

GROUP APPORTIONMENT AGREEMENT

THIS AGREEMENT is effective as of January 1, 2018 (the “**Effective Date**”) **BY AND BETWEEN:**

X,
a company incorporated under the laws of Country X, and having its head office at ...
(hereinafter referred to as “**X**”)

- and -

Y,
a company incorporated under the laws of Country Y, and having its head office at ...
(hereinafter referred to as “**Group Company**”)

WHEREAS:

The Y Group is active in the area of ...; and

The **Group Company** is part of the **Y Group**;

X provides central services that relate to the group as a whole and are made available to the group to the **Group Company** including through the use of personnel of sister companies or of external service providers;

The activities conducted by **X** are centralized and in general may include administrative services such as planning, coordination, budgetary control, financial advice, accounting, auditing, legal, factoring, computer services; financial services such as supervision of cash flows and solvency, capital increases, loan contracts, management of interest and exchange rate risks, and refinancing; assistance in the fields of production, buying, distribution and marketing; and services in staff matters such as recruitment and training et al;

These activities governed in this agreement will be provided and it has been assumed that the intra-group charge for such services is in accordance with the arm’s length principle. In this respect the July 10, 2018 version of the internationally applied OECD Transfer Pricing Guidelines is used as benchmark. In particular Para. § 7.35 – § 7.37 of Chapter VII is applied observing that the provision of the centralized service is a principal activity of **X**, where the profit element is relatively insignificant;

These central services are the subject of this contract.

ARTICLE I - SERVICES

X provides the services listed below for the **Group Company**:

1.1 Management and sales support:

- (a) The **Group Company** is managed by a Management Board consisting of **#number#** members.
- (b) The board is led by the CEO, who determines in close cooperation with the other board members the strategy of the group.
- (c) The activities of **#number#** board members are largely supportive by nature. See also hereafter.

1.2 General legal, tax and business consulting

Costs for groupwide legal and tax advice within the Y Group are pooled via X. The external lawyers regularly render invoices to X.

1.3 Monitoring and control tasks, planning, accounting and reporting

- (a) A group of **#number#** persons carries out monitoring and control tasks at Group Companies within the context of auditing activities.
- (b) This also includes the usual monitoring functions on the basis of short-term profit and loss accounts, financial, sales and project progress reports and audited financial statements.
- (c) A multi-stage planning cycle is run through annually. It serves for Group-wide partial and total budgeting. The budget figures are considered as targets for the new financial year.

1.4 Marketing services

The central area of Marketing is allocated to a Board area. Central Marketing is responsible for the marketing strategy (including corporate identity matters), online marketing, trade fair and event management and print media. There are some local marketing activities which are then merely coordinated centrally. The local activities (e.g. visits to trade fairs) tend to increase with the distance from Headquarters.

1.5 IT services

Services in the IT area are limited. They are mainly restricted to the selection of the software systems used Group-wide. There is no worldwide central support or a common data centre. A central computing centre is only used for a **#group of companies#**.

1.6 Consolidation of financial reports

- (a) A group of **#number#** persons consolidates the financial reports of the affiliated companies. Additionally, the group generates transfer price documentation.
- (b) In addition, further services can be claimed and made available on the basis of this contract to which the regulations will then apply analogously.

ARTICLE II – PAYMENT FOR THE SERVICES

- 2.1 As long as the services of **X** referred to in Article I above are not performed in the interests of the shareholders (especially what are called monitoring and planning activities, “shareholder activity”), the use of the services by the **Group Company** is subject to remuneration. These services are provided in the interest of the **Group Company** which cannot use its own personnel to provide them, and save the **Group Company** its own expenses by the commissioning of third parties.
- 2.2 The payment for the central services described under Article I is made as part of a cost apportionment. For this purpose, **X** determines the costs due to it for the services carried out in the interests of the subsidiary companies every year and uses these as a basis for calculating the total sum to be apportioned, taking into account a mark-up rate of ...%. The total costs to be apportioned are derived on the basis of the annual financial statements audited by an auditor / an auditing company.
- 2.3 For the current services period 2018, a total sum of central services to all **Group companies** to be apportioned of EUR **#amount#** p.a. (in words **#amount in words#**) is derived from **Annex A**.
- 2.4 Since the central services are available to all the companies in the Group and are generally also utilised, distribution is carried out on the basis of a uniform distribution key. The sales of the **Group Company** forms the basis of the pro rate apportionment calculation. This means that the main criteria a cost causation are adequately taken into account in the opinion of the company performing the services as well as the company receiving them, without unnecessarily rendering the determination of the pro rate apportionment amount more difficult. If the specified apportionment scale leads to economically unrealistic cost apportionments in individual cases, the parties undertake to seek an appropriate solution in each individual case that comes closest to the desired result of an accurate cost allocation, taking into account simple and predictable determination.
- 2.5 Individual billing of services in the sense of Article I is in principle excluded in favour of the agreed apportionment.

ARTICLE III – OBLIGATIONS OF X

- 3.1 **X** is obliged to offer the services of the catalogue shown under Article I and to perform them on request by the **Group Company** within a normal business cycle.
- 3.2 If **X** is not in a position to do this or to do this on time with its own resources, **X** will be obliged to buy in the external service at its own expense.
- 3.3 The subject of the service is the agreed service, not a particular result. **X** is obliged, when carrying out the service, to apply the due care of a prudent businessman. It will be liable to the **Group Company** only for gross negligence or intent.
- 3.4 **X** is obliged to adjust the cost basis of the apportionment every year to the latest budget for the applicable year.

ARTICLE IV – OBLIGATIONS OF THE GROUP COMPANY

- 4.1 The **Group Company** is obliged to announce the use of special services of **X** that are not regularly performed well in advance.
- 4.2 It will make advance payments to the annual total sum arising on the proportional apportionment amount.
- 4.3 The advance payments will be invoiced by **X** and are to be settled within 90 days of invoicing.
- 4.4 Different advance payment periods or annual billing may be determined arbitrarily by **X**. The settlement of the apportionment will always be in EUR.

ARTICLE V – SALES AND WITHHOLDING TAXES

- 5.1 The remuneration of the services will be made – in so far as taxable and liable to tax – plus turnover tax at the statutory rate.
- 5.2 If the **Group Company** is obliged to withhold foreign withholding taxes on the payment, it may deduct the tax paid from the payment on behalf of **X**.
- 5.3 It will cooperate where possible and necessary in obtaining the evidence needed for the offsetting of this foreign withholding tax.

ARTICLE VI – ENTRY INTO FORCE, FINAL PROVISIONS

- 6.1 This contract is to be applied to all services which are performed as from January 1, 2018.
- 6.2 This agreement will be governed solely by **Country X law**; the place of jurisdiction will be **Country X**.
- 6.3 If any provision of this contract should be wholly or partially ineffective or unenforceable, the validity of the remaining provisions will remain unaffected. The ineffective or unenforceable provision is to be regarded as replaced by an effective and enforceable provision which comes as close as possible to the economic purpose pursued by the contracting parties in the ineffective or unenforceable provision. The same applies in the event that the contract contains an omission not intended or not foreseen by the contracting parties.

#(DATE)#

#(PLACE)#,

#(PLACE)#,

X

Group Company

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