

STANDARD TERMS & CONDITIONS PURCHASING SERVICES

THE UNIVERSITY OF LIMERICK STANDARD CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 In these Conditions:

“**Affected Party**” has the meaning given to that term in Clause 10.2.

“**Client**” means The University of Limerick.

“**Client Equipment**” means any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

“**Client Materials**” means all materials, samples, drawings and specifications in any form (whether owned by the Client or a third party) which are provided by the Client to the Supplier.

“**Conditions**” means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Supplier.

“**Confidential Information**” means, in relation to a party, information (in whatever form communicated or recorded) belonging or relating to that party, its business affairs or activities which: (a) that party has marked as confidential or proprietary, or (b) has been described as confidential by that party to the other (orally or in writing), or (c) due to its character or nature, a reasonable person in a like position to its recipient and under like circumstances would treat as confidential.

“**Contract**” means the contract for the supply and acquisition of the Services on the Conditions.

“**Deliverables**” means any outputs of the Services and any other documents, products and materials provided by the Supplier to the Client as specified in the RFT, the Specification or the Submission and any other documents, products and materials provided by the Supplier to the Client in relation to the Services.

“**Excluded Claim**” means any claim by the Client pursuant to any of Clauses 7.2, 8.1, 13.2, 14, 15, 16 and 17.

“**Force Majeure Event**” has the meaning given to that term in Clause 10.1.

“**Good Industry Practice**” means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

“**Order**” means the Client's purchase order to which these Conditions are annexed.

“**IPR**” means any and all intellectual property rights, including without limitation, all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

“**Loss**” includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense (including legal expenses), fee, penalty or fine.

“**Personnel Liability**” means all claims (including but not limited to) claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, sexual

orientation, race, religion, belief or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and fixed term employees, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by the Equality Authority, the National Employment Rights Authority or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation) and legal costs and expenses.

“**Pre-existing IPR**” means all IPR existing prior to the date of the Contract and all IPR in any materials acquired or developed by or for the Supplier or the Client independently of the Contract.

“**Price**” means sums payable for the Services as stated in the Order.

“**Regulations**” means the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

“**RFT**” means the Client's request for tender (if any) pursuant to which it invited tenders for the supply of the Services.

“**Supplier**” means the person so described in the Order.

“**Supplier's Personnel**” means any of the Supplier's employees, servants, agents or sub-contractors engaged in the provision of the Services for the time being and from time to time.

“**Services**” means the services described in the Order including services which are incidental or ancillary to such services.

“**Specification**” includes any plans, drawings, data or other information relating to the Services.

“**Statutory Requirements**” means all provisions relevant to the compliance by the Supplier with its duties, either express or implied by the Contract, under every Act of the Oireachtas, and/or statutory instrument made thereunder, orders, local authority and other regulations or requirements applicable from time to time in Ireland.

“**Submission**” means the Supplier's response to the RFT.

1.2 In these Conditions, unless the contrary intention is stated, a reference to: (a) the singular includes the plural and vice versa; (b) either gender includes the other; (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing; (d) a person includes that person's legal personal representative, permitted assigns and successors; (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland; (f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time; (g) a Recital, Clause or Schedule, is a reference to a recital, clause or schedule of these Conditions; (h) a statute, by-law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time, and to any by-law, regulation, delegated legislation or order made thereunder; (i) ‘including’ means comprising, but not by way of limitation of any class, list or category; (j) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally

open for business in Ireland; and (k) 'writing' shall include a reference to any electronic mode of representing or representing words in visible form.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Client to acquire the Services subject to the Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Client or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 No variation to the Order or these Conditions shall be binding unless agreed in writing by authorised representatives of the Client and the Supplier.

3. SPECIFICATIONS

3.1 The description of the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Client to the Supplier or agreed in writing by the Client and the Supplier.

3.2 Any Specification supplied by the Client to the Supplier or specifically by the Supplier for the Client, in connection with the Contract together with the copyright, design rights or any other IPR in the Specification, shall be the exclusive property of the Client. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

4. SUPPLIER'S RESPONSIBILITIES

4.1 The Supplier shall:

(a) provide the Services and the Deliverables in accordance with the RFT, the Specification and the Submission;

(b) ensure that the Services and Deliverables will conform in all respects with RFT, the Specification and the Submission and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Client;

(c) perform the Services with the due care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;

(d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;

(e) co-operate with the Client in all matters relating to the Services, and comply with the Client's instructions;

(f) before the date on which the Services are to start, obtain and at all times, maintain during the term of the Contract, all necessary licences and consents and comply with all applicable laws in relation to the Services;

(h) hold all Client Materials in safe custody at its own risk and maintain the Client Materials in good condition until returned to the Client, and not dispose of or use the Client Materials other than in accordance with the Client's written instructions or authorisations; and

(k) notify the Client in writing immediately upon the occurrence of a change of control of the Supplier.

4.2 Time is of the essence in relation to any performance dates for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to the Client's right to terminate the Contract and any other rights it may have), the Client may:

(a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(b) purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;

(c) hold the Supplier accountable for any loss and additional costs incurred; and

(d) have any sums previously paid by the Client to the Supplier in respect of the affected Services refunded by the Supplier.

4.3 The Supplier shall procure that all of the Supplier's Personnel engaged by it in providing the Services possess such skills, knowledge, experience and qualifications as are necessary to fulfil the Services.

4.4 The Supplier shall use its best endeavours to ensure the continuity of the Supplier's Personnel throughout the provision of the Services.

4.5 The Client shall have the benefit of all representations, warranties and undertakings implied by law in relation to the Services.

4.6 The Supplier hereby confirms that it has satisfied itself as to all the relevant aspects of the Services. The Supplier hereby acknowledges that where prior to the date of the Contract it carried out certain services for and on behalf of the Client it accepts that such services are deemed to be part of the Services under these Conditions in every way and acknowledges that its liability in respect of the Services whether during, before or after the date of the Order shall be as if at all times it had been instructed to carry out the Services.

4.7 The Client shall be free to enter into agreements for services of a similar nature with any other party without limitation.

5. PRICE OF SERVICES

5.1 In consideration of the performance by the Supplier of its obligations under the Contract, the Price of the Services shall be as stated in the Order and, unless otherwise so stated, shall:

(a) be exclusive of any applicable value added tax (which shall be payable by the Client subject to receipt of a valid VAT invoice); and

(b) be the entire price payable by the Client to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation and the cost of the Supplier's Personnel.

5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Client in writing.

6. TERMS OF PAYMENT

6.1 The Supplier shall be entitled to invoice the Client at the intervals specified in the RFT or at any time after performance of the Services provided it is in receipt of a valid purchase order number from the Client and each invoice shall quote the number of the Order and a valid purchase order number issued by the Client. All invoices must be addressed to the Accounts Payable Department, Finance Division, University of Limerick. Where an invoice is subject to RCT (Relevant Contracts Tax), the contract number must be quoted on the invoice.

6.2 Unless otherwise stated in the Order and subject to the provisions of this Clause 6, the Client shall pay the Price of the Services within 30 days of receipt by the Client's Accounts Payable Department, Finance Division, of a valid invoice (and such supporting documentation as may be required by the Client from time to time) or after acceptance of the Services in question by the Client whichever is the later. The Client shall pay the Price of the Services after the acceptance of the Services in question and on receipt of a valid invoice. Payments will only be made under the terms of the Prompt Payment of Accounts Act, 1997 unless other invoicing arrangements have been agreed **provided however** that if the Client disputes any portion of an invoice, the Client shall pay only the undisputed portion of such invoice and shall notify the Supplier of the amount in dispute and the basis on which such amounts are disputed. The parties agree that the Client will not be liable to pay interest on any invoice which is overdue as a result of dispute.

6.3 Payment of the Price of the Services is subject to:

(a) compliance by the Supplier with the provisions of the Contract;

(b) the Client being in possession of the Supplier's current tax clearance certificate and the Supplier shall comply with all EU and domestic tax law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at www.finance.gov.ie. The Supplier may supply the certificate and registration numbers, as they appear on the tax clearance certificate, to facilitate on-line verification of their tax status by the Client.

6.4 The Client shall be entitled to set-off any matured obligation owed by the Supplier to the Client under the Contract (including, without limitation, the amount of any defects in the Services and/or the amount of any claim or Loss which has been incurred (or is likely to be incurred) by the Client by reason of any breach of, or failure to observe the provisions of the Contract) against any obligation (whether matured or unmatured) owed by the Client to the Supplier. If an obligation is unascertained or unliquidated, the Client may in good faith estimate that obligation and set off in respect of the estimate subject to the relevant party accounting to the other when the obligation is ascertained or liquidated. The Client will not be obligated to pay any amounts to the Supplier under the Contract so long as any sums which are then due by the Supplier to the Client under the Order remain unpaid, and any such amounts which otherwise be due will fall due from the Client only if and when the Supplier has paid all such sums.

7. WARRANTIES AND LIABILITY

7.1 The Supplier represents, warrants and undertakes to the Client that:

- (a) it has the authority and right under law to enter into and to carry out its obligation and responsibilities under the Contract;
- (b) it is entering into the Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
- (c) it is entering into the Contract with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;
- (d) it has the power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, and performance and delivery of, the Contract and the transactions contemplated by the Contract;
- (e) the status of the Supplier, as declared in the "Declaration as to Personal Circumstances of Tenderer" in the Submission, which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Supplier, remains unchanged;
- (f) it has and shall continue in performing the Order to comply with the Statutory Requirements; and
- (g) it owns, has obtained or is able to obtain, valid licences for all IPR that are necessary for the performance of its obligations under the Contract and for the Client to obtain the benefit of the Services.

7.2 The Supplier shall indemnify the Client in full on demand against any and all Losses awarded against, suffered or incurred or paid by the Client as a result of or in connection with any:

- (a) breach of any representation or warranty given by the Supplier in relation to the Services; and
- (b) act or omission of any of the Supplier or the Supplier's Personnel in connection with the performance of the Services.

8. LIABILITY & INSURANCE

8.1 The Supplier shall indemnify the Client and keep the Client fully and effectively indemnified on demand in relation to all Losses which the Client may suffer or incur as a result of any negligence, any act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Supplier or any of the Supplier's Personnel or any of them.

8.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury, death or in respect of any Excluded Claim neither party shall be liable for any indirect or consequential losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) suffered by the other under the Contract.

8.3 The Supplier shall effect and maintain at all times during the currency of the Contract (at its own expense) employer's liability, public liability, product liability, and professional indemnity insurance in such indemnity amounts as are specified in the RFT and otherwise comply with the insurance requirements set out in the RFT.

8.4 The Supplier shall supply the Client with evidence of compliance by the Supplier with its obligations under this Clause 8 as the Client may require from time to time including, without limitation, certified copies of the certificates of insurances relating thereto which certificates shall incorporate any exclusions. The Supplier shall furnish the receipt for the last upon request by the Client from time to time. The Supplier shall advise the Client immediately of any material change to its insured status.

9. TERMINATION

9.1 The Client may terminate the Contract at any time by giving 14 days' notice in writing to that effect to the Supplier.

9.2 The Client shall have the right, in addition to any other rights which it has at law, to terminate the Contract immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Supplier.

9.3 The occurrence of an Event of Default in relation to the Supplier will constitute repudiation (but not a termination) of the Contract by the Supplier (whether the occurrence of that Event of Default is voluntary, involuntary or occurs by operation of law or pursuant to any decree or order of any court). If an Event of Default occurs and is continuing in relation to the Supplier, then the Client may, at its option (and without prejudice to any other rights or remedies which it may have under the Contract or otherwise): (a) suspend the operation of the Contract for such period of time as it, in its absolute discretion, sees fit; or (b) accept such repudiation and by notice the Supplier and with immediate effect terminate the Contract (but without prejudice to the continuing obligations of the Supplier under the Contract) whereupon all rights of the Supplier under the Contract shall cease; and/or (c) proceed by appropriate court or other action to enforce performance of the Contract and/or to recover damages for the breach of the Contract.

9.4 For the purposes of the Contract, each of the following shall be an Event of Default: (a) the Supplier fails to comply with any obligation on its part under the Contract which failure is, in the opinion of the Client, material, and either that failure is not susceptible to remedy or, if it is susceptible to remedy, it is not remedied within 30 days of notice having been given by the Client to the Supplier requiring that failure to be remedied; (b) without prejudice to Clause 9.4(a), the Supplier or any member of the Supplier's Personnel fails to comply with the requirements of Clause 18; (c) the Supplier is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Supplier suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; (d) any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Supplier; or any liquidator, receiver or examiner is appointed to or in respect of the Supplier or any of its assets; (e) the Supplier ceases or threatens to cease to carry on business; (f) the Client becomes aware of any conflict of interest on the part of the Supplier which cannot, in the opinion of the Client, be removed by other means; and/or (g) the Client becomes aware of any registrable interest on the part of the Supplier.

9.5 On termination or expiry of the Contract:

- (a) the Supplier shall immediately deliver to the Client all Deliverables whether or not then complete, and return all of the Client Materials and the

Client's Equipment. If the Supplier fails to do so, then the Client may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables, Client Materials and Client's Equipment in its possession and will not use them for any purpose not connected with this agreement; and

(b) the Supplier shall, if so requested by the Client, provide all assistance reasonably required by the Client to facilitate the smooth transition of the Services to the Client or any replacement supplier appointed by it

9.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.7 The provisions of this Clause 9 and Clauses 1, 8, 13.2, 14, 15, 16, 17, 19, 23 and 24 shall survive the termination or expiry of the Contract however it arises, and shall continue to bind the Supplier without limit in time.

10. FORCE MAJEURE

10.1 A "Force Majeure Event" means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party which has the effect of delaying or preventing that party from complying with its obligations under the Contract including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Supplier (or subcontractor or agent) places of business.

10.2 In the event of any failure, interruption or delay in the performance of either party's obligations (or any of them) resulting from any Force Majeure Event, that party (the "Affected Party") shall promptly notify the other party in writing specifying: (a) the nature of the Force Majeure Event; (b) the anticipated delay in the performance of obligations; and (c) the action proposed to minimise the impact of the Force Majeure Event; and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

10.3 If the Affected Party does not comply with Clause 10.2 it forfeits its rights under that Clause.

10.4 If the Force Majeure Event continues for 30 days or more, then either party shall be entitled, by the giving of 14 days notice in writing to the other party, to terminate the Contract.

10.5 In circumstances where the Supplier is the Affected Party, the Client shall be relieved from any obligation to make payments under the Contract save to the extent that payments are properly due and payable for obligations actually fulfilled by the Supplier in accordance with the terms and conditions of the Contract.

11. HEALTH AND SAFETY

Without prejudice to Clause 4, the Supplier shall comply with all necessary safety precautions and safety legislation relevant to the Services including, but without limitation, the Safety, Health and Welfare at Work Act, 2005, and any amendments thereof and/or regulations rules or orders made pursuant thereto, including the Safety Health & Welfare at Work (Construction) Regulations 2006 (in so far as they are applicable to the Services), the Safety Health and Welfare at Work (General Applications) Regulations 1993, 2001 & 2003, the Confined Space Regulations 2001 and any amendments thereof.

12. POLICIES AND PROCEDURES

12.1 The Supplier shall ensure that each of the Supplier's Personnel shall be aware of, and shall comply with the Client's policies and procedures. It shall be a term of the Contract that the Supplier shall direct the Supplier's Personnel to attend any training or orientation provided by the Client in relation to the Client's policies and procedures, at no cost to the Client.

12.2 If there is any alleged breach of the Client's policies and procedures by the Supplier or any of the Supplier's Personnel, the Client reserves the right to require the Supplier to remove those Seller's Personnel from the Client's premises and from performance of the Services.

12.3 The Supplier shall procure that the Supplier's Personnel participate in any investigations enquires or hearings provided for under any of the Client's policies, and the failure by the Supplier or any of the Supplier's Personnel to participate in any such procedure shall entitle the Client to require the Supplier to remove any of the Supplier's Personnel from its premises.

13. INDEPENDENT CONTRACTOR

13.1 In performing the Services or carrying out its obligations under the Contract, the Supplier shall act as independent contractor and not the agent of the Client.

13.2 The Supplier acknowledges and agrees that it not intended that there should be transferred to the Client the obligations of any person as employer arising under any contract of employment, in consequence of, or in connection with, the entry by the parties into, or the performance by them of their obligations under, the Contract, or the termination of the Contract, or the transfer to the Client of any function to be performed by the Supplier under the Contract. If, notwithstanding that intention, any such obligations are transferred to the Client by operation of law (whether pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations, 2003 or otherwise), then the Supplier shall indemnify the Client on demand against all Losses which may be suffered or incurred by the Client arising out of or in connection with any such transfer, or any contract of employment so transferred to the Client, or the termination of any such contract of employment by the Client subsequent to any such transfer (which the Client shall be free in its absolute discretion to terminate without prejudice to its rights under this Clause).

14. INTELLECTUAL PROPERTY

14.1 All IPR in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of the Contract (collectively the "Materials") (or any part or parts thereof) shall vest in the Client and the Supplier so acknowledges and confirms. For the avoidance of doubt, the Supplier hereby assigns all IPR, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such IPR title or interest may be deemed by law reside in it in the Materials to the Client absolutely. The Supplier further agrees to do and execute (and shall procure that each of the Supplier's Personnel do and execute) all matters, acts, things and documents that are necessary to finalise the assignment and transfer of any IPR to the Client or register the Client as the owner of registrable rights.

14.2 All Client Materials are and shall remain the exclusive property of the Client. The parties acknowledge and agree that all IPR in and to all the Client Materials are vested and shall remain vested in the Client and its licensors.

14.3 The Supplier shall not use the Client Materials for any other purpose other than the supply of the Services pursuant to the Contract. The Supplier acknowledges and agrees that no licence is granted to the Supplier in respect of the Client Materials other than expressly granted by the provisions of these Conditions. The Supplier shall return (at its own cost) all Client Material to the Client at any time upon receipt of a request from the Client.

14.4 Save as expressly set out in this Clause 14 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

14.5 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of the Contract.

14.6 The Supplier shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of the Contract (to include but not be limited to ensuring that the Supplier shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes).

14.7 The Supplier:

(a) warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Client Materials) by the Client shall not infringe the rights, including any IPR of any third party; and

(b) shall indemnify the Client in full on demand against Losses awarded against or incurred or paid by the Client as a result of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the receipt, use of supply of the Services and the Deliverables (excluding the Client Materials).

14.8 Without prejudice to the Client's other rights and remedies, at the option of the Client for and in respect of any such breach, the Supplier shall at its expense and option:

- (i) procure the necessary rights for the Buyer to continue use;
- (ii) replace the relevant deliverable with a non-infringing equivalent;
- (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
- (iv) if the Supplier cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Buyer the Price paid for such deliverable less a reasonable amount for the Buyer's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, together with all losses (whether direct, indirect or consequential) thereby accruing to the Client as a result of the breach.

14.9 Upon the termination or expiry of the Contract for whatever reason, the Supplier shall immediately deliver up to the Client all the Materials prepared up to the date of termination or expiry. As an exception to its obligations under this Clause 14.9 the Supplier may retain one copy of the Client Materials, in paper form, in the Supplier's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under the Contract.

14.10 The provisions of this Clause 14 shall survive the expiration or termination of the Contract for any reason.

15. CONFIDENTIALITY

15.1 Each party shall keep confidential the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information other than as necessary for the exercise of its rights, and performance of its obligations, under the Contract.

15.2 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the exercise of its rights, and performance of its obligations, under the Contract, and to procure that such persons are made aware of, and agree to observe the obligations of confidentiality in Clause 15.1.

15.3 The provisions of Clauses 15.1 and 15.2 shall not apply to information which: (a) was, at the time of receipt by the recipient party, published or otherwise generally available to the public; or (b) has, after receipt by the recipient party, made generally available to the public, through no act or omission of the recipient party or its servants, agents or contractors; or (c) the

recipient party can demonstrate was already lawfully in its possession at the time of receipt, without any restrictions on its disclosure; or (d) the recipient party can demonstrate, was independently developed by it without reference to the Confidential Information; (e) is obtained by the recipient party from a third party free from any obligation of confidentiality for the benefit of the disclosing party; or (f) is by law or by any court or order of any governmental or regulatory authority required to be disclosed, to the extent of the relevant disclosure requirement; or (g) the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

15.4 If the Supplier is required by law or by any order of any court or governmental or regulatory authority to disclose the Confidential Information of the other party, it shall promptly notify the Client of receipt of notice of that requirement and, at the request and cost of that Client, shall assist it in opposing any such disclosure.

15.5 The Supplier confirms that it will, from time to time, during the currency of this Agreement as may be requested by the Client submit full personal details (including those of subcontractors) who are assigned to provide the Services (or any part thereof) under the Contract. The Supplier further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Supplier shall comply with all reasonable directions of the Client arising therefrom.

15.6 In circumstances where the Client is subject to the provisions of the Freedom of Information Act, 2014 or the European Communities (Access to Information on the Environment Regulations 2017 to 2014), then in the event of the Client receiving a request for information related to the Contract, the Client shall consult with the Supplier in respect of the request. The Supplier shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Supplier about this commercially sensitive information before making a decision on any Freedom of Information request received. The Client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

16. DATA PROTECTION

16.1 In these Conditions the following terms shall have the meanings respectively ascribed to them:

“**Authorised Person**” means any of the persons occupying the roles in the Client identified in that specific regard in the RFT or the Order;

“**Data**” means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to its employees, agents, independent contractors and/or sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under the Contract and includes any Personal Data;

“**Data Controller**” has the meaning given under the Data Protection Laws;

“**Data Processor**” has the meaning given under the Data Protection Laws;

“**Data Protection Laws**” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “**General Data Protection Regulation**”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

“**Data Subject**” has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

16.2 The Supplier shall comply with all applicable requirements of the Data Protection Laws.

16.3 The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Supplier is the Data Processor in respect of Data which is Personal Data. The RFT or the Order sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.

16.4 Without prejudice to the generality of Clause 16.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:-

(a) process that Personal Data only on the written instructions of the Client which instructions shall be: (A) documented in writing; and (B) given by an Authorised Person; and

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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, 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);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not sell, transfer, disclose or otherwise allow access to any Data to any party other than its Personnel, save where the prior written consent of the Client has been obtained;

(e) not copy or maintain any Data on any other systems, application or other medium other than as required for the provision of the Services;

(f) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

iv. the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(g) take all steps reasonably required to ensure that the Data is accurately recorded and kept up to date.

16.5 The Supplier shall not perform the Services in such a way as to cause the Client to breach any of its obligations under Data Protection Laws.

16.6 The Supplier shall make available to the Client all information necessary to demonstrate its compliance with the obligations set out in the Data Protection Laws and shall allow the Client access to the Supplier’s premises, personnel and relevant records to the extent necessary to enable it to verify the Supplier’s compliance with Data Protection Laws and its obligations under the Contract.

16.7 The Supplier shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client’s obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

16.8 The Supplier shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

16.9 The Supplier shall promptly but not later than 24 (twenty-four) hours after becoming aware of it notify the Client of any unauthorised access to, or unauthorised use, alteration, disclosure, accidental loss or destruction of, any Data in the custody of the Supplier (each a **“data breach”**).

16.10 In the event of any data breach, the Supplier shall:

(a) take prompt action at its own expense on the instruction of the Client to remedy the cause of the data breach;

(b) bear the costs of investigation into said data breach;

(c) promptly, at its own expense, provide the Client on request with all information required to fulfil its obligations, as data controller, under the Data Protection Laws; and

(d) promptly, at its own expense, assist the Client in complying with its obligations under Articles 32 to 36 of the General Data Protection Regulation.

16.11 The Supplier shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

16.12 At any time during the course of the provision of the Services, or upon termination or expiry of the Contract, the Supplier shall, upon the request of the Client, immediately securely deliver to the Client or destroy all Data as may be requested by the Client and shall certify such destruction or delivery in writing to the Client on request from time to time.

16.13 The Supplier shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Supplier’s facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Supplier in any way for the provision of the Services. The Supplier shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

16.14 The Supplier shall fully comply with, and implement policies which are communicated or notified to the Supplier by the Client from time to time.

16.15 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 16 and allow for inspections and contribute to any audits by the Client or the Client’s designated auditor.

16.16 The Supplier shall:-

(a) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

(b) ensure that a back-up copy of any and all such Personal Data is made at such frequency as is required by Good Industry Practice in the Supplier’s industry and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

(c) in such an event and if attributable to any default by the Supplier or any sub-contractor, promptly restore the Personal Data at its own expense or, at the Client’s option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

16.17 The Client does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement.

16.18 The Supplier shall indemnify and keep indemnified the Client on demand from time to time from and against all Losses suffered or incurred by the Client arising out of or in connection with any breach by the Supplier of its obligations under this Clause 16.

16.19 The provisions of this Clause 16 shall survive termination and or expiry of the Contractor for any reason.

17. PERSONNEL

17.1 The Supplier agrees that each member of the Supplier's Personnel shall remain in the employ of the Supplier and nothing in the Contract shall constitute or establish a relationship of agency or employment between any member of the Supplier's Personnel and the Client regardless of the degree of supervision that may be exercised over any member of the Supplier's Personnel by the Client.

17.2 The Supplier shall comply with all applicable laws and labour standards in respect of the Supplier's Personnel. Without prejudice to the generality of the foregoing the Supplier shall:

(a) comply with all statutory terms and conditions and sector agreements applicable to all workers in Ireland in relation to those members of the Supplier's Personnel;

(b) deal with any disciplinary, grievance or other employment issues referred to it by any member of the Supplier's Personnel or the Client, in accordance with proper policies and procedures (including disciplinary procedures) and with all applicable laws provided that all such matters shall be dealt with at the Supplier's premises and not at or within the immediate environs of the Client's premises (other than with the prior agreement or at the request of the Client); and

(c) comply, and procure that each of the Supplier's Personnel complies, with all applicable laws regarding residence permits, work permits and visas.

17.2 The Supplier shall, so far as practicable, keep the Client informed and consult with it in respect of any proposed disciplinary or other actions proposed to be taken against any of the Supplier's Personnel where such action is reasonably likely to result in damage to or adverse publicity concerning the Supplier.

17.3 The Supplier shall discharge all its obligations as employer in respect of each member of the Supplier's Personnel for its own account and shall indemnify and keep indemnified the Client on demand against all Personnel Liabilities arising from the Supplier's failure to perform and discharge any such obligation and against all Personnel Liabilities arising out of or as a result of:

(a) any act or omission by the Supplier with respect to the Supplier's Personnel;

(b) all emoluments and outgoings in relation to each member of the Supplier's Personnel (including without limitation all wages, bonuses, PAYE, pay related social insurance contributions, pension contributions and otherwise);

(c) any claim or proceedings threatened or instituted against the Client by any member of the Supplier's Personnel whether arising under contract, common law or statute in relation to that person's employment by the Supplier in connection with the Contract and/or the Services including, but not limited to, claims under the Unfair Dismissals Acts 1977-2007, Redundancy Payments Acts, 1967 to 2007, the Industrial Relations Acts 1946-2004, the Organisation of Working Time Act, 1997, Minimum Notice and Terms of Employment Acts, 1973 to 2001, Terms of Employment (Information) Acts, 1994 to 2001, Employment Equality Acts, 1998 to 2008, Payment of Wages Act, 1991 and the Protection of Employees (Fixed-Term Work) Act 2003; and

(d) any statement communicated to or action done by the Supplier to any member of the Supplier's Personnel which has not been agreed in advance by the Client in writing.

17.4 If the Client reasonably determines at any time that any of the Supplier's Personnel are not suitable for provision of the Services it shall notify the Supplier in writing and the Supplier shall remove or shall procure the removal of, the relevant member of the Supplier's Personnel.

18. GARDA VETTING

It shall be a condition of the Contract that the Supplier shall for the term of the Contract procure that all of the Supplier's Personnel ("**Relevant Persons**") where any such persons may have unsupervised access to children and/or vulnerable adults in the course of the provision of the Services are subject to and shall have successfully completed a background check via the Garda Central Vetting Unit (GCVU) and the Garda Vetting process as required by The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. The Supplier shall be required to provide all such information and documentation as the Client may require in this connection and shall comply (and procure compliance by the Relevant Persons) with the Client's Garda Vetting/Police Clearance policies and procedures from time to time.

19. EQUIPMENT

19.1 Save where the Client expressly permits use of the Client's Equipment during the provision of the Services, the Supplier shall provide all equipment and materials necessary for the provision of the Services (the "**Supplier's Equipment**").

19.2 All Supplier's Equipment brought onto the Client's premises shall be at the Supplier's own risk and the Client shall have no liability for any loss of, caused by or damage to any of the Supplier's Equipment. The Supplier shall provide for the haulage or carriage thereof to the Client's premises and the removal of the Supplier's Equipment when no longer required at its sole cost. Unless otherwise agreed, the Supplier's Equipment brought onto the Client's premises shall remain the property of the Supplier.

19.3 The Supplier shall maintain and store all items of the Supplier's Equipment within the Client's premises in a safe, serviceable and clean condition.

19.4 The Supplier shall, at the Client's written request, at its own expense and as soon as reasonably practicable: (a) remove from the Client's premises any of the Supplier's Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and (b) replace such item with a suitable substitute item of the Supplier's Equipment.

19.5 On completion of the Services the Supplier shall remove the Supplier's Equipment used by the Supplier to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any of its employees or subcontractors.

20. NON-EXCLUSIVITY

It is specifically understood that the Contract shall be interpreted as a non-exclusive agreement. Accordingly, nothing in the Contract shall preclude the Client from purchasing services (or Services) from any other party or entering into agreements for services of a similar nature with any other party, in each case without limitation.

21. MEDIA

No media releases, public announcements or public disclosures relating to the Contract or its subject matter, including but not limited to promotional or marketing material, shall be made by the Supplier with the prior written consent of the Client.

22. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

22.1 The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any subcontractor nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under the Contract. The Supplier hereby undertakes to advise the

Client immediately should any conflict or potential conflict of interest come to its attention during the term of the Contract and to comply with the Client's directions and those of the Client's employees and officers in respect thereof.

22.2 Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Supplier (and subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate the Contract 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.

22.3 The Supplier 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 22.3 or the commission of any offence by the Supplier, any subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 or the Criminal Justice (Corruption Offences) Act, 2018 shall entitle the Client to terminate the Contract 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 Supplier of the amount or value of any such gift, consideration or commission.

23. AUDIT AND RECORDS

23.1 The Supplier shall create and maintain for a minimum period of the term of the Contract (or, if the longer, any period prescribed by applicable law) complete and accurate records and accounts:

- (a) required by the Contract and applicable law that relate to the Contract and the Supplier's performance of its obligations under the Contract;
- (b) sufficient to demonstrate that any and all amounts invoiced to the Client under the Contract are accurate and proper in both kind and amount;
- (c) sufficient to demonstrate the accuracy of any reports submitted to the Client under the Contract; (together the "Records").

23.2 In creating and maintaining the Records, the Supplier shall employ standards and practices that are no less rigorous than those employed by prudent, well managed enterprises with the relevant jurisdiction that provide services similar to those that the Supplier provides under the Contract.

23.3 The Supplier shall allow the Client and any auditors of or other advisers to the Client to access any of the Supplier's premises, personnel and relevant records as may be reasonably required in order to:

- (a) undertake verification that Services are being provided in accordance with the Contract; and/or
- (b) undertake verification that the Supplier's IT system protects the integrity, operational availability, confidentiality and security of the Client's data.

23.4

(a) Subject to Clause 23.4(b) below, any such audit shall be carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the performance of the Services and the Supplier's other business.

(b) Where the Client has reasonable grounds to believe that the Supplier is not complying with its obligations under the Contract, an audit may be carried out without prior notice.

(c) The Client, its agents or designees may exercise the Client's rights of audit under this Clause 23 and shall comply with the Supplier's reasonable security and access rules and procedures. Persons that the Client may designate include the Client's independent auditors, representative of

governmental or regulatory authorities having jurisdiction under applicable law for the activities relating to the Contract.

(d) During any audit, the Client shall procure that its agents or designees shall treat as confidential any information, data or documents relating to the Supplier to which they may have access.

(e) The Supplier shall provide all assistance reasonably requested by the Client (and its auditors and other advisers) in relation to any audit, including access to the Supplier's personnel, records and premises.

23.5 If an audit identifies that the Client has overpaid any of the Price the Supplier shall pay to the Client the amount overpaid within 7 days from the date of receipt of an invoice or notice to do so.

23.6 The Supplier shall not be required to disclose any of the Supplier's Confidential Information in any such audits unless reasonable agreements and safeguards regarding confidentiality are mutually agreed upon.

24. GENERAL

24.1 Notices and other communications under or in connection with the Conditions may be given in writing by hand, by ordinary pre-paid post, by facsimile or by e-mail, save that service of any notice of any claim, dispute, termination, breach or legal proceedings in connection with the Contract shall not be made by e-mail. Any such notice, if so given, shall be deemed to have been served: (a) if sent by hand, when delivered; (b) if sent by post, one business day after posting; (c) if sent by facsimile, upon production by the sender's facsimile transmission system of a receipt confirming transmission of the communication to the correct facsimile number; and (d) if sent by e-mail, six hours after sending provided the sender has not received notice of failed or delayed delivery.

24.2 Nothing in the Contract shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties or any of them, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.

24.3 Each party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by any other party to implement the Contract.

24.4 If the whole or any part of a provision of the Contract is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of the remainder of the provision in question or any other provision of the Contract.

24.5 The parties recognise that printed purchase orders, invoices and other commonly used form documents relating to the performance of any obligations hereunder may contain terms which conflict with the one or more terms of the Contract. In case of any such conflict, the relevant terms of the Contract shall prevail.

24.6 The Supplier may not, without the prior written consent of the Client: (a) assign, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under the Contract; or (b) purport to transfer, sub-contract or delegate any of its obligations under the Contract.

24.7

(a) The Supplier shall be deemed to be the prime contractor under the Contract and the Supplier assumes full responsibility for the discharge of all obligations under the Contract and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Supplier as prime contractor under the Submission hereby assumes liability for all subcontractors permitted by the Client in writing and shall ensure that any such approved subcontractors shall comply in all respects with the relevant terms of the Contract.

(b) Where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any subcontractor, the Client reserves the right to require the Supplier to immediately replace such

subcontractor and the Supplier shall comply with such requirement. The Supplier shall include in every sub-contract a right for the Supplier to terminate the sub-contract where any of the exclusion grounds apply to the subcontractor and a requirement that the subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

24.8 The Contract together with the Order (and all attachments thereto including the Specification) and these Conditions contain the sole and entire agreement between the parties in relation to its subject matter and supersedes all prior written and oral arrangements, understandings, representations, warranties and agreements between them in that regard. For the avoidance of doubt, the Supplier shall be obliged to comply with any additional terms set out in an Order.

24.9 Each of the rights of each party under the Contract may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that party may have under the Contract, law or otherwise; and may be

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waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.

24.10 The Contract (and any non-contractual obligations arising under or in connection with the Contract) shall be governed by, and construed in accordance with, the laws of Ireland.

24.11 This Clause 24.11 is for the benefit of the Client only. Subject as provided below, the Irish courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract and the parties submit to the exclusive jurisdiction of the Irish courts. Nothing in this clause limits the right of the Client to bring proceedings against the Supplier arising out of or in connection with this agreement: (a) in any other court of competent jurisdiction; or (b) concurrently in more than one court of competent jurisdiction.