



NATIONAL TRANSPORT AUTHORITY

and

[•]

CAMERA ENFORCEMENT SUBJECT MATTER EXPERT

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THIS AGREEMENT is made on [•] 20

BETWEEN:

- (1) **NATIONAL TRANSPORT AUTHORITY**, a statutory corporation established under the laws of Ireland pursuant to an Act of the Oireachtas, and having its principal office at Haymarket House, Smithfield, Dublin, D07 CF98, Ireland (the “**Authority**”); and
- (2) [•], a company incorporated under the laws of [•] with registration number [•] and having its registered office at [•] (the “**Supplier**”).

RECITALS

- A. The Authority has been established pursuant to the Dublin Transport Authority Act 2008 and has such powers, functions and responsibilities as are conferred on it by law and, in particular, the Dublin Transport Authority Act 2008 and the Public Transport Regulation Act 2009.
- B. The Authority requires the supply of the Services.
- C. The Authority has conducted a public tender competition in connection with such supply of the Services.
- D. The Supplier is engaged in the business of providing services of the type contemplated by this Agreement and has the necessary skill, knowledge, expertise and experience in the supply of the Services.
- E. The Supplier has submitted a tender for the supply of the Services and has been selected by the Authority as the successful tenderer.

NOW IT IS AGREED AS FOLLOWS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement (including the Recitals), except where the context requires otherwise:

“**Affected Party**” has the meaning given to it in clause 18.1;

“**Agreed Sub-Contractors**” means [●] and any other sub-contractor agreed by the Authority in accordance with the provisions of clause 12.2;

“Applicable Law” means any law applicable in Ireland (without further enactment) or any other applicable jurisdiction and shall include without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation;

“Associated Companies” means the Supplier and any undertaking which from time to time is a subsidiary undertaking of the Supplier or is the parent undertaking of the Supplier or ultimate parent undertaking of the Supplier or a subsidiary undertaking of any such parent undertaking and for the purposes of this definition “subsidiary undertaking” and “parent undertaking” shall have the meanings given to them in the European Communities (Companies: Group Accounts) Regulations 1992;

“Authority Locations” means the locations nominated by the Authority;

“Authority Policies” means all internal policies of the Authority which apply in the normal course to the Authority’s employees, agents and sub-contractors including, without limitation, policies relating to health and safety, IT security, data privacy and acceptable usage of e-mail, internet and intranet;

“Authority Project Manager” shall have the meaning set out in clause 6.1;

“CEDR” means the International Centre for Effective Dispute Resolution;

“Change Control Procedure” means the change control procedure set out in Schedule 5;

“Commencement Date” means the date of this Agreement;

“Confidential Information” means all information and knowledge received by a party (the **“Receiving Party”**) in the course of the Services or in connection with this Agreement which is the property of the other party (the **“Disclosing Party”**) or is in the control or possession of the Disclosing Party (whether or not the subject of a separate non-disclosure or confidentiality agreement between the Disclosing Party and any third party), whether verbal, written or existing, stored or communicated in any form or medium, together with all copies thereof, however and whenever made, and includes data, documents, reports, analysis, tests, specifications, charts, plans, drawings, models, ideas, schemes, correspondence, communications, lists, manuals, computer programs, software, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatus, equipment, business opportunities, financial information, and/or know-how and trade or other secrets, but excluding:

- (a) information or knowledge which is or hereafter becomes part of the public domain through no fault of the Receiving Party or its personnel;

- (b) information or knowledge which is, legally and as a matter of right, in the Receiving Party's possession as of the date of this Agreement and not the subject of another non-disclosure or confidentiality agreement between the Disclosing Party and the Receiving Party;
- (c) information or knowledge which has been or is hereafter furnished or made known to the Receiving Party, legally and as a matter of right, by third parties without any restriction on use or disclosure; and
- (d) information or knowledge which is *bona fide* independently developed by the Receiving Party provided that such information or knowledge has been developed entirely without reference to, or consideration of, the information or knowledge referred to in clause 13;

"Customised Materials" shall have the meaning set out in clause 11.1;

"Data Protection Acts" means the Data Protection Act 2018, and Regulation (EU) 2016/679 (General Data Protection Regulation);

"Deliverables" means the deliverables to be provided by the Supplier as set out in the Services Specification Document;

"Employee Liabilities" means costs (including the cost of wages, salaries and other remuneration or benefits), taxation or other deductions required by law, PRSI payments, redundancy payments, levies, losses, claims, demands, actions, fines, penalties, awards, liabilities, expenses (including legal expenses on an indemnity basis), in each case howsoever arising;

"Exit Management Plan" shall have the meaning set out in Schedule 6;

"Force Majeure" shall, in relation to either party, include any event beyond the reasonable control of that party including act of God, war, riot, civil commotion, malicious damage, national official strike or lock-out, accident, fire, flood or storm and which could not have been avoided by taking reasonable precautions;

"Index" means the consumer price index (all items) of Ireland published from time to time by the Central Statistics Office;

"Instructions to Tenderers" means the request for tender issued by the Authority on [•];

"Intellectual Property" means all intellectual and/or industrial property rights including copyright, patents, design rights, trade secrets, rights in confidential information, trade marks, trade names, domain names, service marks, utility models, moral rights, topography rights, rights in databases and know-how in all cases whether or not registered or registerable and including registrations and applications for registration of any of these rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“Key Personnel” means the personnel set out in Schedule 3 of this Agreement;

“Mediation Notice” shall have the meaning set out in clause 23.2;

“New Contractor” has the meaning given to it in clause 20;

“Other Suppliers” means suppliers or other parties who may be providing services to the Authority from time to time;

“Payments Schedule” means Schedule 2 of this Agreement;

“Personnel” means employees, partners or Agreed Sub-Contractors engaged by the Supplier in the performance of the Services;

“Project Manager” shall have the meaning set out in clause 6.1;

“Prospective Tenderer” means a person or company who has submitted, or has indicated an intention to submit, a tender or expression of interest in relation to the provision of works or services of a similar type to any of the Services under this Agreement;

“Services” means the services set out in the Services Specification Document and any services ancillary, incidental or necessary thereto;

“Service Levels” means the service levels, including response and resolution times, set out in the Service Level Agreement;

“Service Credits” means the service credits set out in the Service Level Agreement;]¹

“Services Specification Document” means the services specification document set out in Schedule 1 of this Agreement which contains details of the Services to be provided under this Agreement;

“Supplier Project Manager” shall have the meaning set out in clause 6.1;

“Tender Submission” means the tender submission submitted by the Supplier and dated [•]; and

“Working Day” means a day other than a Saturday or Sunday in Ireland on which banks are generally open for business in Dublin.

1.2 Interpretation

In this Agreement:

- (a) the headings and the table of contents in this Agreement are inserted only for convenience and shall not affect its construction;

- (b) any reference to this Agreement includes reference to the Schedules hereto;
- (c) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or statutory instrument or as contained in any subsequent re-enactment and shall include, without limitation, any statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, codes of practice, code of conduct, rule of court, instrument or delegated or other subordinate legislation made under the relevant statute;
- (d) any reference to the Supplier shall include its servants, agents and Agreed Sub-Contractors, except where the context otherwise requires;
- (e) any reference to a person will be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality) and a reference to a person (including a party to this Agreement) includes a reference to that person's legal personal representatives, successors and assigns;
- (f) words importing the singular shall include the plural and vice versa; words importing any gender shall include every gender;
- (g) the word “**including**” shall be construed as meaning including without limitation;
- (h) the Authority shall not be imputed with knowledge of any fact, matter or thing merely because that fact, matter or thing is within the knowledge of the State's servants or agents; and
- (i) the rule known as the *ejusdem generis* rule shall not apply to the interpretation of this Agreement and accordingly general words, including those introduced by “**other**” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words; and
- (j) the words in this Agreement shall bear their natural meaning.

1.3 Contra Proferentum

The parties have had the opportunity to take legal advice on this Agreement and no terms shall therefore be construed *contra proferentum*.

1.4 Ambiguities

In the event of any conflict or inconsistency between the terms of this Agreement and any document or other agreement referred to herein, such conflict shall be resolved in the following order of priority:

- (a) This Agreement (not including its Schedules);
- (b) Schedules to this Agreement;
- (c) Mandatory provisions of the Instructions to Tenderers; and
- (d) the Tender Submission,

save that, where in the reasonable opinion of the Authority and at the Authority's sole discretion, the Tender Submission with a higher standard of service than another provision of this Agreement, the Tender Submission shall prevail.

2. Duration

This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with its terms, the Agreement shall continue in full force and effect for a period of 4 years from the Commencement Date.

3. Obligations of the Parties

- 3.1 In consideration of the award of this contract, and the payment by the Authority of the charges to the Supplier in accordance with clause 10 and the Payments Schedule, the Supplier agrees to supply the Services to the Authority in accordance with the terms of this Agreement.
- 3.2 While this Agreement is in force the Supplier shall give the Authority such time and attention as may be necessary for the proper exercise of its duties under the Agreement.
- 3.3 The Supplier agrees to provide the Services in a timely manner, in accordance with the timeframes set out in the Services Specification Document (if any). The Supplier shall co-operate with all the Authority personnel and any third parties involved in the provision of services to the Authority to the extent reasonably required to ensure that the Services are provided in accordance with any such timeframes set out in the Services Specification Document.

4. Service Levels

Not Used

5. Change Control

Any request for material changes to the Services will be dealt with in accordance with the Change Control Procedure.

6. Project Governance

6.1 The Authority and the Supplier shall each appoint a project manager for the purposes of this Agreement (respectively the "**Authority Project Manager**" and the "**Supplier Project Manager**" and the term "**Project Manager**" shall be construed accordingly) who shall act as the primary point of contact in respect of all matters relating to this Agreement. Subject to the terms of clause 8 (Key Personnel) each party shall notify the other of any change in the identity of its Project Manager from time to time.

6.2 The parties agree to participate in regular review meetings, including without limitation meetings with any Other Suppliers or any other third parties (together with, or in the absence of, the Authority) as required by the Authority (acting reasonably).

7. Status of the Supplier and Employee Matters

7.1 Status of the Supplier

Subject to clause 24, the parties agree that the Supplier is and shall be an independent supplier and not the servant, agent or employee of the Authority.

7.2 Provision of services to other persons

Subject to clause 14, nothing in this Agreement shall preclude the Supplier from providing similar or any other services to any other person or firm except where the Authority considers such provision may create a conflict of interest, in which case the Supplier may not provide the services without first obtaining the prior written consent of the Authority, not to be unreasonably withheld.

7.3 Responsibility for Employees

(a) It is agreed and acknowledged that:

- (i) the Supplier is fully responsible for, and the Authority has no responsibility for or to, the Supplier's employees, servants or agents;
- (ii) the Supplier's employees, servants or agents shall not be entitled to any salary, wages, overtime payments, sick or holiday pay, pension, bonus or additional or fringe benefits of any kind from the Authority and such are the responsibility of the Supplier;

- (iii) the Supplier shall be responsible for income tax liabilities, PRSI contributions, levies or other deductions required by law in respect of itself or its employees, servants or agents (including, for the avoidance of doubt, all PAYE deductions for tax and universal social charge contributions from the remuneration which it pays to Personnel);
 - (iv) the Supplier shall be responsible for the day-to-day management and control of its employees, servants and agents and the Authority shall have no such responsibility or control; and
 - (v) the Supplier is responsible for providing and maintaining any equipment or resources to be used by its employees, servants or agents and the Authority shall have no such responsibility (unless agreed otherwise).
- (b) The Supplier shall indemnify and keep indemnified the Authority against any claim (including but not limited to a claim for income tax, PRSI, universal social charge, any other deductions required by law and any interest and penalties thereon) which may be made against the Authority by the Revenue Commissioners, the Department of Social Protection, the Supplier's employees or any third party, or any order or award made by any tribunal or court, relating to a determination or allegation that the Supplier's employees, servants or agents are employees of the Authority, together with all costs and expenses incurred by the Authority in connection with or arising out of any such claim, order or award (including reasonable legal costs in defending such claim if necessary).
- (c) The Supplier shall indemnify and keep indemnified the Authority against Employee Liabilities arising from death or personal injury suffered by the Supplier's employees, servants or agents in providing the Services, except to the extent that such arises due to any negligent act of the Authority.

7.4 No partnership

Subject to clause 24, nothing in this Agreement shall constitute a partnership or joint venture nor establish a relationship of agency between the parties or a relationship of employment between the Authority and the Supplier's servants or agents.

7.5 No authority

The Supplier shall have no power or authority to enter into any agreement, contract or commitment for or on behalf or in the name of the Authority in connection with, or pursuant to, the provision of the Services or otherwise without the prior specific consent in writing of the Authority.

7.6 Stand-Still Period

During the 6 (six) month period preceding the date of expiry of this Agreement, or at any time after either party has given notice to terminate this Agreement, the Supplier shall not, and shall procure that its Associated Companies, contractors or sub-contractors (of any tier) shall not, without the prior written consent of the Authority:

- (a) amend, or offer, promise or agree for the future to amend, terms and conditions of employment including, without limitation, the rates of remuneration (including pensions and bonuses), working hours, holidays and sick pay, of any employee employed by the Supplier or by any of its Associated Companies, contractors or sub-contractors (of any tier) whose work (or any part of it) is work undertaken for the purposes of this Agreement; or
- (b) increase or decrease the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract, or make offers of employment that would have the effect of increasing the number of such employees or give notice of termination of employment that would have the effect of decreasing the number of such employees.

7.7 Employee Information

- (a) At any time during the term of this Agreement where notified in writing by the Authority to do so, the Supplier shall provide Employee Information (as defined below) to the Authority within 10 (ten) business days of such notice.
- (b) It is agreed that the Authority may disclose Employee Information to any Prospective Tenderer, but that the Authority shall not disclose Employee Information (or any part of that information) to any other person without the Supplier's consent except where the Authority is required by law or under regulatory rules to disclose such information.
- (c) Where Employee Information has been provided by the Supplier to the Authority, the Supplier shall:
 - (i) within 10 (ten) business days of any amendment to such information, or the discovery of new relevant information, inform the Authority of any change to the information provided and/or provide any new Employee Information not previously provided;
 - (ii) use its best endeavours to clarify within 10 (ten) business days any matter upon which clarification is requested by the Authority; and
 - (iii) use its best endeavours to co-operate with any other reasonable request made by the Authority concerning the Employee Information or concerning the Supplier's employees or the employees of its Associated Companies, contractors or sub-contractors (of any tier).
- (d) "Employee Information" means:

- (e) An overview of how the Services are provided, including but not limited to setting out the total number of persons engaged by the Supplier to provide the Services and indicating in each case whether those persons are employed by the Supplier, its Associated Companies or by any of its contractors or sub-contractors of any tier; and
- (f) In relation to employees of the Supplier or its Associated Companies who are wholly or mainly assigned to the provision of the Services, a spreadsheet containing the following:
 - (i) employee's job title and staff number
 - (ii) name and address of the applicable employer (i.e. whether employed by the Supplier or an Associated Company);
 - (iii) date of birth;
 - (iv) details of remuneration (including salary and all benefits, perquisites, bonuses, commission, share plans, overtime or other such payments);
 - (v) details of any pension scheme contributions or entitlement;
 - (vi) details of any other contractual entitlements (for example health insurance, permanent health insurance and company car);
 - (vii) normal working hours;
 - (viii) approximate percentage of the employee's working time spent on the Services (expressed as a percentage of the total work the employee carries out for his/her employer);
 - (ix) contractual annual leave entitlements and accrued annual leave;
 - (x) details of whether employment is permanent, temporary, part-time or fixed-term;
 - (xi) length of service;
 - (xii) notice period;
 - (xiii) any amendments to terms and conditions of employment covering future dates which has already been agreed; and
 - (xiv) any contractual redundancy or severance entitlement whether express or implied; and
- (g) In relation to each person mentioned in clause 3.3.1(f) above, the following:

- (i) terms and conditions of employment (copy contracts of employment) including details of terms incorporated from any collective agreement or arising out of any custom or practice;
 - (ii) employee handbook and/or policies and procedures forming part of the employees' contracts;
 - (iii) workforce structure and lines of responsibility;
 - (iv) details of any outstanding or reasonably anticipated liability for past breaches of such employment contracts;
 - (v) details, including expected return dates, of any employee who is on sick leave, maternity leave or other statutory or contractual leave (other than normal holiday leave) whether paid or unpaid;
 - (vi) details of any outstanding or potential liability under statute or otherwise (for example, any claim for unfair dismissal or discrimination or wrongful dismissal);
 - (vii) details of any employee grievances or current disciplinary action;
 - (viii) details of trade union recognition, any collective agreements, any areas of industrial dispute and any decisions or recommendations of a court or otherwise affecting the workforce that are still in effect;
 - (ix) details of any employees currently serving a notice period or garden leave period prior to termination of their contract; and
 - (x) details of any other outstanding or potential contractual liability to be met by a new contractor were it to become employer of such persons;
- (h) In relation to any employees providing the Services, whether they be employees of the Supplier, an Associated Company or contractors or subcontractors of any tier, confirmation that any such employee would not reasonably be deemed to be an employee of another employer due to his working arrangement; and
- (i) Such other information as the Authority may reasonably require in relation to the Supplier's employees or the employees of its Associated Companies, contractors or subcontractors (of any tier).

8. Key Personnel

- 8.1 Unless the Key Personnel are removed in accordance with clause 8.2, or cease to be employed by or contracted to the Supplier, are taken ill, are injured or are on maternity or paternity leave, the Supplier will use all reasonable endeavours to ensure that the Key Personnel shall continue to provide the Services to the Authority until expiry or termination of this Agreement in accordance with its terms. Subject to clause 8.2, with the exception of a member of the Key Personnel who ceases to be employed by or contracted to the Supplier, who is taken ill, is injured or is on maternity or paternity leave, the Key Personnel may only be removed by the Supplier in advance of the completion of the Services with the prior written consent of the Authority, such consent not to be unreasonably withheld. In all cases the Key Personnel (whether removed with consent or otherwise pursuant to the terms of this clause) must be replaced with an employee, servant or agent of equal or higher ability. Prior to the removal of any Key Personnel in accordance with this clause, the Supplier shall (where possible in advance of any such removal) furnish the Authority with a copy of the proposed replacement's curriculum vitae and all details required to enable the Authority to satisfy itself that the employee, servant or agent is appropriately qualified for the provision of the Services.
- 8.2 If at any time during the term of this Agreement the Authority reasonably determines that any employees, servants or agents of the Supplier are not suitable for the provision of the Services, it shall notify the Supplier of its decision and the Supplier shall immediately remove the said person(s) from the Services and replace him/her in accordance with the procedures set out in clause 8.1. The Supplier shall indemnify and keep indemnified the Authority from any Employee Liabilities that may result from such action or that relate to the removal of that person from the Service(s).

9. Maintenance of records

The Supplier shall keep detailed records of all acts and things done by it in relation to the performance of the Services and at the Authority's request shall make them available for inspection and shall, at the Supplier's own expense, provide to the Authority copies of all documentation required by the Authority at any time.

10. Payment

10.1 Basis of payment

The Authority shall pay the Supplier in accordance with the Payments Schedule. The Supplier acknowledges that payments may be subject to retention provisions as set out in the Payments Schedule.

10.2 Notification

- (a) The Supplier shall, on a monthly basis (or such other period as may be requested by the Authority), notify the Authority of the time spent in carrying out the Services over the course of that month and shall produce any such record, back-up or other evidence relating to the time spent as the Authority may require.
- (b) The Supplier shall maintain records of all fees incurred in respect of the Services in electronic format (or such other format specified by the Authority). The records maintained by the Supplier shall contain details of all Services undertaken, the dates and identities of the Personnel who carried out such Services and the identities of the personnel of the Authority who authorised the carrying out of such Services. The Authority shall be entitled to inspect the Supplier's fee records upon providing notice of such inspection to the Supplier.

10.3 Payment

- (a) Invoices shall be submitted to the Authority in accordance with the Payments Schedule.
- (b) Payment of any sums due (including all legally demandable VAT, at the rate for the time being properly chargeable in respect of the supply of goods and services by the Supplier under this Agreement) shall be made on a net monthly account basis such that payment is made on the last business day of the month following the month of the invoice date, provided all monies specified in the Supplier's invoice raised are due and undisputed and the invoices are valid VAT invoices and are correctly addressed. The Supplier will be responsible for any VAT due in respect of fees received under this Contract.
- (c) The Authority shall be entitled to make deductions from the payments specified in this Agreement where it is required by law or otherwise entitled to make such deductions. In particular, Professional Services Withholding Tax will be deducted at source as directed by the Revenue Commissioner from the Supplier's payment and remitted to the Revenue, if the Supplier is providing professional services.
- (d) Payment of any monies under this Agreement does not give rise to an inference that the Supplier has fulfilled its obligations to the satisfaction of the Authority or is entitled to any such payment.

10.4 Right of set-off

Where, in any case, the Supplier is liable to make any payment to the Authority under this Agreement or otherwise, the Authority may set off any such payments due to it against any fees due by the Authority to the Supplier on this or any other contract between the parties.

10.5 Current tax clearance certificate

The Supplier shall not be entitled to any payment if at any time in response to a request from the Authority the Supplier does not produce a current tax clearance certificate from the Revenue Commissioners of Ireland confirming suitability on tax grounds.

10.6 Hourly & Daily Rates

The Hourly & Daily Rates set out in the Hourly & Daily Rate Table of Schedule 2 (Payments Schedule):

- i. are fixed for the period up to the second anniversary of the Commencement Date and shall not before that date be subject to any price adjustment or escalation formula to reflect variations in currency, exchange rates, taxation, the cost of labour, materials, overheads or any other expense; and
- ii. following the second anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date (a “**Readjustment Date**”), shall be adjusted by the percentage increase or decrease (if any) of the Index figure (**published by the Central Statistics Office, Consumer Price Index (CPI Inflation Calculator)**) current at the Readjustment Date compared with the Index figure current on the previous Readjustment Date, or, in the case of the first readjustment, compared with the Index figure current on the Commencement Date.. Between Readjustment Dates, the fees as adjusted will be fixed for the year following the Readjustment Date and shall not be subject to any further price adjustment or escalation formula to reflect variations in currency, exchange rates, taxation, the cost of labour, materials, overheads or any other expense until the next Readjustment Date.

11. Title, Ownership and Licensing

- 11.1 The Supplier agrees that all Intellectual Property Rights for the full terms thereof throughout the world arising in any works or material originated, conceived, written or created specifically for the Authority by the Supplier or the Personnel, in connection with the supply of the Services (the “**Customised Materials**”), shall vest in and be the absolute property of the Authority. The Intellectual Property rights in respect of any works or material supplied in connection with the Services, which are not Customised Materials, shall vest in and be the absolute property of the Supplier and the Supplier grants to the Authority a worldwide, non-exclusive, perpetual, sub-licensable, transferable and royalty-free licence to use such works and material. The Supplier shall, at the request and expense of the Authority, do all things necessary or desirable to substantiate the rights of the Authority under this clause.

- 11.2 The Supplier hereby waives, and shall procure that the Personnel waive, all current or future moral or similar rights arising in connection with the Customised Materials insofar as they may lawfully do so in favour of the Authority and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the Intellectual Property Rights in such Customised Materials.
- 11.3 The Supplier acknowledges that all rights in any materials (including without limitation any and all computer programs, data, diagrams, charts, reports, specifications, studies, and development tools) provided by the Authority to the Supplier ("**Authority Materials**") shall at all times vest in and be the absolute property of the Authority.
- 11.4 Title to any other goods or physical media of which the Deliverables are comprised shall vest in the Authority on the earlier of delivery to the Authority or payment of any relevant charges for them. The Supplier shall do all things necessary or desirable to substantiate the rights of the Authority under this clause.

12. Assignment, Sub-Contracting and Novation

12.1 Supplier

With the exception of the Agreed Sub-Contractors, the Supplier shall not be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement without the prior written consent of the Authority.

- 12.2 The Supplier shall procure the compliance with the terms of this Agreement by the Agreed Sub-Contractors and by any sub-contractor, servant or agent appointed by the Supplier pursuant to clause 12.1, provided that the Supplier shall remain primarily liable to the Authority for the performance of the Supplier's obligations under this Agreement notwithstanding the appointment of the Agreed Sub-Contractors or any sub-contractor, servant or agent appointed by the Supplier pursuant to clause 12.1.

12.3 Authority

The Authority may transfer, assign or novate all or any part of the terms and conditions of this Agreement to any public sector body and shall give prompt notice to the Supplier of such transfer, assignment or novation. The Supplier agrees to do all acts, and execute all documents, necessary to give effect to such transfer, assignment or novation.

13. Confidentiality

13.1 Confidential

The parties agree and acknowledge that they will keep, and will ensure that their personnel shall keep, Confidential Information confidential, and shall not at any time for any reason whatsoever disclose or permit Confidential Information to be disclosed to any third party except as permitted hereunder to enable them to carry out their duties and obligations under the Agreement.

13.2 Third parties

- (a) The parties shall procure that each of their employees and any other personnel having access to Confidential Information shall be subject to the same obligations as set out in this clause 13 with respect to Confidential Information and shall enter into a suitable confidentiality agreement in a form agreed by the parties or, insofar as that is not reasonably practicable, they shall take all reasonable steps to ensure that their personnel and employees are made aware of and perform such obligations.
- (b) The Supplier further agrees and acknowledges that it and its Personnel are subject to, and to the extent applicable shall comply with, Section 38 of the Dublin Transport Authority Act 2008.

13.3 Permitted disclosure

Either party may disclose Confidential Information:

- (a) if and to the extent required by law or for the purpose of any judicial inquiry or proceedings;
- (b) if and to the extent required by any securities exchange or regulatory or governmental body to which it is subject wherever situated, including (amongst other bodies) the Public Accounts Committee, any other Oireachtas Committee, and/or the Irish Stock Exchange, whether or not the requirement to disclose the Confidential Information has the force of law;
- (c) if and to the extent necessary or desirable to enable mediation under clause 23;
- (d) where necessary, to its professional advisers, auditors and bankers;
- (e) if and to the extent that it is necessary to carry out its Services hereunder;
- (f) in the case of a disclosure by the Supplier, if and to the extent that the Authority has given prior written consent to the disclosure; or
- (g) in the case of the Authority, pursuant to an access request under the Freedom of Information Acts 2014 (the “**FOI Acts**”), subject where relevant to the Authority seeking submission from the Supplier in accordance with Section 38 of the FOI Acts.

14. Conflict of Interest

14.1 No conflict

The Supplier agrees and acknowledges that:

- (a) it and its Personnel are subject to, and to the extent applicable shall comply with, Section 37 of the Dublin Transport Act 2008; and

- (b) without prejudice to the generality of clause 14.1(a), shall ensure that no conflict of interest arises in respect of its performance of the Services under this Agreement.

14.2 Disclosure

The Supplier shall disclose to the Authority, within forty-eight hours of it coming to its attention, any conflict of interest or potential conflict of interest which it, any of its affiliates, Associated Companies, or any of its Agreed Sub-Contractors may have in performing the Services.

14.3 Authority rights

In the event of any conflict or potential conflict of interest arising, the Supplier agrees and acknowledges that it is a matter for the Authority to decide the appropriate action to be taken (including termination of contract) in accordance with Section 37 of the Dublin Transport Act 2008 and the terms of this Agreement.

14.4 Supplier warranty

The Supplier hereby expressly agrees and warrants that for the duration of this Agreement neither the Supplier nor any of its Agreed Sub-Contractors shall, unless otherwise agreed in advance with the Authority, provide any advice to any person other than in accordance with this Agreement in connection with any matter connected with the Services.

14.5 Third parties

The Supplier shall ensure that its Personnel comply with this clause 14 and Section 38 of the Dublin Transport Authority Act 2008 as if they were a party to this Agreement.

15. Intellectual Property Indemnity

- 15.1 The Supplier shall indemnify the Authority against all damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Rights in consequence of the use or possession of any Deliverables (or any part thereof) by the Authority and the supply of the Services (or any part thereof) by the Supplier under this Agreement, subject to the following:

- (a) the Authority shall promptly notify the Supplier in writing of any alleged infringement of which he has notice;
- (b) the Authority must make no admissions without the Supplier's prior written consent; and

- (c) the Authority, at the Supplier's request and expense, shall allow the Supplier to conduct any negotiations or litigation and/or settle any claim. The Authority shall give the Supplier all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Supplier's account.

If at any time an allegation of infringement of Intellectual Property Rights is made in respect of the Services (or any part thereof) or, if in the Supplier's reasonable opinion such an allegation is likely to be made, the Supplier may at his own expense modify or replace the Services (or any part thereof) so as to avoid the infringement, without detracting from overall performance, the Supplier making good to the Authority any loss of use during modification or replacement.

16. Rights of Third Parties

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

17. Warranties

- 17.1 The Supplier warrants that the Deliverables, and any other equipment or materials to be provided to the Authority under this Agreement, shall be fit for purpose and free from material defects in normal use.
- 17.2 The Authority shall give notice to the Supplier as soon as practicable upon becoming aware of any breach of the warranty in clause 17.1. Without prejudice to any other rights and remedies to which the Authority may be entitled under this Agreement or otherwise, the Supplier shall after receipt of notice of a breach of warranty remedy same by repair or replacement of the Deliverables, or the equipment or materials, in question without charge to the Authority so as to ensure that the item in question complies with the warranty in clause 17.1.
- 17.3 The Supplier warrants that the Services shall be provided by appropriately experienced, qualified and trained personnel and that the Services shall be rendered with all due skill, care and diligence.
- 17.4 The Supplier warrants that the provision of the Services will not infringe the Intellectual Property Rights of any third parties.
- 17.5 The Supplier warrants that it has the authority to enter into this Agreement and to perform its obligations under this Agreement and that no material conflict of interest shall arise for the Supplier by virtue of the Supplier entering this Agreement.
- 17.6 The Supplier warrants that all information supplied by the Supplier in the Tender Submission is true and accurate in all respects as at the date of this Agreement save as otherwise disclosed in writing to the Authority.
- 17.7 The Supplier warrants that it shall:
- (a) observe and comply with all Applicable Law to the extent that such laws are relevant to the performance of its obligations under this Agreement; and
 - (b) obtain at its own risk and expense from the appropriate authorities or any third parties all permits and licences necessary for the proper performance of its obligations under this Agreement.
- 17.8 The Supplier warrants that it is a company duly incorporated and validly existing under the laws of Ireland.

18. Force Majeure

18.1 Affected Party obligations

If a party is affected by a Force Majeure then the party so affected (the “**Affected Party**”) shall promptly notify the other party in writing of the nature and extent of the circumstances in question and both parties shall consult each other and make every reasonable effort to mitigate the effect of such Force Majeure on the Affected Party’s ability to perform its obligations under this Agreement.

18.2 Effect of Force Majeure

- (a) Notwithstanding any other provisions of this Agreement, but subject to clause 18.2(c), the Affected Party shall be deemed not to be in breach of this Agreement or otherwise be liable to the other party for any delay in performance or non-performance of its obligations under this Agreement arising from the operation of a Force Majeure which it has notified to the other party. The time for the performance of obligations affected by a Force Majeure which has been duly notified to the other party shall, subject to clause 18.2(c), be extended until such time as the Force Majeure ceases to exist.
- (b) The Affected Party shall notify the other party immediately in writing once the Force Majeure has ended and shall forthwith resume performance of its obligations under this Agreement.
- (c) If any circumstances of Force Majeure exist for a continuous period of six months then the Authority shall be entitled to terminate the Supplier’s appointment under this Agreement forthwith by giving notice in writing to the Supplier.

19. Termination

19.1 Termination Events

This Agreement may be terminated by the Authority immediately in writing (without prejudice to any other rights and remedies which it may possess):

- (a) if in the reasonable opinion of the Authority there has been material breach, default or negligence by the Supplier or flagrant or persistent neglect by the Supplier of its obligations under this Agreement and, the Authority having served written notice on the Supplier notifying it of the breach, default or negligence, the Supplier has failed to remedy such breach, default or negligence within a period of ten Working Days of such notification;

- (b) if the Supplier (or, where the Supplier is a partnership, any partner in the Supplier) becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (where the Supplier is a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or the Supplier has a receiver or manager appointed to its undertakings or if any security is enforced against any asset of the Supplier or any distress or execution shall be threatened or levied upon any asset of the Supplier or if the Supplier is unable to pay its debts in accordance with the law relating to this Agreement;
- (c) if the Supplier has been guilty of conduct tending to bring itself or the Authority into disrepute;
- (d) if funding of the Authority in connection with the matter the subject of the Services shall cease; or
- (e) if the performance of the Supplier's duties hereunder is not satisfactory in the reasonable opinion of the Authority..

19.2 The Agreement may be terminated by the Authority immediately in writing where:

- (a) in the reasonable opinion of the Authority, the Agreement has been subject to substantial modification, which would require a new procurement procedure pursuant to Article 72 of Directive 2014/24/EU and/or Regulation 72 of the European Union (Award of Public Authority Contracts) Regulations 2016
- (b) the Supplier has, at the time of the award of the Agreement, been in one of the situations referred to in Article 57(1) of Directive 2014/24/EU of the European Parliament and of the Council, and/ or Regulation 57(1) or (2) of the European Union (Award of Public Authority Contracts) Regulations 2016 and should therefore have been excluded from the procurement procedure for this Agreement; or
- (c) the Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties governing the European Union and/or Directive 2014/24/EU and/or the European Union (Award of Public Authority Contracts) Regulations 2016, which infringement has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union

19.3 Authority voluntary right

This Agreement may be terminated by the Authority at any time on giving 3 months' written notice to the Supplier. In such circumstances the Authority shall pay the Supplier for all Services which have been performed in accordance with the terms of this Agreement up to and including the date of termination.

19.4 Supplier waiver

Without prejudice to any other clause of this Agreement, the Supplier waives any rights it may have under this Agreement, under statute, in equity or otherwise at law to seek compensation for loss of profit, loss of business or any indirect or consequential losses resulting from the Authority's termination of this Agreement, including, without limitation, pursuant to clause 19.1, 19.2 [or 19.3,].

19.5 Consequences of termination

The parties shall develop an Exit Management Plan in accordance with the provisions of Schedule 6. On termination of this Agreement for any reason, the provisions of the Exit Management Plan shall apply. For the avoidance of doubt, the Supplier shall have no lien on documents in its possession or under its control for payment due to it by the Authority.

19.6 Without prejudice

The provisions of this clause 19 are and shall be without prejudice to any other rights or remedies which the Authority may have.

20. Transfer of Undertakings

20.1 In this clause 20

"Employee" means any employee of the Existing Contractor or of any third party whose terms and conditions of employment transfer to the Supplier under Regulation 4 of the Transfer Regulations;

"Existing Contractor" means [•], the contractor currently providing some or all of the services the subject of this Agreement;

"New Contractor" means the Authority or any third party that will provide some or all of the Services on the termination or expiry of this Agreement;

"Retransfer Date" means the date on which the relevant Retransferring Employee transfers to a New Contractor in accordance with the Transfer Regulations;

"Retransferring Employee" means any employee of the Supplier or of any third party whose terms and conditions of employment transfer to a New Contractor under Regulation 4 of the Transfer Regulations on the termination or otherwise of this Agreement;

"Transfer Date" means the date on which the Employees transfer to the Supplier in accordance with the Transfer Regulations; and

"Transfer Regulations" means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, including any statute or statutory provision which amends, extends, consolidates or replaces the same.

- 20.2 The Parties acknowledge that the Transfer Regulations may apply on or following the commencement of this Agreement such that persons currently providing all or part of the Services would transfer to the Supplier and that, should the Transfer Regulations apply, the contracts of employment of the Employees (save insofar as excluded under Regulation 4 of the Transfer Regulations) will have effect from the Transfer Date as if originally made between the Supplier and the Employees. However, the Supplier acknowledges and agrees that it shall be liable for all Employee Liabilities resulting from the application or alleged application of the Transfer Regulations on, or following, commencement of this Agreement, that the Authority has made no representations regarding the Transfer Regulations and that the Authority has not provided any warranty or indemnity of any nature regarding the application of the Transfer Regulations or the identity of the persons who may transfer to the Supplier in accordance with the Transfer Regulations.
- 20.3 If the Transfer Regulations apply on or following commencement of this Agreement, it is agreed that:
- (a) the Supplier shall comply with its obligations under the Transfer Regulations;
 - (b) the Authority shall provide information and assistance so far as it is reasonably able to do so in order to allow the Supplier to so comply with its obligations under the Transfer Regulations, including using reasonable endeavours to obtain from the Existing Contractor (or other applicable employer) details of the Employees' existing contractual rights and obligations. However, the Authority neither warrants, represents nor takes responsibility for the accuracy of information so obtained from the Existing Contractor and provided to the Supplier; and
 - (c) the Supplier shall indemnify the Authority and keep the Authority indemnified on demand against any and all Employee Liabilities relating to Employees (or persons claiming to be Employees) arising from:
 - (i) a refusal to employ such person;
 - (ii) the employment or termination of such person's employment by the Supplier after the Transfer Date;
 - (iii) any changes in such person's terms and conditions of employment after the Transfer Date;
 - (iv) any failure by the Supplier to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8; and
 - (v) any failure by the Supplier to comply with its obligations under this clause 20.3.

- 20.4 It is acknowledged and agreed that if, on the termination or expiry of all or part of this Agreement, the provision of some or all of the Services pursuant to it are transferred to a New Contractor and such transfer constitutes a transfer within the meaning of the Transfer Regulations, then the provisions of clauses 20.5 to 20.7 below shall apply.
- 20.5 The Supplier shall comply with its obligations under the Transfer Regulations, including its information and consultation obligations under Regulation 8 of the Transfer Regulations, and it shall provide any reasonably necessary information and assistance to a New Contractor to allow that party to comply with its obligations (including providing a list of Retransferring Employees together with their terms and conditions of employment and allowing the New Contractor to address Retransferring Employees as is reasonably necessary in the lead up to the Retransfer Date).
- 20.6 The Supplier shall indemnify the Authority and the New Contractor and keep the Authority and New Contractor indemnified on demand against any and all Employee Liabilities relating to Retransferring Employees (or a person claiming his employment should transfer to the New Contractor) arising from:
- (a) any claim which relates to such person's employment by the Supplier before the Retransfer Date;
 - (b) the employment or termination of such person's employment by the Supplier before the Retransfer Date;
 - (c) any changes in such person's terms and conditions of employment before the Retransfer Date;
 - (d) any failure by the Supplier to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8;
 - (e) a failure by the Supplier to provide an accurate list of Retransferring Employees together with their terms and conditions of employment; and
 - (f) the non-disclosure or inaccurate disclosure of Employee Information.
- 20.7 If it is alleged that the provisions of the Transfer Regulations operate so as to transfer to the New Contractor a person other than a Retransferring Employee whose identity was notified to the New Contractor in accordance with clause 20.5 above:
- (a) the New Contractor shall, upon becoming aware of the alleged application of the Transfer Regulations to such person, inform the Supplier, and the Supplier shall within 5 (five) business days:
 - (i) provide all relevant information to the New Contractor relating to such person and his employment as reasonably requested by the New Contractor; and
 - (ii) consult with the New Contractor in good faith as to the appropriate steps to be taken in relation to that person;

- (b) the Supplier shall, within 10 (ten) business days, offer such person employment on their same terms and conditions of employment; and
 - (c) the Supplier covenants to pay to the New Contractor on demand an amount equal to any and all Employee Liabilities arising out of such person's employment and/or the termination of such person's employment, so long as such termination takes place within 2 (two) months of the New Contractor becoming aware of such allegation.
- 20.8 The Authority holds the benefit of any indemnities, covenants, agreements or warranties provided under this clause 20 (or any sub-clauses hereof) for itself and in trust for any nominee or New Contractor, and the Supplier agrees that the Authority has the right at its sole discretion to assign the benefit of such indemnities to a New Contractor or that, when requested to do so by the Authority, the Supplier shall execute indemnities, covenants, agreements or warranties in similar terms as this clause 20 in favour of a New Contractor.
- 20.9 Where the Supplier chooses to provide all or any part of the Services through an Associated Company, contractor or subcontractor:
 - (a) the term "Supplier" shall be interpreted where necessary as including such Associated Company; and
 - (b) the Supplier shall ensure that any such Associated Company, and any contractors or subcontractors providing some or all of the Services, comply with the Transfer Regulations (if applicable) and any obligations to provide information or assistance to the Authority or a New Contractor in the same manner as such applies to the Supplier.

21. Liability

- 21.1 Save in respect of death or personal injury caused by the negligence of either party, breach of this Agreement by virtue of fraud or wilful default, or breach of any Intellectual Property Rights by the Supplier (including, for the avoidance of doubt, any liability under the indemnity at clause 15), each party's liability for any claim whether in contract, tort (including negligence) or otherwise, for any loss or damage, arising out of or in connection with this Agreement or otherwise shall in no case exceed 200% of sums paid and payable by the Authority under this Agreement in respect of any event or series of connected events.
- 21.2 In no event shall either party be liable for special, incidental, indirect or consequential damages.

22. Insurance obligations

- 22.1 The Supplier shall be required at all times during the term of this Agreement, and for a period of 2 years thereafter, to effect and maintain such levels of insurance with a reputable insurer as may be required to cover any potential liability of the Supplier under this Agreement.
- 22.2 Without prejudice to the generality of clause 22.1, the Supplier shall, as a minimum, carry throughout the term of this Agreement the levels and types of insurance set out below under forms of policy which are acceptable to the Authority, acting reasonably:
- (a) Professional Indemnity: €1,500,000 each and every claim, unlimited any one Period of Insurance
- 22.3 The Supplier shall notify the Authority immediately in the event that any of the insurances described in clause 22.2 ceases to be available or maintained.
- 22.4 The insurance policies described in clause 22.2 shall include an indemnity to principals clause specifically indemnifying the Authority. None of the policies described in clause 22.2 shall include any terms or conditions to the effect that the Supplier must discharge any liability before being able to recover from the insurers.
- 22.5 If the Supplier fails to provide the insurance cover specified in clause 22.2, the Authority 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 sums due to the Supplier under this Agreement, or otherwise recover such sums from the Supplier.
- 22.6 The Supplier shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in clause 22.2 in the event of a claim under any of the policies.

23. Dispute Resolution

- 23.1 The parties shall use all reasonable endeavours to settle any dispute that may arise in connection with this Agreement.

- 23.2 If any dispute cannot be settled amicably by the Authority Project Manager and the Supplier Project Manager within 10 Business Days, the dispute shall be referred to the Authority's [●] and the Supplier's [●]. The Authority's [●] and the Supplier's [●] will use all reasonable endeavours to resolve the dispute. If the dispute is not resolved by the Authority's [●] and the Supplier's [●] within 10 Business Days of the matter being referred to them, the parties will refer the dispute to mediation in accordance with the CEDR procedures then in force before resorting to litigation. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation (the "**Mediation Notice**"). The parties shall agree on a choice of mediator with sufficient knowledge and experience in the industry sufficient to comprehend the technical and economic issues raised. In the event that the parties are unable to agree on a choice of mediator within 10 Business Days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. The costs of the mediation shall be shared equally between the parties.
- 23.3 Nothing contained in this clause 23 shall restrict either party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy, to protect any Intellectual Property Rights or rights in Confidential Information or to otherwise prevent irreparable harm.

24. Data Protection

- 24.1 The Supplier acknowledges that in providing the Services under this Agreement the Supplier will process personal data within the meaning set out in Data Protection Law on behalf of the Authority. In such circumstances, the Supplier acknowledges that the Authority is the data controller and the Supplier is the data processor, as each term is defined in the Data Protection Acts and the Supplier agrees that:
- (a) the Supplier processes personal data on behalf of the Authority in the context of providing the services under this Agreement, for the duration of the Term. The obligations and rights of the Authority shall be as set out in this Agreement;
 - (b) the Supplier will only process such personal data in accordance with the documented instructions of the Authority, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement;
 - (c) the Supplier shall ensure that the persons authorised by the Supplier to process such personal data are bound by appropriate confidentiality obligations;
 - (d) the Supplier shall implement such technical and organisational security measures as are required to comply with the data security obligations under Data Protection Law;
 - (e) the Supplier shall not engage any sub-processor without the prior written consent of the Authority and where the Authority has consented to the appointment of a sub-processor, the Supplier must not replace or engage other sub-processors without the prior written consent of the Authority;

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- (f) where any sub-contractor of the Supplier will be processing such personal data on behalf of the Authority, the Supplier shall ensure that a written contract exists between the Supplier and the Sub-contractor containing clauses equivalent to those imposed on the Supplier in this clause 24. In the event that any sub-processor fails to meet its data protection obligations, the Supplier shall remain fully liable to the Authority for the performance of the sub-processors obligations;
 - (g) the Supplier shall inform the Authority immediately in the event of receiving a request from a data subject to exercise their rights under Data Protection Law and provide such co-operation and assistance as may be required to enable the Authority to deal with such request in accordance with the provisions of Data Protection Law;
 - (h) the Supplier shall assist the Authority by implementing appropriate technical and organisational measures to allow the Authority to comply with requests from data subjects to exercise their rights under Data Protection Law;
 - (i) the Supplier shall assist the Authority in ensuring compliance with its obligations in respect of security of personal data under Data Protection Law;
 - (j) the Supplier shall: (i) at the choice of the Authority, delete or return all such personal data to the Authority when the Supplier ceases to provide service relating to data processing; and (ii) save as required by Applicable Law, delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
 - (k) the Supplier shall: (i) make available to the Authority all information necessary to demonstrate compliance with the obligations laid down in this clause 24; and (ii) allow for and assist with audits, including inspections, conducted by the Authority or another auditor mandated by the Authority, in order to ensure compliance with the obligations laid down in this clause 24, including its data security obligations under Data Protection Law provided however that the Authority shall be entitled, at its discretion, to accept adherence by the Supplier to an approved code of conduct or an approved certification mechanism to aid demonstration by the Supplier that it is compliant with the provisions of this clause 24;
 - (l) the Supplier shall inform the Authority immediately if, in its opinion, it receives an instruction from the Authority which infringes Data Protection Law;
 - (m) the Supplier shall notify the Authority immediately after becoming aware of any personal data breach (as defined in Data Protection Law) and provide the Authority with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach; and
 - (n) no such personal data shall be transferred outside of the European Economic Area by the Supplier or any of its agents or sub-processors without the prior

written consent of the Authority which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model contracts in respect of any sub-processors). The Supplier shall comply with the requirements of Data Protection law in respect of transfers of such personal data outside of the European Economic Area, to the extent that the Authority consents to any such transfer.

- 24.2 For the purposes of this clause 24, but not for any other purpose under this Agreement, the Authority appoints the Supplier as its agent.

25. Authority Locations and Policies

- 25.1 The Authority shall afford to appropriate personnel of the Supplier, and its sub-contractors, servants and agents, at all reasonable times and upon receipt of adequate prior notice, such access to the Authority Locations as may be necessary for the performance of the Supplier's obligations hereunder provided always that such personnel comply with the terms of any Authority Policies notified by the Authority to the Supplier from time to time. The Authority shall have the right to refuse admission to, or order the removal from, the Authority Locations of any person who is in breach of any rule relating to safety whilst at the Authority Locations where such rule has previously been brought to the attention of the Supplier or who, in the opinion of the Authority, is in breach of the Authority Policies or who is under the influence of alcohol or drugs whilst at the Authority Locations. The Authority shall confirm action taken pursuant to this clause forthwith in writing to the Supplier.
- 25.2 The Supplier shall use best endeavours to ensure that in performing its obligations under this Agreement it does not disrupt the operations of or, save as may be reasonably unavoidable, inconvenience the Authority, its employees, agents, customers or service providers, or any other persons, including at the Authority Locations.

26. Notices

26.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Authority:

National Transport Authority

Address:

Attention:

Haymarket House
Smithfield
Dublin
D07 CF98
Ireland

robert.curley@nationaltransport.ie

Robert Curley

(a) in the case of the Supplier:

[*name of Supplier*]

Address:

[Email]

Attention:

[*To be inserted*]

[*To be inserted*]

or such other address or facsimile number as may be notified to the other party to this Agreement, such notice to take effect not less than five Working Days' after the service of the notice.

26.3 Delivery

- (a) Subject to clause 26.3(b), a communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Working Days' after being deposited in the post postage prepaid in an envelope addressed to it at that address,
 - (iii) and, if a particular department or officer is specified as part of its address details provided under Clause 26.2, if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Authority will be effective only when actually received by the Authority and then only if it is expressly marked for the attention of the department or officer identified with the Authority's signature below (or any substitute department or officer as the Authority shall specify for this purpose).

26.4 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English, or

- (ii) if not in English, and if so required by the Authority, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

27. Waiver, Delay and Remedies

27.1 No waiver

The failure by either party to enforce any provision of this Agreement will in no way affect its right thereafter to require complete performance by the other party nor will the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provisions or be a waiver of the provision itself.

27.2 Delay

No failure or delay by the Authority in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall a single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or exercise of any other claim, remedy, right, power or privilege.

27.3 Remedies cumulative

Except where this Agreement provides otherwise, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

28. Amendment or variation

An amendment or variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

29. Non-Exclusivity

The Authority shall at all times be entitled to enter into separate contracts for the provision of any or all services the same as or similar to the Services with persons other than the Supplier. Nothing in this Agreement shall create an exclusive relationship between the Authority and the Supplier for the provision of Services.

30. Severance

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions become invalid, illegal or unenforceable then the validity and legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

31. Counterparts

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute one and the same instrument.

32. Entire Agreement

This Agreement (including its Schedules) contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties with respect to its subject matter, and may not be modified except in accordance with clause 28.

33. Governing Law

The laws of Ireland govern the construction, validity and performance of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written above.

SIGNED by [INSERT NAME OF _____
INDIVIDUAL]

a duly authorised representative of/for and on
behalf of the Authority

SIGNED by [INSERT NAME OF _____
INDIVIDUAL]

a duly authorised representative of/for and on
behalf of the Supplier

SCHEDULE 1 – Services Specification Document

SCHEDULE 2 – Payments Schedule

SCHEDULE 3 – Key Personnel

SCHEDULE 4 – NOT USED

SCHEDULE 5 – Change Control Procedure

1. Where either party (the "Requesting Party") wishes to make a material change to the terms of this Agreement including, without limitation, any change to:
 - (a) any Deliverable or Services; or
 - (b) the timeframes for the provision of any Deliverable or Services,the procedure in this Schedule (the "**Change Control Procedure**") shall apply. The Change Control Procedure shall also apply in respect of any matters which are specifically identified in the Agreement as being subject to the Change Control Procedure.
2. All change requests must be documented in a request form (a "**Change Request Form**") which shall include, as a minimum, the following details:
 - (a) description of the requirements for the change;
 - (b) comparison of the new requirements with the existing requirements;
 - (c) reasons for the change, including a high level description of the proposed business impact;
 - (d) timeframe for completion of the change.
3. The Change Request Form shall be signed by the Project Manager of the Requesting Party and submitted to the Project Manager of the other party.
4. The Supplier shall provide the Authority Project Manager with an impact statement (an "**Impact Statement**") within 10 Working Days of receipt or submission of a Change Request Form (or such longer period as the parties may agree). The Impact Statement shall include, as a minimum, the following details:
 - (a) the estimated number of working days and personnel (including levels of qualification) and details of the work categories required to deliver the change within the timeframe specified in the Change Request Form;
 - (b) overall impact on the charges payable under the Agreement (i.e. reduction or increase) which shall include a breakdown of how such fees relate to the details in (a) above so as to facilitate, where relevant, any reduction being offset against any increase in fees;
 - (c) timetable for the change including any impact on the timeframes set out in the Services Specification Document; and
 - (d) impact on the Deliverables and Services to be provided under the Agreement.
5. After consideration, the Authority Project Manager may elect by giving written notice to the Supplier either to:

- (a) accept the Impact Statement in which case the Agreement shall be amended accordingly;
 - (b) reject the Impact Statement in which case the Agreement shall remain unchanged; or
 - (c) require the Supplier to produce a revised Impact Statement by repeating (up to a maximum of 2 times) the procedure set out in paragraphs 4 and 5 of this Schedule.
6. Following completion of the procedure in paragraph 5 above, where the parties fail to reach agreement on a request for change, the dispute resolution procedure set out in clause 23 of the Agreement may be invoked.

SCHEDULE 6 – Exit Management Plan

1. Development and Updating of Exit Management Plan

- 1.1 The parties shall discuss and agree an exit management plan within not more than 6 months from the date of signature of this Agreement (the “**Exit Management Plan**”) covering action to be taken in respect of the termination or expiry of the Agreement.
- 1.2 The parties shall review and, if necessary, agree updates to the Exit Management Plan at 6 monthly intervals from the date on which the Exit Management Plan is first agreed in order to ensure that it reflects the contemporaneous state of the Services.

2. Content of Plan

2.1 The Exit Management Plan shall, as a minimum:

- (a) provide for the assignment and/or novation to the Authority of any licences or other contracts with third parties on which the supply of the Services, or any replacement services, are dependent or for the procurement of similar licences or contracts directly between the Authority and the relevant third party on terms no less favourable than those provided to the Supplier;
- (b) seek to ensure that there is an orderly and smooth transition from the performance of the Services by the Supplier to the performance of the Services, or any replacement services, by the Authority or any New Service Provider;
- (c) define the responsibilities of both parties clearly in the event of exit and transfer;
- (d) provide for the handover of the following data to the Authority in such manner as the Authority may reasonably require:
 - (i) all such data as may be necessary to facilitate the continued provision of the Services, or any replacement services, by the Authority or a New Service Provider seamlessly and without interruption; and
 - (ii) all such data as the Authority may deem necessary to enable a New Service Provider to tender for the provision of the Services or any replacement services; and
- (e) provide for any training reasonably required by the Authority for the personnel (of either the Authority or any New Service Provider) who will be assuming responsibility for the Services or any replacement services.

2.2 The Exit Management Plan shall include the following:

- (a) a list and timetable of activities for the Authority and the Supplier to undertake during the exit management period;

- (b) full details of any dependencies on the Authority for the successful implementation of the Exit Management Plan; and
- (c) such other details as the Authority and the Supplier consider appropriate when agreeing the terms of the Exit Management Plan.

SCHEDULE 7 – Data Processing Obligations

The following data processing obligations should be adhered to at all times:

The following data processing instructions should be adhered to at all times in respect of any personal data that the Supplier processes on behalf of the Authority:

1. The Supplier shall ensure that data is hosted either within EEA, or in a country deemed by the European Commission to provide an adequate level of protection for personal data.
2. The Supplier shall not copy production data to a test or development server without the approval of the Authority's Data Protection Officer and the Authority's security officer.
3. The Supplier shall not export data from the Authority's site or any of its data centres without the permission of the Authority's Data Protection Officer and Authority's Security Officer.
4. The Suppliers shall implement Authority's data retention policies, or alternatively agree an appropriate policy with the Authority for the data being processed.
5. The Supplier shall adopt appropriate and agreed data protection procedures if copying data to a test server for maintenance / fault-finding purposes. Such procedures should be signed off by the Authority's Data Protection Officer and Authority's security officer each time data is copied.
6. The Supplier shall implement appropriate and agreed quality assurance processes to ensure accuracy of personal data processed on behalf of the Authority.
7. Where the Authority advises that consent is the basis for processing personal data, the Supplier shall implement consent capture / recording processes.
8. The Supplier shall have a physical document management process in place and this process must be approved by the Authority.
 - The document management process shall ensure the synchronisation of physical and automatic data.
 - The document management process shall specify storage procedures for physical documents and scanned physical documents.
 - On request from the Authority, the Supplier shall provide 'proof of record' when shredding physical personal data.
9. The supplier shall ensure Data Protection scripts and recording processes used are compliant with Data Protection Law.

10. The Supplier shall respond to subject access requests as requested by the Authority in line with the Data Protection Law timelines for response.
11. On request of the Authority, the supplier shall partake in simulated data access requests exercises in order to test the subject access request process.
12. The Supplier shall have user training processes in place to provide clear instructions on personal data processing. The Supplier shall carry out regular training on an ongoing basis (at least annually).
13. The Supplier shall ensure that appropriate security measures are in place to protect data at all times, and that the level of security is appropriate according to the sensitivity of the data.
14. The Supplier shall regularly (minimum annually) demonstrate adherence to data protection instructions / policies / legislation. Evidence of adherence shall be provided to the Authority. This includes completion and return of the Authority's Data Processor Questionnaire.
15. The Supplier shall ensure that appropriate internal confidentiality controls are in place to protect data.
16. The Supplier shall maintain a written record of all personal data categories which it processes.
17. The Supplier shall notify the data controller (the Authority) of a personal data breach as soon as they are aware of the incident.
18. The Supplier shall inform the data controller (the Authority) should any of its requests breach Data Protection Law obligations or EU law.
19. The Supplier shall seek written consent from the data controller (the Authority) prior to sub-contracting any work.
20. In the event of sub-contracting any work, the Supplier shall ensure that their sub-contract adheres to each and every one of the instructions in this schedule.
21. The Supplier shall maintain records of all processing activities and provide all necessary data to the data controller to demonstrate Data Protection Law compliance.
22. The Supplier shall implement appropriate privacy notices for any websites deployed on behalf of the Authority that are both consistent with Articles 12 to 14 of the Data Protection Law, and agreed with the Authority.