

POBAL

SINGLE PARTY FRAMEWORK AGREEMENT

Microsoft Services and related services

Title	Management of Microsoft Services, support and associated services
Value of this Framework Agreement	TBC
Contracting Authority	Pobal
Service provider	[insert]
Commencement Date:	[insert]

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FRAMEWORK AGREEMENT dated the ____ day of _____ (“the **Commencement Date**”)

BETWEEN

- (1) **Pobal**, of Holbrook House, Holles Street, Dublin 2, D02 EY84, Ireland (the “**Recipient**”, which expression shall include its successors and assigns)

AND

- (2) [..], a [insert type of company] with its offices at [..] (the “**Service Provider**”, which expression shall include its successors and assigns).

(Individually called a “**Party**” and collectively called the “Parties”).

WHEREAS

- (A) The Recipient requires the performance of certain Services, as hereinafter defined and wishes to engage the Service Provider to perform the Services.
- (B) The Service Provider has agreed to perform the Services on the terms and conditions contained in this Agreement.

NOW IT IS HEREBY AGREED

1. INTERPRETATIONS AND DEFINITIONS

1.1. In this Agreement, unless the context otherwise suggests:

“**Agreement**” means the provisions of this framework Agreement (including the Schedules) as may from time to time be varied in accordance with Clauses 9 and 26;

“**Background Intellectual Property**” means any and all Intellectual Property that is owned by or licensed to either Party and which are or have been developed independently of this Agreement, the Services and Deliverables (whether prior to or after the Commencement Date);

“**Bias**” includes an inclination, leaning, tendency, bent, a preponderating disposition or propensity, predisposition, predilection and/or prejudice. Bias can include subjective or objective bias. Objective bias, for these purposes, includes where there is a reasonable apprehension or suspicion that the entity in question might have been biased (i.e. where, although there was no actual bias, there is an appearance of bias);

“ Business Day” means a day other than a Saturday, Sunday, or other day on which commercial banks in Ireland are authorized or required by law to be closed for business;

“Change of Control” means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the Service Provider’s management or policies, whether through ownership of shares, by contract, or by any other means;

“Confidential Information” means this Agreement, and all information of whatever nature relating to the Recipient, the Services and/or the affairs, plans, transactions, proposals, projections, strategies, finances, prices, know how, methodologies, costs, operations, accounts, strategic plan, operational processes, Intellectual Property and data systems of the Recipient which is disclosed before or after the date hereof by the Recipient to the Service Provider (including its officers, employees, advisers, agents, representatives, contractors, sub-contractors or consultants) or to which the Service Provider is given access, whether in written, oral, visual, graphic, photographic, electronic, digital or in any other tangible form whatsoever, including, but not limited to, all know-how, Intellectual Property, ideas, experience, drawings, designs, diagrams, lists, computer programs, algorithms, engineering data, economic data, statistical data, formulae, specifications and all other technical or other tangible information in the possession or procurement of the Recipient and any other matters relating to the Recipient, the Agreement and/or the Services, whether pursuant to written communication, or correspondence with the officers, management, employees, contractors or sub-contractors of the Recipient, or the advisers or consultants to or agents or representatives of the Recipient. Confidential Information also includes analyses, compilations, studies, notes, reports, presentations and any other documents or records of whatsoever nature in whatever form prepared by or on behalf of the Recipient, or by the Service Provider and/or its officers, employees, advisers, agents, representatives, contractors, sub-contractors or consultants with respect to the Agreement and/or the Services whether marked confidential or not;

“Conflict of Interest” means any conflict of interest or Bias or any other factor, whether arising through personal interest, current or prospective contractual obligations or any other activity or association that the Service Provider or any of the Service Provider’s Personnel has which would compromise the independence of the Service Provider in its performance of the Services or any aspect of the Services for the Recipient pursuant to this Agreement and any of its subject matter or which could create the perception that the independence of the Service Provider in its performance of the Services might be so compromised including, without limitation:

- (i) An interest which would or could compromise the independence of the Service Provider in its performance of the Services pursuant to this Agreement;
- (ii) An interest which could (in the opinion of the Recipient) create the reasonable perception that the independence of the Service Provider in its performance of the Services might be so compromised;
- (iii) A substantial pecuniary interest (whether by way of a shareholding or otherwise) in an “authorised undertaking” (within the meaning of Regulation 2(1) of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No.

335 of 2011)) or in a “postal service provider” as defined in section 6(1) of the Communications Regulation (Postal Services) Act 2011;

- (iv) A contract (whether oral or written) with any person regulated by the Recipient or potentially affected by any decisions of the Recipient or which represent any persons regulated or potentially affected by decisions of the Recipient;
- (v) A position of employment, directorship (whether executive or non-executive) or any position of emolument with any person regulated by the Recipient or potentially affected by any decisions of the Recipient or which represent any persons regulated or potentially affected by decisions of the Recipient;
- (vi) Where the Service Provider has in the past undertaken work for an organisation (or a subsidiary or an associated company of an organisation) that might be affected by decisions to be taken by the Recipient and which are in any way connected with the Services, in circumstances where the Service Provider was privy to confidential information that would give, or might reasonably be perceived to give, the Service Provider (and by extension the Recipient) an unfair advantage in relation to an organisation that might be affected by any future decisions to be taken by the Recipient relating to, or connected with, matters falling within the scope of the Services; and
- (vii) Any conflict of interest which has been disclosed or is disclosable by the Service Provider to the Recipient and a perception of a conflict of interest.

“Deliverables” include, without limitation, all items, reports, data, spreadsheets, compilations, output, product, work, models and any other deliverables whatever resulting from the performance by the Service Provider of the Services and/or this Agreement.

“Exit Plan” means the exit management plan set out in Clause 3 of this Agreement which may be amended and updated from time to time;

“Euro” means the lawful currency of Ireland;

“Fees” means the Fees described in Schedule 2 and payable in accordance with Clause 4 and Schedule 2;

“Group of Companies” has the meaning given to it in Section 8 of the Companies Act 2014;

“Harmful Code” means any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any person, or otherwise deprive the Recipient of their lawful right to use the Services;

“Intellectual Property” includes, without limitation, any copyright (including copyright in computer software and source code), database rights, sui generis database rights, discoveries, concepts, domain names, patents, secret or other processes, technologies, know-how, inventions, ideas, goodwill, utility models, improvements, information, trade secrets, all copyright works, business methods, logos, designs, trademarks, service marks, business names, domain names, business methods, utility

models, design rights (whether registered or unregistered and including any application or right of application or right of renewal in relation to any of them), trade secrets and all other industrial or intellectual property rights including moral rights of whatever nature whether registered or unregistered in any application for such rights and any similar proprietary rights and any related goodwill;

"RFT" means the Request for Tender published by the Recipient on www.etenders.gov.ie and OJEU reference in respect of the Services and any clarifications issued by the Recipient in respect of the RFT;

"Liabilities" includes all costs claims, demands, damages, expenses, actions, compensation, charges, settlements, proceedings, penalties, losses, fines, awards and liabilities (including legal and professional fees and costs, together with VAT) whatsoever;

"Month" means a calendar month;

"Process" means to perform any operation or set of operations on any data, information, material, work, expression, or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalogue, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or (c) block, erase, or destroy. **"Processing"** and **"Processed"** have correlative meanings;

"Procurement Directive" means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement;

"Procurement Documents" means the RFQ (including the Detailed Systems Requirements contained therein or appended thereto) and the Tender Response Form together with all appendices and schedules;

"Parties" means the Recipient and the Service Provider;

"Recipient Data" means any and all information, data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of the Recipient for Processing by or through the Services, or (b) collected, downloaded, or otherwise received by the Service Provider or the Services for the Recipient pursuant to this Agreement or at the written request or instruction of the Recipient. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Recipient Data are themselves also Recipient Data. For the avoidance of doubt, Recipient Data includes all User Data and Personal Data (as defined in Clause 13.1);

"Services" means the services to be provided by the Service Provider to the Recipient as described in Schedule 1 and any reasonably incidental and/or related services (and includes, as the context admits or requires anyone, more or all of them or part of any of them) and any other services which can reasonably be inferred as being required for the proper execution of same;

"Service Provider's Personnel" means the personnel engaged by the Service Provider to provide the Services and includes for the avoidance of doubt any employees, representatives and/or agents of the

Service Provider or its sub-contractors of any tier in any way involved in the performance of the Service Provider's obligations under this Agreement and/or the Services or any Deliverables;

"Service Provider's Key Personnel" means the Services Provider's Personnel (if any) specified in Schedule 2;

"Service Provider's Systems" means the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems), and networks used by or for the Service Provider in connection with the Services;

"Tax Clearance Certificate" means a tax clearance certificate issued by the Irish Revenue Commissioners;

"Tender" means the application submitted to the Recipient by the Service Provider in response to the RFT and including responses to the Detailed Systems Requirements contained therein or appended thereto as well as the completed Tender Response Document, and any relevant certifications and declarations (but which excludes in all cases any qualifications contained in the Tender which were prohibited by the terms of the Procurement Documents);

"Term" has the meaning set out in Clause 3.1 of this Agreement;

"Third Party Product" means the third-party software (if any);

"Third Party Product Maintenance Services" means any maintenance and support services in relation to the Third-Party Product;

"Third Party Provider" means the supplier of a particular Third-Party Product or Third-Party Product Maintenance Service;

"User Data" means any and all information reflecting the access or use of the Services by or on behalf of the Recipient, including any end user profile, visit, session, impression, click through, or click stream data, and any statistical or other analysis, information, or data based on or derived from any of the foregoing.

1.2. In this Agreement (except where the context otherwise requires or unless otherwise specified):

- 1.2.1. any reference to a Clause, Schedule, sub-Clause or paragraph is to the Clause, Schedule, sub-Clause or paragraph of or to this Agreement and any reference to a sub-Clause or paragraph is to the relevant sub-Clause or paragraph of the Clause or Schedule in which it appears;
- 1.2.2. the index and Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.3. the use of the singular includes the plural and vice versa;
- 1.2.4. the use of any gender includes the other genders;
- 1.2.5. a reference to any statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and

includes any regulation, order, instrument or subordinate legislation for the time being in force made under the relevant statute or statutory provision;

- 1.2.6. references to persons in this Agreement include bodies corporate, unincorporated associations or partnerships and any reference to a person includes a reference to that person's legal personal representatives, successors and lawful assigns;
- 1.2.7. where the words "include(s)", "including" or "in particular" are used in this Agreement, they are deemed to have the words "without limitation" following them and where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them; and
- 1.2.8. any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.3. This Agreement will not be interpreted *contra proferentum*.
- 1.4. The Schedules to this Agreement form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules to this Agreement.

2. ENGAGEMENT OF THE SERVICE PROVIDER

- 2.1. Subject to Clause 2.2 to this Single Party Framework Agreement (the "Agreement"), the Service Provider agrees to provide the Services described in Schedule 1 ("the Services") to the Recipient in accordance with this Single Party Framework Agreement ("Agreement"). Schedule 1 details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission ("the Specification").
- 2.2. The following shall be conditions precedent to this Agreement coming into force:
 - 2.2.1. the completion by the Recipient of satisfactory due diligence in relation to the Service Provider (and any third party engaged by the Service Provider to assist in the provision of the Services). Any such due diligence may have regard to the financial status of the Service Provider and its ability and capacity to perform the Services. However, any due diligence by the Recipient, in relation to the Service Provider, shall not in any way limit or relieve the Service Provider of its liabilities and obligations under this Agreement, unless as otherwise expressly provided for under this Agreement;
 - 2.2.2. the Service Provider (and any third party engaged by the Service Provider to assist in the provision of the Services) providing the Recipient with a declaration to the effect that neither it nor the Service Provider's Personnel has a Conflict of Interest;
 - 2.2.3. the Service Provider providing the Recipient with documentary proof that it possesses a Tax Clearance Certificate and the insurance cover required under Clause 12. However, the supply to the Recipient of a Tax Clearance Certificate or any draft or final insurance

policy or insurance certificate shall not imply acceptance by the Recipient that the terms of the Tax Clearance Certificate are satisfactory or that the extent of the insurance cover is sufficient, or that its terms are satisfactory, nor does it serve to otherwise limit or relieve the Service Provider of its liabilities and obligations under this Agreement, unless as otherwise expressly provided for under this Agreement; and

- 2.2.4. if the Service Provider is not resident in Ireland or its business is registered outside of Ireland, the Service Provider providing the Recipient with a statement from the Revenue Commissioners (in lieu of a Tax Clearance Certificate) confirming suitability on tax grounds to be awarded this Agreement.
- 2.3. The Service Provider shall render and perform the Services using all reasonable care, skill and ability to be expected of a properly qualified service provider experienced in providing services comparable in type, scope, complexity and purpose to the Services, in a timely manner and in accordance with the description of the requirements of the Services as set out in Schedule 1, so as to give to the Recipient the full and complete benefit of the Service Provider's experience and expertise.
- 2.4. The Service Provider shall provide a detailed implementation / service transition plan / data and document migration plan on or before the Commencement Date
- 2.5. Without prejudice to Clause 2.3, the Service Provider shall exercise (and shall procure that its agents, sub-contractors, the Service Provider's Personnel and all other third parties engaged by the Service Provider to assist in the provision of the Services shall exercise) in the performance of the Services that standard of skill, care and diligence reasonably to be expected of a properly qualified service provider experienced in providing services comparable in type, scope, complexity and purpose to the Services. This includes that the Service Provider (and any agent, sub-contractor, employee, or third party engaged by the Service Provider) shall perform the Services in accordance with good industry practice and shall comply with all applicable laws, including environmental, social and labour laws, and with the international conventions listed in the Procurement Directive 2014/24/EU as transposed in Ireland by Regulation 57 of the European Communities (Award of Public Authorities' Contracts) Regulations 2016.
- 2.6. The Service Provider's Personnel may be required to provide the Services at the Recipient's premises from time to time.
- 2.7. The Service Provider represents and warrants to the Recipient that it and the Service Provider's Personnel have the experience, qualifications and necessary ability to undertake the Services.
- 2.8. The Service Provider represents and warrants to the Recipient that:
 - 2.8.1. it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement;
 - 2.8.2. the execution, delivery and performance by it of this Agreement has been authorised by all necessary action on its part;
 - 2.8.3. each of the obligations under this Agreement constitute legally binding obligations;

- 2.8.4. there are no actions, suits or proceedings or regulatory investigations pending or, to the Service Provider's knowledge, threatened against or affecting the Service Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Service Provider to perform its obligations under this Agreement;
- 2.8.5. the status of the Service Provider, as declared in the "Declaration as to Personal circumstances of Tenderer", which confirms that none of the excluding circumstances listed in Article 57 of the Procurement Directive apply to the Service Provider, remains unchanged;
- 2.8.6. the Service Provider shall take all reasonable steps not to introduce any Harmful Code into the Recipient's network and information systems via the Services or otherwise; and
- 2.8.7. the Services and materials provided by the Service Provider under this Agreement will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party.

3. COMMENCEMENT AND TERMINATION

- 3.1. This Agreement shall take effect on the date of this Agreement ("the Commencement Date") and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties ("the Term").

The framework agreement will be for a maximum period of four (4) years. The initial call-off contract is for a period of two [2] years. The Contracting Authority reserves the right to extend the Term of the initial contract for a period or periods of between twelve (12) and twenty-four (24) months on the same terms and conditions, subject to strategic alignment, satisfactory performance, budget availability and permitted subject to its obligations at law and with mutual agreement.

- 3.2. If the Service Provider:

- (i) abandons this Agreement or commits a material breach of any of its obligations under this Agreement which is incapable of remedy or which, if capable of remedy, is not remedied within 10 Business Days of receiving notice from the Recipient to remedy such breach;
- (ii) its employees, servants or agents or any of them commit any act of grave misconduct or gross default, crime, fraud, dishonesty, or any conduct tending to bring either the Service Provider or the Recipient into disrepute or affecting the business of the Recipient;
- (iii) through its employees, servants or agents or otherwise is in default or neglect in the discharge of its obligations under this Agreement or is, by reason of the ill health of its employees, servants or agents or otherwise unable to fulfil its obligations under this Agreement to the satisfaction of the Recipient;
- (iv) becomes bankrupt, or makes any composition or arrangement with, or conveyance or assignment for the benefit of his creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of his estate, or a trustee is

granted by him on behalf of his creditors, or if the Service Provider, being a company, enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation), or if a receiver or examiner of any of its assets is appointed;

- (v) undergoes a Change of Control to which the Recipient does not give its prior written consent unless that Change of Control does not materially affect the Service Provider's ability to carry out the Agreement;
- (vi) if in the reasonable opinion of the Recipient, it appears that the Service Provider's Personnel or the Service Provider has a Conflict of Interest; or
- (vii) if the Service Provider, or its sub-processors, can no longer undertake processing of personal data in jurisdictions approved by the Recipient when entering into the Agreement, or where a relevant jurisdiction loses the benefit of an EU granted Adequacy Decision held at the time of the parties entering into this Agreement,
- (viii) if in case of any continued poor performance where notified issues, linked to the SLA and KPIs, remain unaddressed

the Recipient may, without prejudice to any other right or remedy, terminate this Agreement by giving the Service Provider 14 Business Days written notice thereof.

In addition, and without prejudice to the above, where the Recipient becomes aware that any of the exclusion grounds set out in Article 57 of EU the Procurement Directive apply to any sub-contractor engaged by the Service Provider, the Recipient reserves the right to require the Service Provider to immediately replace the sub-contractor and the Service Provider shall comply with such requirement. The Service Provider shall include, in every sub-contract relating to performance of the Services into which it enters, (i) a right for the Service Provider to terminate the sub-contract where any of the exclusion grounds set out in Article 57 of the Procurement Directive apply to the sub-contractor; and (ii) a requirement that the sub-contractor, in turn, shall include a provision having the same effect in every sub-contract relating to performance of the Services into which the sub-contractor enters.

- 3.3. the Recipient may terminate this Agreement in whole or in part with thirty (30) days prior written notice without cause.
- 3.4. The Service Provider may not change any of the Service Provider's Key Personnel without the prior written consent of the Recipient. If any of the Service Provider's Key Personnel become unable to perform the Services through accident, ill health, unsound mind, are convicted of any criminal offence or are otherwise unable to undertake the Services or part thereof, the Service Provider must inform the Recipient immediately and the Recipient may request the Service Provider to immediately remove that person and to replace them. If any of the Service Provider's Key Personnel are replaced for any reason, any such replacement(s) shall, to the satisfaction of the Recipient, possess qualifications and experience equal to or greater than the Service Provider's Key Personnel who are being replaced. If the Service Provider fails to nominate a replacement who is acceptable to the Recipient within 30 Business Days after the

Recipient so requests a replacement, the Recipient may immediately terminate this Agreement by notice in writing.

3.5. If:

- (i) conditions arise because of a change in Government policy, or the passing of any law, or the issuing of any guidance or circular by a Government department, which in the opinion of the Recipient, makes it advisable or necessary to dispense with the Services under this Agreement; or
- (ii) the Recipient considers it necessary or prudent to terminate this Agreement (in whole or in part) to comply with public procurement law or to settle or resolve any related complaint or proceedings,

the Recipient may terminate this Agreement upon 30 Business Days' written notice to the Service Provider. Such a termination shall be affected in the manner specified in the said notice and shall be without prejudice to any claims which either party may have against the other under this Agreement. In the event of such termination by the Recipient, the Recipient shall pay to the Service Provider such Fees as are properly owing to the Service Provider for Services performed up to the date of such termination.

- 3.6. If this Agreement is terminated for any reason other than pursuant to Clause 3.3, the Service Provider shall only be entitled to payment directly attributable to the proportion of the Services properly completed in accordance with this Agreement, prior to such termination of this Agreement. Any prepaid Fees for the Services to be completed after such termination shall forthwith, upon termination, be refunded to the Recipient.
- 3.7. the Recipient shall not be liable to the Service Provider (or to any third party engaged by the Service Provider to assist in the provision of the Services) for any loss of profit, contracts, goodwill, business opportunity or anticipated saving suffered or incurred by the Service Provider arising out of or in connection with this Agreement, whether by termination of it or otherwise.
- 3.8. Termination of this Agreement shall be without prejudice to the rights and remedies of either Party in relation to any negligence, omission or default of the other Party prior to termination.
- 3.9. The termination or expiry of this Agreement (in whole or in part) shall not affect either Party's rights, remedies, liabilities or obligations accrued prior to the date of termination or expiration or any rights, remedies, liabilities or obligations of either Party which are stated or by implication are intended to survive or commence after the expiration or termination of this Agreement.
- 3.10. On termination of this Agreement, the Service Provider shall execute and deliver all Confidential Information and all documentation prepared by the Service Provider and all other documentation in its custody or control relating to the Services to the Recipient and shall take further steps as the Recipient may reasonably require for the purpose of fully vesting in the Recipient all rights and benefits of the Service Provider arising therefrom.

- 3.11. the Recipient's rights to terminate this Agreement as provided for in this Clause 3 are in addition to any other rights of termination provided for in this Agreement.
- 3.12. If the Recipient terminates this Agreement because of a material breach of this Agreement it may rely on a single material breach, a number of material breaches or repeated material breaches.
- 3.13. Upon termination of this Agreement for any reason, the Recipient may procure substitute services from another service provider. Except in the case of termination under Clause 3.4, 3.5 and 3.6, the costs of procuring an alternative service provider shall be reimbursed to the Recipient by the Service Provider.
- 3.14. The Supplier shall, within six (6) months of the Commencement Date, provide a robust Exit Management Plan for any planned / unplanned migration off the service. This must include a detailed plan and supporting methodology which will, at a minimum:
 - 3.14.1. Contain separate mechanisms for Ordinary Exit and Emergency Exit
 - 3.14.2. Set out the management structure to be employed during both transfer and cessation of the services in an Ordinary Exit and an Emergency Exit;
 - 3.14.3. Set out detailed description of both the transfer and cessation processes, estimated timelines, document and data transfer, security and integration with legacy systems
 - 3.14.4. Plan should be revised at least once per annum during the term of the Agreement

4. FEES

- 4.1. In consideration of the provision of the Services in accordance with this Agreement, the Recipient shall pay to the Service Provider the Fees for the amounts and at the times set out in the service agreement.
- 4.2. All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Recipient's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Recipient or upon such deemed acceptance, the invoice shall be payable by the Recipient. Payment is subject to any rights reserved by the Recipient under any other provision of this Agreement A valid invoice must contain a valid purchase order number. Invoices shall be supported, where required, by a written report and shall also be supported where required, by time analysis in respect of the work undertaken by the Service Provider and shall be sent to the Recipient's Contact and accountspayable@pobal.ie.
- 4.3. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- 4.4. Any Service Provider pre-printed terms and conditions are hereby disallowed.

- 4.5. Invoices with respect to any Fees additional shall not be submitted to the Recipient unless the Recipient has provided prior written approval.
- 4.6. The Service Provider agrees that neither it (nor any third party engaged by it to assist in the provision of the Services) is or shall become an employee or agent of the Recipient or be entitled to any fee, salary, pension, bonus, or other fringe benefits from the Recipient and it is agreed that the Service Provider shall be responsible for the deduction of income tax liabilities and Pay Related Social Insurance (PRSI) or similar contributions, if applicable, arising from the payment of the Fees to the Service Provider under this Agreement. The Service Provider agrees to indemnify and hold harmless the Recipient against any claims or demands that may be made by any relevant authority in respect of income tax, PRSI, penalties or interest relating to such payments in respect of the provision of the Services.
- 4.7. The payment of any Fees under this Agreement is conditional on the Recipient having in its possession at the time of payment a valid and current Tax Clearance Certificate. If the Service Provider is not resident in Ireland or its business is registered outside of Ireland, the Service Provider must provide the Recipient with a Tax Clearance Certificate for non-residents from the Revenue Commissioners confirming suitability on tax grounds to be awarded this Agreement.

5. ACCESS TO INFORMATION, REPORTING, COOPERATION AND AUDIT

- 5.1. the Recipient shall make available to the Service Provider and its servants or agents any information reasonably required by the Service Provider to enable it to fulfil its obligations under this Agreement.
- 5.2. The Service Provider shall appoint a competent and appropriately qualified and experienced manager for the Services for the purposes of overseeing and co-ordinating the timely and proper delivery of the Services who shall be available for consultation with the Recipient during normal business hours during the Agreement.
- 5.3. the Recipient and its representative and the Service Provider and its representative shall liaise and co-operate with each other with a view to achieving, inter alia, the best, most effective and efficient achievement of the Services.
- 5.4. The Service Provider shall report to the Recipient on all matters referred to the Service Provider under this Agreement in such form and with such frequency and within such time periods as are reasonably specified by the Recipient and the Recipient shall be entitled to have full and free access to all papers, results and data generated by the Service Provider in the performance of the Agreement and Services.
- 5.5. The Service Provider shall submit to the Recipient reports at such times as the Recipient shall reasonably require and in such format as the Recipient shall reasonably require (including electronic format) so as to be capable of audit. Records and reports and other materials shall be kept in good order and in safe storage.
- 5.6. The Service Provider shall maintain proper accounts and records of its performance under this Agreement.

- 5.7. the Recipient may at any time, on giving 14 Business Days' notice (save in the case of emergency when no notice shall be required to be given), conduct an audit (itself and/or using an auditor with relevant experience and qualifications) of the Service Provider for the following purposes:
- 5.7.1. to verify the accuracy of the Fees (including the calculation of same);
 - 5.7.2. to review the Service Provider's compliance with and performance of its obligations under this Agreement;
 - 5.7.3. to review the Service Provider's accounts and records held and maintained in accordance with Clause 5.6; and
 - 5.7.4. to carry out the audit and certification of the Recipient's accounts.
- 5.8. If, as a result of the exercise by the Recipient of its audit rights referred to in Clause 5.7, the Recipient is not satisfied that the Service Provider is providing the Services in accordance with its obligations pursuant to this Agreement, the Recipient shall so inform the Service Provider and the Service Provider shall forthwith take such actions as are necessary to ensure compliance. The rights of the Recipient pursuant to this Clause 5.8 are independent of, and in addition to, any other rights and remedies it may have.
- 5.9. Without prejudice to any legal requirement or longer retention requirement under this Agreement, all accounts and records shall be retained for a period of 6 years following completion of the Services.

6. CONFIDENTIAL INFORMATION AND ANNOUNCEMENTS

- 6.1. Subject to Clause 6.2, during the term of this Agreement and at any time after the termination or expiry of this Agreement the Service Provider shall (and shall procure that the Service Provider's Personnel and any third party engaged by it to assist in the provision of the Services):
- (i) keep safe, secure, secret and strictly confidential the Confidential Information;
 - (ii) not use any Confidential Information for any purpose other than in the performance of its obligations under this Agreement;
 - (iii) not disclose any Confidential Information to any person except with the prior written consent of the Recipient or in accordance with Clause 6.2;
 - (iv) use all reasonable endeavours to prevent the use or disclosure of Confidential Information;
 - (v) not to use or disclose the Confidential Information to any third party without the Recipient's prior written consent; and
 - (vi) to immediately notify the Recipient in writing if the Service Provider suspects that the confidentiality and security of the Confidential Information has been breached.
- 6.2. The Service Provider may disclose information which would otherwise be Confidential Information if and to the extent that:

- (i) it is required by law;
 - (ii) the information has come into the public domain or into the knowledge of the Service Provider, otherwise than through a breach of this Clause 6 (or any other confidentiality agreement) with the Recipient by the Service Provider;
 - (iii) it is required by existing contractual obligations of which the Recipient is made aware prior to the Commencement Date of this Agreement;
 - (iv) it is required by a regulatory or Government body in Ireland to which it is subject provided that it gives the Recipient as much advance notice as reasonably possible and permits the Recipient to make representations; or;
 - (v) the disclosure is to its professional advisers, other officers, employees and sub-contractors ("a Receiving Party") to the extent that disclosure is reasonably necessary for the purposes of this Agreement provided that it gives the Recipient as much advance notice as reasonably possible and permits the Recipient to make representations.
- 6.3. The Service Provider shall ensure that a Receiving Party is made aware of and complies with the Service Provider's obligations of confidentiality under this Agreement as if the Receiving Party was a Party to this Agreement.
- 6.4. At the Recipient's request, the Service Provider shall provide, and shall procure that any relevant Receiving Party provides, satisfactory evidence that the obligations outlined at Clause 6.3 have been implemented and are being maintained to a level acceptable to the Recipient. This evidence shall be provided with ten (10) Business Days of the Recipient's request.
- 6.5. The Service Provider shall within one (1) month of termination or expiry of this Agreement:
- (i) return to the Recipient all Confidential Information insofar as it is in tangible form together with all copies thereof, provided however that in such case the Service Provider shall be entitled to retain one copy of same for professional indemnity purposes which copy shall only be used for such purposes; and
 - (ii) provide a signed statement to the Recipient certifying that all Confidential Information has either been delivered to the Recipient or destroyed.
- 6.6. The Service Provider acknowledges that the Recipient may be required to grant access to records held by the Recipient in relation to the Services (including Confidential Information) to members of the public pursuant to the provisions of the Freedom of Information Act 2014 and the Service Provider shall provide the Recipient with copies of any relevant records (for the purpose of the Freedom of Information Act 2014) held by it within ten (10) Business Days of a request being made by the Recipient.
- 6.7. The Service Provider acknowledges that any Confidential Information marked by the Recipient as, or claimed as, legally privileged shall be privileged and the benefit of the privilege belongs to the Recipient. The provision of legally privileged Confidential Information to the Service Provider does not amount to any waiver of privilege.

- 6.8. The Service Provider acknowledges that prior to the execution of this Agreement it has familiarised itself with and is aware of the provisions of the Freedom of Information Act 2014 and the Recipient's procedures in relation thereto which are published on the Recipient's website at <https://www.pobal.ie/freedom-of-information/>.
- 6.9. Subject to this Clause 6, no public announcement concerning this Agreement, the Services or any ancillary matter shall be made by the Service Provider, without the prior written consent of the Recipient. The Service Provider shall not therefore communicate directly or indirectly with the print or broadcast media or any agency nor shall it publish any articles or similar relating to this Agreement.
- 6.10. Clause 6.9 does not apply to a public announcement, communication or circular to be made or sent by the Service Provider, if it is required by law, or any regulatory or Government body, to which it is subject.
- 6.11. The Recipient reserves the right at its sole discretion to publish information about the Agreement. Where the Service Provider (acting reasonably) notifies the Recipient that financial and/or economic information supplied by it to the Recipient is confidential or commercially sensitive information, the Recipient will take account of such representations in considering whether to disclose the relevant information.
- 6.12. This Clause 6 survives the termination or expiration of this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The Recipient has no, and will not, acquire any right, title or interest in or to the Background Intellectual Property of the Service Provider or its third-party licensors. However, the Service Provider hereby grants to the Recipient an irrevocable perpetual fully paid-up worldwide royalty free non-exclusive licence to use any of the Deliverables, any additionally derived software created in the provision of the Services and any of the Service Provider's Background Intellectual Property contained therein, in connection with the Recipient's use of, and/or in order to obtain the full benefit for the Recipient of, the Services. The licence in this Clause 7.1 will survive the expiry or termination of this Agreement for any reason.
- 7.2. The Recipient hereby grants the Service Provider a revocable non-exclusive non-transferable limited licence to use the Recipient's Intellectual Property solely to the extent necessary for the Service Provider to provide the Services in accordance with this Agreement, and not for any other purpose. This licence will immediately cease upon the termination or expiry of this Agreement (or earlier to the extent that any such Intellectual Property is not required by the Service Provider for the purpose of fulfilling its obligations to provide the Services under this Agreement).
- 7.3. The Recipient may, but is not required to, provide Recipient Data to the Service Provider in connection with this Agreement. As between the Recipient and the Service Provider, the Recipient is and will remain the sole and exclusive owner of all right, title, and interest in and to all Recipient Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Clause 7.4.

- 7.4. Subject to the terms and conditions of this Agreement, the Recipient hereby grants the Service Provider a limited, royalty-free, fully-paid up, non-exclusive, non-transferable and non-sublicensable licence to Process the Recipient Data solely as necessary to provide the Services for the Recipient's benefit as provided in this Agreement for so long as the Recipient uploads or stores such Recipient Data for Processing by or on behalf of the Service Provider on the Service Provider's Systems.
- 7.5. Except for the limited licence expressly provided in Clause 7.4, nothing contained in this Agreement shall be construed as granting the Service Provider or any third party any right, title, or interest in or to any Recipient Data.
- 7.6. The Service Provider shall indemnify the Recipient, its officers, employees and agents against any action, claim or demand, costs (including legal costs), liabilities, damages or expenses arising from or incurred by reason of any infringement of any third party's Intellectual Property rights in respect of the performance of the Services.
- 7.7. If any claim is made or brought against the Recipient in respect of the matters referred to in Clause 7.6, the Service Provider shall be immediately notified thereof and may, with the assistance of the Recipient, if required, but at the sole expense of the Service Provider, conduct all negotiations for the settlement of the same, or any litigation that may arise therefrom, provided before undertaking the conduct of such negotiations or litigation the Service Provider shall have given to the Recipient such security as shall reasonably be required to cover any compensation, damages, expenses and costs which might become payable or be incurred by the Recipient in respect of or as a result of such negotiations or litigation.
- 7.8. If any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, the Service Provider shall, at the Service Provider's sole cost and expense:
- (i) procure for the Recipient, the right to continue to access and use the Services to the full extent contemplated by this Agreement; or
 - (ii) modify or replace all components, features, and operations of the Services that actually, or are likely or alleged to, infringe or otherwise violate the rights of any third party ("**Allegedly Infringing Features**") to end and avoid such infringement or violation while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Agreement.
- 7.9. If neither of the remedies set forth in Clause 7.8 is reasonably available with respect to the Allegedly Infringing Features then the Service Provider may direct the Recipient to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that the Service Provider shall:
- (i) refund to the Recipient any prepaid Fees for Services that have not been provided; and

- (ii) in any case, at its sole cost and expense, secure the right for the Recipient to continue using the Allegedly Infringing Features for a transition period of up to 2 months to allow the Recipient to replace the affected Services or Allegedly Infringing Features without disruption

7.10. The remedies set forth in Clause 7.8 and 7.9 are in addition to, and not in lieu of, all other remedies that may be available to the Recipient under this Agreement or otherwise.

7.11. The Service Provider agrees on request at any time to give the Recipient or any person authorised by the Recipient access to the Intellectual Property and to provide copies of same at its own expense.

7.12. The provisions of this Clause 7 will continue to apply notwithstanding the termination or expiry of this Agreement for any reason and notwithstanding the completion of the performance of the Services.

8. COMPLIANCE WITH LAWS

8.1. The Service Provider shall comply with and shall procure that the Service Provider's Personnel, complies with all relevant laws and the requirements of any statutory authority, regulatory or government body in performing the Services.

9. CHANGE CONTROL

9.1. At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.

9.2. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Service Provider or the Recipient proposes the change.

9.3. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the provision of the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").

9.4. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.

9.5. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.

9.6. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.

9.7. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.

9.8. The Service Provider and the Recipient will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Recipients request for any variation is subsequently withdrawn but results in a delay in the performance of the Services, then the Service Provider will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

10. SUSPENSION OF SERVICES

10.1. The Recipient may by notice require the Service Provider to suspend the progress of the whole or any part of the Services for a specified period upon receipt of such a notice.

10.2. Unless such suspension is necessary by reason of some default of or breach of this Agreement by the Service Provider for which it is responsible, the following provisions shall apply:

- (i) the Service Provider shall be entitled to an extension of time for performance of the obligation(s) to which the suspension relates; and
- (ii) the Service Provider shall be reimbursed by the Recipient in respect of any increased costs reasonably incurred by the Service Provider by reason of such suspension.

10.3. Following any such period of suspension referred to in this Clause, the Recipient may by notice require the Service Provider to immediately recommence work on all or any part of the suspended Services.

11. INDEMNITY

11.1. The Service Provider acknowledges that the Recipient will be relying on the Service Provider's skill, expertise and experience in providing the Services. The Recipient will also be relying on the accuracy of all representations or statements made and the advice given by the Service Provider in connection with the provision of the Services. The Service Provider hereby agrees to indemnify and hold harmless the Recipient and the Recipient's officers, employees and agents against all Liabilities of any nature whatsoever incurred or suffered by the Recipient arising out of the Service Provider's (and/or the Service Provider's Personnel's) breach of any of the obligations, representations or the warranties contained in this Agreement or arising out of the Service Provider's (and/or the Service Provider's Personnel's) negligence, act, default, omission or breach in providing or while performing or in connection with the Services, or while present on the Recipient's premises. With the exception of any liability of the Service Provider pursuant to Clauses 4.6, 6, 7.6, 13 and 19.2, the liability of the Service Provider under this Agreement shall otherwise, to the fullest extent permitted by law, be limited to 125% of the value of this Agreement. The Recipient agrees it shall take reasonable steps within its control to mitigate any liability to the Service Provider pursuant to this Agreement.

11.2. Without limiting Clause 11, the Service Provider agrees to indemnify, keep indemnified and hold harmless the Recipient and its officers, employees and agents from and against all Liabilities in

respect of any injury to or the death of any person whatsoever or in respect of any loss of or damage to any property caused by or arising from any act, neglect, default or omission of the Service Provider, its employees, sub-contractors or agents in connection with the performance of the Services or while present on the Recipient's premises.

- 11.3. Nothing in this Agreement excludes or limits the liability of either Party in respect of death or personal injury to any person arising as a result of the negligence or wilful acts or omissions of a Party, its employees, agents, approved sub-contractors or any other person for which that Party has responsibility.
- 11.4. Except where the Service Provider is in breach of Clause 6 or Clause 7, the Service Provider shall not be liable to the Recipient for any indirect or consequential losses suffered by the Recipient arising out of or in connection with this Agreement. Despite any other provisions of this Agreement, the Recipient shall not be liable to the Service Provider for any indirect or consequential losses suffered by the Service Provider arising out of or in connection with this Agreement.
- 11.5. This Clause 11 survives the expiration or termination of this Agreement.

12. INSURANCE

- 12.1. With effect from the Commencement Date, the Service Provider will, at its sole cost and expense, effect and maintain for the benefit of the Recipient for the term of this Agreement, and such further period as may be required or ought prudently to be effected and maintained after the expiration or termination of this Agreement, insurance cover with reputable insurers to cover its liabilities that may arise under or in connection with this Agreement including, without limitation:
 - (i) public liability insurance with minimum cover of €6.5 million for each and every claim;
 - (ii) employer's liability insurance with minimum cover of €13 million for each and every claim;
 - (iii) professional indemnity insurance with minimum cover of €1.5 million for each and every claim (which professional indemnity insurance will be kept in place for at least 1 year from the expiration or termination of this Agreement);
 - (iv) cyber liability insurance with minimum cover of €2 million for each and every claim; and
 - (v) product liability insurance with minimum cover of €6.5 million for each and every claim
- 12.2. The relevant insurer will indemnify the Recipient directly against a claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Recipient, the Service Provider shall use all insurance monies received by him to indemnify the Recipient in respect of any claim and shall make good any deficiency from his own resources.
- 12.3. The Service Provider shall ensure that the Recipient's interest is noted on the policy (or policies) referred to in Clause 12 or that the policy (or policies) contain an indemnity to principals Clause(which provides equivalent protection for the Recipient) and at the request of the

Recipient, or the Recipient's insurance broker, furnish a certificate from its insurers confirming that the policy (or policies) are in place and the amounts of cover which are provided for. The Service Provider shall notify the Recipient immediately in the event that any insurance ceases to be available or maintained.

- 12.4. At the Recipient's request the Service Provider shall increase the agreed insurance limits or obtain additional coverage at the Recipient's expense.
- 12.5. If the Service Provider fails to provide the insurance cover specified in Clause 12, the Recipient may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs it incurs in obtaining such cover from any Fees due to the Service Provider under this Agreement, or otherwise recover such sums from the Service Provider.
- 12.6. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Service Provider of its liabilities and obligations arising under this Agreement.

13. DATA PROTECTION

- 13.1. For the purposes of this Clause 13, the terms Personal Data, Data Controller, Data Processor, Data Subject, Personal Data Breach, process and processing have the meanings set out in Data Protection Legislation. "Data Protection Legislation" means the Data Protection Acts 1988 to 2018 (DPAs), the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI No. 336/2011), and the EU General Data Protection Regulation (Regulation EU/2016/679) (GDPR), and any amendments, supplements, replacements and/or successors of the foregoing and any delegated acts and/or statutory instruments made under the foregoing
- 13.2. The Service Provider shall and hereby warrants that it shall:
 - 13.2.1. process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of providing the Services (as per Schedule 3) and in accordance with the Recipient's documented instructions from time to time and shall not process the Personal Data for any other purpose. This prohibition includes the use of the Recipient's data in any test or development environment as well as use for the training of any publicly available or proprietary AI models. The Service Provider will keep a record of any processing of Personal Data it carries out on behalf of the Recipient; take all measures required pursuant to Article 32 of the GDPR, including without limitation to ensure its own compliance with the requirements under Article 32 GDPR and to assist the Recipient in meeting its obligations under Article 32 GDPR;
 - 13.2.2. ensure that it has in place appropriate technical and organisational security measures, reviewed and approved by the Recipient to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the

cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data to industry standards, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 13.2.3. ensure that access to the Personal Data is limited to those employees who need access to the Personal Data to meet the Service Provider's obligations under this Agreement and such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties;
- 13.2.4. ensure that all of its employees involved with the Services have committed themselves to confidentiality and are aware both of the Service Provider's duties and their personal duties and obligations under Data Protection Legislation, Applicable Laws and this Agreement;
- 13.2.5. promptly comply with any request from the Recipient requiring the Service Provider to amend, transfer or delete the Personal Data;
- 13.2.6. provide, at the Recipient's request, a copy of all Personal Data held by it in the format and on the media reasonably specified by the Recipient, including so as to enable the Recipient to comply with its obligations under Articles 15 – 22 of the GDPR;
- 13.2.7. not authorise a third party (sub-contractor) to process the Personal Data unless:
 - (i) the Service Provider has provided prior written notification to the Recipient, no less than 30 working days before processing is to commence, providing details of the sub-contractor, the nature of the processing and the technical and organisational controls in place, allowing the Recipient to raise such concerns as it may have in relation to the processing. Where such a concern is raised the Service Provider shall work with the Recipient to resolve any issues;
 - (ii) the same obligations as set out in this Agreement, and in particular, this Clause 13, shall be imposed on the sub-processor by way of a contract between the Service Provider and the sub-contractor;
 - (iii) where the sub-contractor fails to fulfil its data protection obligations, the Service Provider shall remain fully liable to the Recipient for the performance of that sub-contractor's obligations; and
 - (iv) provided that the sub-contractor's contract terminates automatically on termination of this Agreement for any reason.
- 13.2.8. not transfer the Personal Data outside the European Economic Area without the prior specific written permission of the Recipient and (subject to that permission) ensure that the following conditions are fulfilled: -

- (i) the Recipient or the Service Provider has provided for and implemented appropriate safeguards in relation to the transfer, approved in advance by the Recipient;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Service Provider complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with reasonable instructions notified to it in advance by the Recipient with respect to the processing of the Personal Data;
- 13.2.9. within 24 hours of becoming aware, inform the Recipient of any Personal Data Breach or if any actual or suspected Personal Data Breach using dataprotection@pobal.ie, and provide the Recipient with full co-operation and assistance to enable it to investigate and to understand the causes of any Personal Data Breach or such other incidents including so as to allow the Recipient to remedy same. Without prejudice to this, the Service Provider will restore such Personal Data at its own expense;
- 13.2.10. process the Personal Data in compliance with Data Protection Legislation and all Applicable Laws; and
- 13.2.11. provide all reasonable assistance to the Recipient in ensuring compliance by the Recipient with the latter's obligations under Articles 15 – 22 GDPR and under Articles 32 – 36 GDPR.
- 13.3. If the Service Provider receives any complaint, notice or communication (whether from a Data Subject or from a data protection supervisory authority or otherwise) which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation, it shall immediately notify the Recipient using dataprotection@pobal.ie and it shall provide the Recipient with full co-operation and assistance in relation to any such complaint, notice or communication.
- 13.4. The Service Provider shall notify the Recipient in writing using dataprotection@pobal.ie if, in its opinion, an instruction received from the Recipient infringes this Data Protection Act 2018 or other Union or Member State data protection provisions.
- 13.5. If the Service Provider receives a request from a Data Subject to exercise his/her rights under Data Protection Legislation, the Service Provider shall:
 - (i) notify the Recipient within 2 Business Days of receiving such a request using dataprotection@pobal.ie;
 - (ii) await written instruction from the Recipient, providing the Recipient with full co-operation and assistance in relation to any such request made by the Data Subject to exercise their said rights; and

(iii) not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Recipient or as provided for in this Agreement save to communicate the Recipient being the Controller.

- 13.6. The Service Provider shall make available to the Recipient, free of charge, all information necessary to demonstrate compliance with Data Protection Legislation. The Recipient is entitled, on giving at least 5 Business Days' notice to the Service Provider, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Processor. This requirement to give notice will not apply if the Recipient has reasonable grounds to believe that the Service Provider is in breach of any of its obligations under this Clause 13.
- 13.7. The Service Provider agrees to indemnify and keep indemnified and defend at its own expense the Recipient on its own behalf and on behalf of any sub-contractors against all costs, fines, penalties claims, damages or expenses incurred by the Recipient or for which the Recipient may become liable due to any failure by the Service Provider, its employees, sub-contractors or agents to comply with Data Protection Legislation or any of the Service Provider's obligations under this Clause 13.
- 13.8. The Service Provider shall, at the choice of the Recipient, delete or return to the Recipient all Personal Data after the end of the provision of the Services relating to processing and deletes existing copies unless Union or Member State law requires storage of the Personal Data.

14. JOINT AND SEVERAL LIABILITY

- 14.1. If the Service Provider is comprised of more than one person or legal entity, unless expressly provided otherwise, all representations, warranties, indemnities, undertakings, covenants, agreements and obligations made, given or entered into in this Agreement by the Service Provider are made, given or entered into jointly and severally by each of the persons that constitute the Service Provider.
- 14.2. If the Service Provider is comprised of more than one person or legal entity the Recipient may take action against any one or more of the Service Provider members and/or may release or compromise in whole or in part the liability of any one or more of the Service Provider members under this Agreement or grant any time or other indulgence without affecting the liability of the other persons that constitute the Service Provider under this Agreement.

15. NON-SOLICITATION

- 15.1. The Service Provider agrees that, both during the continuance of this Agreement and for a period of 6 months thereafter, it shall not employ or solicit or endeavour to solicit or entice away from the service of the Recipient, any person employed by the Recipient in any capacity whatsoever, whether or not such an employee would commit a breach of his employment contract in so doing.

16. FORCE MAJEURE

16.1. If a party (the “**Affected Party**”) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:

- 16.1.1. the Affected Party’s obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- 16.1.2. as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- 16.1.3. if the Affected Party does not comply with Clause 16.1.2, it forfeits its rights under Clause 16.1.1; and
- 16.1.4. the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement and immediately after the end of the Force Majeure Event the Affected Party shall notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

16.2. If the Force Majeure Event continues for more than 30 days starting on the day the Force Majeure Event starts, a Party may terminate this Agreement by giving not less than ten (10) Business Days' written notice to the other Party.

16.3. In this Clause 16, a “Force Majeure Event” means the occurrence of:

- (i) any nuclear, chemical or biological contamination;
- (ii) pressure waves caused by devices travelling at supersonic speeds;
- (iii) acts of God; pandemics, earthquake; volcanic ash; windstorm; storm; fire; natural disaster; flood;
- (iv) acts of Government or regulatory authorities; and/or
- (v) war; civil war; riot; armed conflict; terrorism; explosion; malicious damage; civil commotion

the effects of which could not have been prevented by the Party concerned taking due care and/or steps reasonably open to it but which excludes labour disputes concerning the Service Provider.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1. This Agreement is personal to the Parties and neither of them may without the written permission of the other, assign (such permission not to be unreasonably withheld in the case of a proposed assignment to another entity within the Party's Group of Companies), sub-contract,

mortgage, charge (otherwise than by floating charge), create an interest in any trust over, or dispose of any of its rights or obligations under this Agreement.

17.2. The Service Provider shall not sub-contract or otherwise engage any third party to provide all or any part of the Services without obtaining the prior written permission of the Recipient. If the Service Provider wishes to apply for the permission of the Recipient to appoint or change a sub-contractor, the Service Provider shall give the Recipient not less than 30 Business Days' notice of:

- (i) the intended appointment of the sub-contractor, with detailed particulars which shall include its relevant experience; and
- (ii) the intended commencement date and scope of the sub-contractor's work.
- (iii) Where the scope of the sub-contractor's work includes processing personal data, the provision of Section 13.2.7 shall apply.

17.3. If the Service Provider has obtained the consent of the Recipient to sub-contract or otherwise engage any third party to provide all or any part of the Services, the consent shall:

- (i) not operate as an authority to transfer responsibility to the sub-contractor for the proper and due performance of the obligations of the Service Provider contained in this Agreement; and
- (ii) not relieve the Service Provider from any of its obligations or liabilities under this Agreement and the Service Provider shall be responsible for the acts or defaults of any sub-contractor, its agents or employees, as if they were the acts or defaults of the Service Provider.

17.4. A change in the legal status of the Recipient shall not affect the validity of this Agreement.

18. RELATIONSHIP OF PARTIES AND SCOPE OF AUTHORITY

18.1. Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall create, or be interpreted or construed as creating a partnership, association, or joint venture or other co-operative entity between the Parties, nor establish a relationship of agency between the Parties.

18.2. The Parties acknowledge that nothing in this Agreement or in any other agreement between the Parties shall give rise to the relationship of employer / employee between the Recipient and the Service Provider and any of the Service Provider's Personnel and any replacement or any other persons supplied to the Recipient by the Service Provider in respect of the Services to be performed under this Agreement.

18.3. Neither Party shall have any right, power or authority to enter into any agreement, or act on behalf of, or to act as or to be an agent or representative of, or to otherwise bind the other Party unless expressly provided otherwise in this Agreement.

- 18.4. Without limiting the above, and to the fullest extent permitted by law, the European Communities (Commercial Agents) Regulations 1994 and the European Communities (Commercial Agents) Regulations 1997 shall not apply to this Agreement and neither the Service Provider, nor any of the Service Provider's Personnel shall have continuing authority to negotiate the sale or purchase of goods in connection with the Services on behalf of the Recipient, save and unless permitted in accordance with Schedule 1.

19. ENTIRE AGREEMENT

- 19.1. This Agreement (and the Schedules hereto) constitutes the entire agreement and understanding between the Parties with respect to the Services and supersedes any previous agreements, negotiations and discussions between the Parties.
- 19.2. Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it (if any), it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to this Agreement or not) other than as expressly contained in this Agreement. Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.
- 19.3. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
- i. This Agreement and any Schedules attached hereto;
 - ii. The RFT;
 - iii. This Submission

20. WITHHOLDING TAX

- 20.1. All payments to be made pursuant to this Agreement shall be subject to professional services withholding tax under the provisions of Part 18, Chapter 1 of the Taxes Consolidation Act 1997 at the prevailing rate.

21. NOTICES

- 21.1. Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant Party or sent by pre-paid registered post to the address of that Party specified in this Agreement, or such other address as may be notified hereunder, by that Party from time to time for this purpose and shall be effective notwithstanding any change of address not so notified.

Unless the contrary is proved, each notice or communication for the purposes of this Agreement shall be deemed to have been given or made and delivered 2 hours after emailing.

22. WAIVERS AND REMEDIES

- 22.1. The failure by the Recipient to exercise or delay in exercising a right or remedy provided by this Agreement or by law shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver by the Recipient of a breach of any of the terms of this

Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver by the Recipient of a breach of any of the terms of this Agreement or of a default under this Agreement shall not prevent the Recipient from subsequently requiring compliance with the waived obligation.

- 22.2. The rights and remedies provided by this Agreement are cumulative and (subject to what is otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.
- 22.3. The Recipient's rights and remedies survive any delivery, inspection, acceptance, payment, reports or performance pursuant to the Agreement and extend to any substituted or remedial Services provided by the Service Provider.
- 22.4. Unless a right or remedy of the Recipient is expressed to be an exclusive right or remedy, the exercise of it by the Recipient is without prejudice to the Recipient's other rights and remedies under this Agreement and/or at law or in equity. the Recipient's rights and remedies survive any delivery, inspection, acceptance, payment, reports or performance pursuant to this Agreement and extend to any substituted or remedial Services provided by the Service Provider.

23. OBLIGATIONS OF THE RECIPIENT

23.1 The Recipient shall:

- (i) provide the Service Provider with:
 - a. all necessary co-operation in relation to this Agreement; and
 - b. all necessary access to such information as may be required by the Service Provider;in order to provide the Services, including but not limited to Recipient Data, security access information and configuration services; and
- (ii) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement.

24. LEGAL OPINION

- 24.1 Without prejudice to Clause 2.8, the Service Provider shall, if requested by the Recipient, at the Service Provider's expense, procure the provision of a written legal opinion of a qualified barrister or solicitor certifying that:
 - (i) the Service Provider has all requisite corporate power to execute, deliver and perform its obligations under this Agreement;
 - (ii) such execution, delivery and performance of this Agreement have been duly authorised by appropriate corporate action; and
 - (iii) this Agreement constitutes legally binding obligations on the Service Provider.

- 24.2 Any legal opinion requested by the Recipient in accordance with Clause 24.1 shall be of such form and content as shall be approved by the Recipient.

25. FURTHER ASSURANCE

- 25.1 Each Party shall, at its own cost, from time to time and being required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other Party as the other Party may reasonably consider necessary, to give full effect to this Agreement.

26. VARIATION

- 26.1 A variation of any of the terms of this Agreement shall not be valid unless it is in writing and signed by or on behalf of each of the Parties.

27. SEVERABILITY

- 27.1 If any provision or part-provision of this Agreement is found by any court, arbitrator or administrative body of competent jurisdiction to be invalid or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 27.2 If any provision of this Agreement shall be found by any court, arbitrator or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

28. COUNTERPARTS

- 28.1 This Agreement takes legal effect from the Commencement Date. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

29. COSTS

- 29.1 The Parties shall be responsible for their respective legal and other costs incurred in relation to the preparation of this Agreement.

30. RESOLUTION OF DISPUTES

- 30.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- 30.2 The Dispute shall be referred as soon as practicable to [insert Service Provider contact] within the Service Provider and [insert Contact details] within the Recipient respectively.
- 30.3 If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

- 30.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- 30.5 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- 30.6 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- 30.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Service Provider shall comply fully with the requirements of the Agreement at all times.

31. GOVERNING LAW AND JURISDICTION

- 31.1 This Agreement, and all disputes arising out of or in connection with this Agreement, shall in all respects be governed by, construed and take effect in accordance with the laws of Ireland.
- 31.2 The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Agreement.

32. ALLOW ELECTRONIC SIGNATURE

- 32.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be a duplicate original and all of which when taken together will constitute the one agreement. The Parties acknowledge and agree that:
- (i) this Agreement may be executed by any form of electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature; and
 - (ii) transmission of an executed counterpart of the Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the Agreement. No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

33. CONTRACT MANAGEMENT

- 33.1 The Recipients' Contact and the Service Provider's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Framework Agreement and to agree milestones, compliance schedules and operational protocols as required by the Recipient from time to time. If requested in writing by the Recipient, the Service Provider shall meet formally with the Recipient to report on progress and shall comply with all reasonable

written directions of the Recipient.

33.2 The Service Provider agrees to:

- (i) liaise with and keep the Recipient's Contact fully informed of any matter which might affect the observance and performance of the Service Provider's obligations under this Agreement;
- (ii) maintain such records and comply with such reporting arrangements and protocols as required by the Recipient from time to time;
- (iii) comply with all reasonable directions of the Recipient; and
- (iv) comply with all agreed service levels and performance indicators.

34. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- 34.1 The Service Provider confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Sub nor agent as the case may be, has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Service Provider hereby undertakes to notify the Recipient immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Recipient's directions in respect thereof. In the event of such notification, the Recipient shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- 34.2 Any registrable interest involving the Service Provider (and any Subcontractor or agent as the case may be) and the Recipient, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Recipient immediately upon such information becoming known to the Service Provider (Subcontractor or agent as the case may be) and the Service Provider shall comply with the Recipient's directions in respect thereof, to the satisfaction of the Recipient. In the event of such disclosure, the Recipient shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- 34.3 The Service Provider shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Service Provider, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Recipient to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Service Provider of the amount or value of any such gift, consideration or commission.

IN WITNESS WHEREOF this Agreement has been entered into on the Commencement Date.

SIGNED for and on behalf of the Contracting Authority (Recipient) _____ (Being a duly authorised officer) PRINT NAME:	SIGNED for and on behalf of the Service Provider _____ PRINT NAME:
WITNESS NAME: WITNESS SIGNATURE _____	WITNESS NAME: WITNESS SIGNATURE _____

Schedule 1: Services: The Specification

As per the Submission of the Service Provider in respect of this RFT dated [Submission Date]

Schedule 2: Charges

[Insert Costs from Service Provider Here]

Schedule 3: Data Protection

[To be defined and completed at contract signing]

Scope and context of processing:

Nature of processing:

Categories of Personal Data (including Special Category Data):

Categories of Data Subjects:

Contact details for the Service Provider's Responsible Person for Data Protection:

Approved Sub Processors:

Name and Address	Nature of Processing	Location of processing activities	Contact details of Responsible Person for Data Protection