execute this contract.

In particular, they will:

- ✓ maintain confidentiality of their assigned use and access permission as well as their access data, protect such data from third-party access and not forward such data to unauthorized users. These data must be protected via suitable and traditional measures. The election organizer will immediately inform the provider if there is suspicion that unauthorized persons could know the access data and/or passwords.
- ✓ adhere to the limitations/obligations with regard to the rights of use as per item 6, especially:
  - not accessing or allowing the access of any information or data without authorisation, or intervening or allowing the intervention in programs operated by POLYAS, or accessing POLYAS data networks without authorization, or requesting such access;
  - not misusing the exchange of electronic messages agreed upon by contract and/or possible through the voting software for unsolicited transmission of messages and information to third parties for advertising purposes;
  - releasing POLYAS from third-party claims based on illegal use of the voting software or resulting from disputes pertaining to data protection, copyright or other legal disputes relating to the use of the voting software caused by the election organiser;
  - obligating the authorised users (voters) to adhere to the applicable conditions of this contract;

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- ✓ ensure that they (e.g. while sending third-party texts/data to the voting software or to employees of POLYAS) adhere to all third-party rights of the material used by them;
- ✓ acquire any necessary consent from the party concerned provided the election organizer collects, processes or utilizes personal information while using the voting software without special legal permission;
- ✓ test any data and information for viruses before sending them to POLYAS, and utilizing state-of-the-art anti-virus programs;
- ✓ immediately report flaws in contract services to POLYAS. Should the election organizer neglect to make a prompt report for reasons caused by them, this constitutes contributory causation / contributory negligence. Should POLYAS not be able to remedy this neglect or delay in reporting, the election organizer is not permitted to completely or partially reduce the agreed compensation, to request compensation for the damage caused by the flaw(s) or to cancel the contract due to the flaw without adherence to a term. The election organiser must verify that they are not responsible for the lack of report;
- ✓ pay the compensation as per item 10 as it is due;
- ✓ if they submit voting data (including electoral registers) to POLYAS for purposes of establishing and conducting an election, especially for generating electoral registers, they will regularly save the electoral data in accordance with their importance and make their own copies to facilitate the reconstruction of electoral data and information in the event of any loss.

### 10. Compensation

10.1. POLYAS offers the payment methods invoice, debit, credit card, PayPal and immediate transfer. POLYAS reserves the right not to offer certain payment methods and to refer to other payment methods. Please also see our privacy policy.

10.2. Any fees accrued while conducting an election, including those for additional services (e.g. additional development of product features or services) must be paid in advance if both parties agree.

10.3. In the event that direct debit authorization is granted, this applies to future elections until revocation. The election organiser bears all costs stemming from negative booking of a payment transaction for a lack of account coverage, or due to falsely entered bank connection data.

10.4. All invoices from POLYAS must be paid in full within 14 days after receipt of the invoice, unless agreed otherwise.

10.5. All prices are net prices and are exclusive of applicable value added tax.

10.6. The election organizer may only offset claims by POLYAS with uncontested or legally determined counter-claims. The election organizer may only exercise a right to retention if there are no counter-claims for the same contractual relationship.

10.7. Should the election organizer default on their payment, POLYAS may suspend the election.

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### 11. Liability

11.1. The parties bear unlimited liability toward one another for malice or gross negligence for all damages caused by them as well as their legal representatives or agents.

11.2. The parties bear unlimited liability for slight negligence in the event of injury to life, body or health.

11.3. Otherwise a contracting party is only liable should they have violated a crucial contract obligation (cardinal duty). In these cases, the liability is limited to compensation of the foreseeable, typically occurring damages. The no-fault liability of the provider for compensation (§ 536 a BGB) for defects present upon finalization of the contract is excluded. Items 11.1 and 11.2 remain hereby unaffected.

11.4. A contracting party is only obligated to pay a contractual penalty if this contract explicitly mandates it. A contractual penalty need not be reserved. Offsetting both with and against it is permitted.

11.5. Liability in accordance with product liability law is unaffected.

### 12. Contract duration and cancellation

12.1. The task of holding an election ends with the submission of the result report or the voting documentation to the election organizer.

12.2. Both parties reserve the right to cancellation under extraordinary circumstances. Extraordinary circumstances for POLYAS include:

- ✓ non-adherence to legal stipulations by the election organizer,
- ✓ violation of contractual obligations by the election organizer, especially from item 9 of these General Terms and Conditions,
- ✓ POLYAS' reputation is significantly damaged by the presence of the election organizer (e.g. if it is discovered after registration of the election organizer that they are legally convicted for a malicious crime and this sentence is known to other election organizers),
- ✓ the election organizer advertises for associations or communities - or their methods or activities - monitored by security or youth protection authorities,
- ✓ the election organizer is a member of a cult or a religious community considered contentious.

12.3. Upon cancellation the election organizer must pay compensation for all services rendered by POLYAS until said cancellation.

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### 13. Data security and data protection

13.1. The parties adhere to the respectively applicable data protection regulations, especially those valid in Germany, and shall oblige their employees employed in connection with the contract and its implementation to maintain confidentiality and data protection, insofar as these are not already generally compliant are committed.

13.2. If the election organizer collects, processes or uses personal data, it shall ensure that it is entitled to do so in accordance with the applicable provisions, in particular data protection provisions, and releases POLYAS from claims of third parties in the event of a breach. Insofar as the data to be processed are personal data and the order has been processed, the provider will comply with the legal requirements of order processing and instructions of the election organizer (e.g. to comply with deletion and blocking obligations). These instructions must promptly be submitted in writing.

13.3. In the event that personal data is processed by POLYAS on behalf of the contract, the parties shall regulate the order processing in a separate order processing agreement pursuant to Art. 28 GDPR.

13.4. POLYAS will process election data only to the extent required by the performance of the contract. The election organizer agrees to the collection and use of such data to this extent.

13.5. The obligations under paragraphs 13.1. and 13.2 exist as long as election data are within the sphere of influence of the provider, even beyond the end of the contract. The obligation under section 13.4. exists beyond the end of the contract for an indefinite period.

### 14. Confidentiality

14.1. The contract partners will maintain confidentiality of all classified information acquired throughout the contract relationship, and only use said third-party information as agreed with the respective other party, regardless of to which ends. Information explicitly declared to be confidential by the party providing the information, as well as information clearly classified as per the circumstances of its provision, are considered classified information. POLYAS must especially treat data regarding the circumstances of an election or ballot with confidentiality, should they receive such information.

14.2. Obligations as per item 14.1 do not apply to such information or portions thereof for which the receiving party verifies that it

- ✓ was known or generally accessible before the date of receipt;
- ✓ was known or generally accessible by the public before the date of receipt;
- ✓ was generally known or accessible by the public after the date of receipt in no part due to the receiving party.

14.3. Public declarations by the parties regarding cooperation are only made as previously agreed.

14.4. Obligations as per item 14.1 extend indefinitely beyond the end of the contract until exceptions in accordance with item 14.2 are applicable.

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### 15. Closing terms

15.1. The sole site of jurisdiction for all disputes from and due to this terms and conditions is the court responsible for Berlin.

15.2. The laws of the Federal Republic of Germany apply to this contract, to the exclusion of the CISG.

15.3. Alterations and amendments to this contract must be submitted in writing. This also applies for an alteration to this written form requirement.

15.4. Should a term of this contract become partially or completely invalid, the validity of the remaining terms is hereby unaffected. The invalid term is replaced by a valid condition that most corresponds to the original purpose as closely as possible. This also applies in the event that a term becomes unfeasible or unclear. In such an event, a condition that is feasible, clear and most closely corresponds to the originally intended purpose is considered agreed upon in place of the unfeasible or unclear term.