

# TERMS & CONDITIONS

## ACHILLES COMMUNITY SUPPLIER STANDARD

The terms and conditions set out below apply to the **Supplier's** participation in the **Achilles Community** to share its **Supplier** information submitted in the **Questionnaire** with all **Subscribers**. The **Supplier** will be deemed to have accepted these terms at the time when the **Supplier** submits its payment to **Achilles**. However, a contract between **Achilles** and the **Supplier** will not be formed unless and until **Achilles** sends to the **Supplier** an email confirming acceptance of the **Supplier's** application. Unless a particular **Community** has specific terms that are applicable to only that **Community** (in which case such terms shall apply in respect of registration on that **Community** only), these terms and conditions shall apply to the exclusion of any other terms and conditions, including without limitation any purchase order or confirmation of order provided by the **Supplier**.

### 1. DEFINITIONS

**"Achilles"** means Aquiles México SA de CV.

**"Achilles Community"** means the common database of **Supplier** information operated by **Achilles** on behalf of **Subscribers** in a particular sector and geography. The application form set out on **Achilles** website describes the particular Achilles Community(ies) into which **Supplier** has chosen to register.

**"Intellectual Property"** means all intellectual property rights including copyright (in any software, operational manuals and reports), database rights, neighbouring rights and all rights in relation to inventions (including any program, system, procedure, process, formula or method of production), patents, registered and unregistered trade marks, registered and unregistered designs, trade secrets and confidential information.

**"Party"** means either **Achilles** or the **Supplier** (and **"Parties"** will be construed accordingly).

**"Questionnaire"** means the specific online questionnaire through which **Achilles** collects the **Supplier's** information for the purpose of subsequently making it available to **Subscribers** through the **Achilles Community**.

**"Supplier"** means a supplier, contractor or a service provider who wishes to register, or is already registered on the **Achilles Community**.

**"Subscriber"** means the companies registered as users of the relevant **Achilles Community**.

## 2. GENERAL TERMS

The **Supplier** shall answer the questions in the **Questionnaire** as accurately and completely as possible such that the completed **Questionnaire** reflects the general status of, and the specific goods and or services offered by, the **Supplier** at the specified time of completion of the **Questionnaire**. The **Supplier** is responsible for reviewing and maintaining the accuracy of the data information entered on the **Questionnaire**. Certain functionality within the **Achilles Community** may generate email or other forms of electronic messaging to be sent to the **Supplier**. The **Parties** recognise that such forms of communication are not infallible, and it is the **Supplier's** responsibility to ensure any contact details provided to **Achilles** are correct, and to make regular checks to view any communications which may be held on the relevant **Achilles Community**.

**Achilles** may request **Supplier** to update or confirm the information **Supplier** has entered into the **Questionnaires** if it believes there may be errors or inconsistencies. Once confirmed by the **Supplier**, **Achilles** will publish the entire information provided by the **Supplier** through the online **Questionnaires** out to the **Subscribers**, by loading the completed **Questionnaire** responses into the relevant **Community** databases where it may be searched by **Subscribers**.

**Achilles** will provide **Supplier** with email confirmation once **Supplier's** information has been loaded onto the **Community** search databases. **Achilles** will allow **Supplier** information to be used to pre-populate **Supplier** **Questionnaires** where a **Supplier** is a member of another **Achilles Community** and on an anonymised basis, **Achilles** will use aggregate **Supplier** information and data to develop and/or improve the products and services it offers to **Achilles Supplier** and **Buyers**.

The **Supplier** agrees to:

- i. Comply with **Achilles'** reasonable requirements and directions as to use of the **Questionnaire**;
- ii. Use the **Questionnaire** in accordance with applicable law, including data privacy laws and communication regulations; and
- iii. Not knowingly interfere with the proper functionality of the web site hosting the **Questionnaire** or the relevant **Achilles Community**;

The **Supplier** agrees not to use the **Questionnaire** to knowingly load, post or distribute any information that:

- i. infringes the **Intellectual Property** rights of any other person or entity; or
- ii. is harmful, inaccurate, misleading, fraudulent, defamatory, obscene, offensive or otherwise illegal.

**Achilles** and the **Supplier** shall use their reasonable endeavours to ensure that computer software viruses that may damage hardware, software or communication systems, are not knowingly created or introduced to the web site hosting the **Questionnaire**.

The **Supplier** further agrees to maintain the confidentiality of the unique **Questionnaire** log on, required by the **Supplier** to gain access to the **Questionnaire**, issued by **Achilles** in the **Achilles Community** introductory letter or email. The **Supplier** agrees to limit distribution of this log on to individuals in the **Supplier's** organisation who require access to this log on for the purpose of completing the

**Questionnaire.** In addition, the **Supplier** will notify **Achilles** immediately if it knows or suspects any misuse of, or breach of confidentiality relating to this log on.

Neither **Party** shall offer, give or agree to give to any person employed by or on behalf of the other **Party** any gift or consideration of any kind as an inducement or reward for any act in relation to the provision of the relevant **Achilles Community**. Any breach of this condition by the **Supplier** (or by anyone employed by or acting on its behalf) in relation to any **Achilles Community** will entitle **Achilles** to terminate this agreement with immediate effect. Under such circumstances **Achilles** will not refund any fees received from the **Supplier**.

Notwithstanding anything else in these terms and conditions and with the exception of the obligation of the **Supplier** to pay the fee neither **Party** shall be liable for any failure in performing any of its obligations under these conditions if such failure is caused by circumstances beyond its reasonable control, which shall include any Act of God, war, trade dispute, fire, flood, drought, tempest or any other abnormal weather conditions.

If at any time any one of the provisions of these terms and conditions becomes invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired. These terms and conditions shall continue in effect until amended by **Achilles** by written notice. These terms and conditions may be provided with translations into other languages, and if a contradiction should occur between such translations then the terms of the English version will take precedence.

No one other than a **Party** to this contract shall have any right to enforce any of its terms. Furthermore, no third party may be held liable by and owes no duty of care, responsibility or liability to the **Supplier**. The **Supplier** agrees that it will not bring any claim or proceedings of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence) in any way in respect of or in connection with this contract against any such third party.

### 3. LIMITATION OF LIABILITY AND INDEMNITIES

The **Supplier** will indemnify and keep indemnified **Achilles**, its officers, employees and agents against all and any liability, losses, damages, awards, claims, costs and expenses that they may sustain or incur arising from **Supplier's** breach of any representations, warranties or obligations set forth under these terms and conditions.

**Achilles** will indemnify the **Supplier** for any loss suffered by the **Supplier** as a result of **Achilles'** failure to comply with any applicable laws or regulations in providing the **Achilles Community**, and against all and any liability, losses, damages, awards, claims, costs and expenses that they may sustain or incur arising from **Achilles'** breach of any representations, warranties or obligations set forth under these terms and conditions, subject to the limit stated below.

Nothing in these terms and conditions will serve to limit the liability of either **Party** in respect of any matter which cannot be excluded by law. For all other matters, **Achilles'** aggregate liability to the **Supplier** in respect of all claims (whether in contract or tort) will not exceed the value of the preceding

twelve (12) months' fees paid by the **Supplier**. **Achilles** will not in any circumstance be liable for indirect, incidental or consequential loss or damage or loss of profits, revenue, business, interest, anticipated savings, use of any open source software or any business interruption.

The web site hosting the **Questionnaire** may provide links to other Internet sites. **Achilles** is not responsible for the availability or content of such other sites. The **Supplier's** accessing of any of these sites is entirely at the risk of the **Supplier**.

## 4. FEES AND PAYMENT

Both **Suppliers** and **Subscribers** will contribute towards the administration cost of operating the relevant **Achilles Community**. An annual non-refundable fee is payable by the **Supplier** for subscription to each **Community**, the amount of which is specified in the **Supplier's** application form set out on the **Achilles** website. Such fee is payable by the methods set out on the **Achilles** website from time to time. If, in accordance with the applicable legislation of the country of the **Supplier**, services rendered by **Achilles** under this agreement are subject to tax withheld from the service fees and to be remitted by the **Supplier** to the respective tax authorities, the fees for services should be increased by the **Supplier** by the respective amount so that, after withholding of these taxes from the fee amount, **Achilles** is paid the amount of fees equal to the amount which **Achilles** would receive if there were no such withholding.

The **Supplier** acknowledges and agrees that if paying online:

- i. payment will be processed on **Achilles'** behalf by **Achilles'** payment processing sub-contractor (the "**Payment Processor**") from time to time;
- ii. the **Payment Processor** may process any personal data provided by the **Supplier** for the purpose of processing payment of the fee;
- iii. receipt by the **Supplier** of any email notification that the **Supplier's** payment is being or has been processed does not constitute acceptance by **Achilles** that it will include the **Supplier's** information in the **Achilles Community** and/or that there exists a contract. If **Achilles** decides, for whatever reason, to decline the **Supplier's** application, then any amounts paid by the **Supplier** will be repaid without delay; and
- iv. payment of the fee may be made to **Achilles** or any of its affiliates and receipt by any such entity shall constitute valid performance by the **Supplier** of its obligation to pay such fee.

## 5. OWNERSHIP RIGHTS

The copyright and all **Intellectual Property** rights whatsoever in the **Achilles Community** database, all computer programs, user manuals, **Achilles** sponsored web sites, questionnaires and other documentation in connection with the **Achilles Community** will remain vested in and be the property of **Achilles**. Any **Intellectual Property** in the information and other material entered by the **Supplier** onto the **Questionnaire** shall, at all times, remain vested in the **Supplier**.

## 6. SUPPLIER SCREENING

**Achilles** currently undertakes **screening services for certain Subscribers**, where the questionnaire data provided by Suppliers is ‘screened’ against certain screening databases in order to help such Subscribers (i) prevent, detect or investigate any unlawful acts; or (ii) discharge any function designed to protect the public against dishonesty, malpractice or seriously improper conduct (“Subscriber Screening”).

**Subscriber Screening** is currently undertaken by **Thomson Reuters** on behalf of **Achilles** using the **Thomson Reuters** “World-Check” database, with the results being provided to the relevant Subscribers.

Supplier acknowledges and agrees that **Achilles** and **Thomson Reuters** have the right to use the questionnaire data provided by Supplier to **Achilles** (including any personal data contained therein) for **Subscriber Screening**.

## 7. CONFIDENTIALITY AND DATA PRIVACY

Notwithstanding **Achilles’** duty to publish **Supplier’s Questionnaire** responses to **Subscribers**, **Achilles** and the **Supplier** agree to keep in confidence for a minimum period of five years from the termination of these terms and conditions any information obtained under these terms and conditions and will not divulge the same to any third party, other than its own officers, employees or agents, without the prior written consent of the other **Party**.

**Achilles** shall use all reasonable endeavours to protect and safeguard the information provided by the **Supplier** from loss, theft, destruction, third party intervention, “hacking” and the like from accidental disclosure and shall ensure all employees do likewise.

This provision shall not apply to:

- i. any information in the public domain other than in breach of these terms and conditions;
- ii. information that is either trivial or obvious or already in the possession of the receiving **Party** before its receipt from the disclosing **Party**;
- iii. information received from a third party (other than a **Subscriber**) who is free to disclose the same;
- iv. disclosure of information which is required by law or a regulatory body;
- v. information developed by one **Party** independent of the other; or
- vi. information disclosed to professional advisers, auditors, bankers or financiers provided a confidentiality undertaking is in force with at least the same terms as this clause.

**Achilles** agrees to ensure that each **Subscriber** undertakes similar terms of confidentiality before being allowed to access the relevant **Achilles Community**.

**Supplier** is aware that its information is designed to be shared with the **Subscribers** participating in the relevant **Community** and that completing the **Questionnaire** may require the **Supplier** to provide certain limited personal information on individuals such as names, job titles and contact details. The **Supplier**

confirms that it is permitted to provide any such details to **Achilles** for the purposes of its participation in the **Achilles Community**. The **Supplier** acknowledges that **Achilles** may transfer the **Supplier's** personal data outside the EEA or the country where the **Supplier** is located for the purposes of operational handling, backup purposes or to carry out **Achilles'** other obligations under the contract. In relation to "personal data" (as defined in the EU Data Protection Directive (Directive 95/46/EC), which also defines "processing" and "data subject") that is processed by **Achilles** under or in relation to the contract, **Achilles** will:

- i. comply with its obligations under the EU Data Protection Directive (and any other applicable laws and regulations) in relation to the processing of the personal data; and
- ii. take appropriate technical and organisational measures against (a) unauthorised or unlawful processing of the personal data; and (b) accidental loss or destruction of, or damage to, the personal data.

## 8. TERM AND TERMINATION

The contract shall continue for the period to which the fees paid by the **Supplier** pursuant to clause 4 relates and shall terminate automatically at the end of such period.

Without prejudice to any of **Achilles'** other rights or remedies, **Achilles** may remove the **Supplier's** details (either temporarily or permanently) from the **Achilles Community** and terminate the contract in the event of any actual or suspected breach by the **Supplier** of these terms and conditions, or any insolvency or other event occurring in respect of the **Supplier** as a consequence of debt.

## 9. LAW, JURISDICTION AND LANGUAGE

These terms and conditions shall be governed by Mexican law and the **Parties** shall be subject to the exclusive jurisdiction of the courts of Mexico.

These terms and conditions are drafted in the English language and Spanish language.

Any notice given under or in connection with these terms and conditions shall be in English. All other documents provided under or in connection with these terms and shall be in English, or accompanied by a certified English translation.

The English language version of these terms and any notice or other document relating to this contract, shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.