



Terms and Conditions of Contract

1 DEFINITIONS AND INTERPRETATION

In this Agreement the following terms shall have the following meanings unless the context otherwise provides:

“Affected Party” has the meaning assigned to it in Clause 13.2

“Agreement” means the agreement for the provision of the Goods and Services, consisting of the following documents, and in the case of conflict of wording, in the following order of priority:

1. The Award Letter;
2. These Terms and Conditions of Contract and Schedules A-C hereof, which were published with the RFT [and govern the Framework Agreement and all drawdown contracts awarded on foot of same];
3. The Processing of Relevant Personal Data Memo, as agreed between the parties and described in the Award Letter;
4. The RFT, as described in the Award Letter;
5. The Submission, as described in the Award Letter.

which said Agreement shall be governed by the terms and conditions herein together with any drawings, plans and specifications referred to in this Agreement which may be or are agreed in writing by the Parties hereto to form part of this Agreement;

“Assignment” has the meaning assigned to it in Clause 20.1;

“Authorised Representative” means a Party’s staff and nominated third parties which include, inter alia, consultants and independent contractors which have been approved in advance by that Party’s staff;

“Business Continuity Plan” means in accordance with Good Industry Practice and all applicable regulatory requirements, the Contractor’s fully documented business continuity and crisis management plan documenting the processes, procedures, policies, arrangements and/or plans that would come into effect in the event of a Disruptive Incident.

“Change Control Notice” has the meaning assigned to it in Clause 30.3;

“Charges” means the price payable by the Contracting Authority to the Contractor in respect of the Goods and Services as stipulated in Schedule B: Prices, Rates and Charges;



“Contractor’s Contact means the person identified in this Agreement, or subsequently during the term of the Agreement, as being the Contractor’s primary contact for the duration of the Agreement, or alternatively, where no specific person has been identified by the Contractor as being their contact, the Contractor’s staff member or agent to whom the PO was issued;

“Contracting Authority’s Contact” means the person identified in this Agreement, or subsequently during the term of the Agreement, as being the Contracting Authority’s primary contact for the purpose of the Agreement, or alternatively, the person that issued to PO on behalf of the Contracting Authority where no other person has been identified as the primary contact in respect of this Agreement.

“Data” means all Confidential Information, whether oral or written (including electronic) form, created by or in any way originating with the Contracting Authority (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 Contracting Authority provided under this Agreement 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 Commission 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;

“Deliverable” means the items identified as such in this Agreement, in the RFT or in the PO, together with any other materials or items provided by or on behalf of the Contractor to the Contracting Authority in the course of providing the Goods and Services;

“Dispute” has the meaning assigned to it in Clause 17.1;



“Disruptive Incident” means in relation to the Contractor any unplanned interruption or event in the supply of the Goods and/or performance of the Services in whole or in part (and/or with respect to the people and facilities used to provide the Goods/Services) in accordance with the terms of this Agreement that would impact, or have the potential to impact, the supply of the Goods and/or performance of the Services to University of Galway.

“Employee Information” has the meaning assigned to it in Clause 14.4;

“Equipment” has the meaning assigned to it in Clause 28.1;

“Euro” or **“€”** means the lawful currency for the time being of the participating member states of the European Union;

“Force Majeure Event” has the meaning assigned to it in Clause 13.1;

“Goods and Services” means the goods and or services and or software that the Contractor may be required and selected to perform, undertake and deliver from time to time as particularly described in this Agreement at Schedule A: The Specification, and / or the PO.

“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.

“Impact Assessment” has the meaning assigned to it in Clause 30.3;

“Incoterms” means the version of the international rules for the interpretation of trade terms of the International Chamber of Commerce as specified in the RFT and or the PO or if not so stated then the version which is in force at the date of Establishment of this Agreement. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement, but if there is any conflict between the provisions of Incoterms and the Agreement, then the latter shall prevail.

“Intellectual Property Rights” has the meaning assigned to it in Clause 10;

“Key Personnel” has the meaning assigned to it in Clause 31.1;

“Purchase Order (PO)” means a PO by which the Contracting Authority directs the Contractor to provide the Goods and Services which shall contain a description of the relevant Goods and Services, and the Charges for same; and may further outline the



agreed timing or schedule for provision of the Goods and Services, details of the Key Personnel for delivery of the Goods and Services and such other terms and conditions that the parties may have agreed in respect of the relevant Goods and Services;

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

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

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

“Replacement Personnel” has the meaning assigned to it in Clause 31.1;

“Relevant Personal Data” is the Personal Data as agreed between the parties and described in the Award Letter

“Specification” means the Goods and Services described in Schedule A: The Specification.

2 APPLICATION OF TERMS & CONDITIONS

- 2.1 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 2.2 References 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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
- 2.3 To the extent that any specific term or condition in the PO is inconsistent or conflicts with any term or condition of this Agreement, the relevant term or condition of this Agreement shall prevail.
- 2.4 The Terms and Conditions of this Agreement shall apply to the purchase by the Contracting Authority from the Contractor of the Goods and Services, to the exclusion of all/any other terms and conditions contained or referred to in the Submission or any acknowledgement or acceptance of the PO, letter, invoice or other communication sent by the Contractor to the Contracting Authority.

3 CONTRACTOR'S OBLIGATIONS

- 3.1 The Contractor undertakes to act with due care, skill and diligence in the supply of the Goods and Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its staff and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the supply of the Goods and Services and



generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.

- 3.2 In consideration of the payment of the Charges and subject to clause 7 (Payment) the Contractor shall: (a) supply the Goods and Services in accordance with the Specification, the PO, the Contracting Authority's directions and the terms of this Agreement; (b) comply with and implement any policies, guidelines and/or any project governance protocols issued by the Contracting Authority from time to time and notified to the Contractor in writing; (c) comply with all local security and health and safety arrangements as notified to it by the Contracting Authority; and (d) supply the Goods and Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Goods and Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- 3.3 The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Agreement hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 3.2(d) above, to the extent that it or they are retained by the Contractor. Subject to clause 20 (Assignment and Subcontract), the Contractor shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- 3.4 Without prejudice to clause 3.2(c), where the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Contracting Authority reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract



a right for the Contractor 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.

- 3.5 During this Agreement the Contractor shall be an independent contractor and not the employee of the Contracting Authority. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Contracting Authority for any purposes whatsoever.
- 3.6 The Contracting Authority acknowledges that the Contractor may from time to time be dependent on the Contracting Authority to facilitate the Contractor in the carrying out of its duties under this Agreement. the Contracting Authority agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 15 (Contract Management).
- 3.7 the Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "TUPE Regulations") and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Contracting Authority indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

4 PROVISION OF GOODS & SERVICES

- 4.1 The Contractor shall deliver the Goods and Services at the time(s), to the location(s) and on the date(s) specified in the PO or otherwise agreed in writing between the Parties.
- 4.2 Unless otherwise stated in the Specification: (a) Where Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the address on the PO or otherwise agreed in writing between the Parties. Where the Goods are collected by the Contracting Authority, the point of delivery shall be when the Goods are loaded on the Contracting Authority's vehicle. (b) Delivery shall include the unloading, stacking or installation of the Goods by the Contractor's staff, agents or carriers at such place as the



Contracting Authority or a duly authorised person shall reasonably direct. (c) The Goods shall be packed and marked in a proper manner and in accordance with the Contracting Authority's instructions and any statutory requirements and any requirements of the carriers and manufacturers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings. (d) Unless expressly agreed to the contrary, the Contracting Authority shall not be obliged to accept delivery by instalments. If, however, the Contracting Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Agreement without further liability to the Contracting Authority. (e) the Contracting Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor. (f) the Contracting Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

- 4.3 Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose prior to or during the term of this Agreement are hereby disallowed.

5 INSPECTION OF GOODS AND SERVICES

- 5.1 The Contracting Authority or its authorised representative may inspect (to include a call for advance samples) or test the Goods and Services either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by the Contracting Authority of any rights or remedies in respect of the Goods and Services and the Contracting Authority reserves the right to reject the Goods and Services in accordance with clause 5.2.
- 5.2 The Contracting Authority may by written notice to the Contractor reject any of the Goods and Services which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Contracting Authority of such Goods and Services. If the Contracting Authority rejects any of the Goods and Services pursuant to this clause the Contracting Authority may (without prejudice to other rights and remedies) either: (a) treat the Agreement as discharged by the Contractor's breach and obtain a refund (if payment for the Goods and Services has already been made) from the Contractor in respect of the Goods and Services concerned together with payment of any additional



expenditure reasonably incurred by the Contracting Authority in obtaining other Goods and Services in replacement provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and Services; or (b) have such Goods and services promptly, and in any event within 14 calendar days, either repaired by the Contractor or replaced by the Contractor with Goods and Services which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.

- 5.3 Rejected Goods shall be removed by the Contractor from the Contracting Authority within 14 calendar days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove Goods within 28 calendar days of such notification, the Contracting Authority may dispose of such Goods as it sees fit and pending such removal, the Goods will remain with the Contracting Authority at the risk of the Contractor. Any costs incurred by the Contracting Authority relating to such disposal shall at the option of the Contracting Authority be borne by the Contractor.
- 5.4 For the avoidance of doubt, the Contracting Authority will be deemed to have accepted the Goods and Services if it expressly states the same in writing or fails to reject the Goods and Services in accordance with clause 5.2.
- 5.5 The issue by the Contracting Authority of a receipt note for the Goods and Services shall not constitute any acknowledgement of the condition, quantity or nature of those Goods and Services, or the Contracting Authority's acceptance of them.
- 5.6 The Contractor hereby guarantees the Goods for the warranty period specified in the Specification, or, as per the manufacturer's warranty period, whichever is the longest, commencing from the date of delivery, or the date of first installation and commissioning of the Goods where applicable (the "Guarantee Period") thus ensuring the Goods are guaranteed to be free from all defects, and, guaranteed against faulty or poor-quality materials and workmanship. The Contracting Authority shall within such Guarantee Period, or within 14 calendar days thereafter, give notice in writing to the Contractor of any defect in any of the Goods and Services as may have arisen during such Guarantee Period under proper and normal use. The Contractor shall (without prejudice to any other rights and remedies which the Contracting Authority may have) promptly remedy such defects (whether by repair or replacement as the Contracting Authority shall elect) free of charge, which replaced or repaired Goods shall also have the benefit of this clause for the Guarantee Period.

6 RISK AND TITLE

- 6.1 The Goods and Services ordered under this Agreement shall be delivered to any location specified by the Contracting Authority, in Ireland, without limit to the number of locations, in the quantities and by the dates specified in the PO, unless otherwise stated in the Specification or agreed in writing. Any extension of the



delivery time shall not constitute a general waiver or acquiescence on the part of the Contracting Authority. All such Goods and Services shall be delivered or provided free of encumbrances or retention of title clauses or similar provision. The Charges quoted shall be based on the understanding that the Goods are to be delivered carriage paid to the various locations as specified, along with the necessary delivery documentation. Pending such delivery, the Goods shall remain at the risk of the Contractor.

6.2 Title shall pass to the Contracting Authority on payment of the Goods.

7 PAYMENT

- 7.1 Subject to the provisions of this clause 7, the Contracting Authority shall pay and discharge the Charges (plus any applicable VAT), in the manner specified in the PO. Invoicing arrangements shall be on such terms as directed by the Contracting Authority on the PO.
- 7.2 Discharge of the Charges is subject to: (a) Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 15 (Contract Management); (b) The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Contracting Authority from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed; (c) PDF Invoices being submitted to SupplierInvoices@universityofgalway.ie (as set out in this Agreement). the Contracting Authority requires the seller to generate a single invoice per Purchase Order. Invoicing will only occur once the complete order has been filled, invoicing will not be accepted for part-shipments. Where part shipments take place, the invoice must be held until the Purchase Order is fulfilled i.e. all Goods and Services are delivered. An invoice must quote a valid the Contracting Authority Purchase Order number or otherwise will not be paid.
- 7.3 All and any queries relating to the invoice for the Goods and Services for any billing period (including whether or not Goods and Services have been accepted, rejected, satisfactorily repaired and/or re-performed as the case may be) must be raised by the Contracting Authority within 30 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 30-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Contracting Authority or upon such deemed acceptance the invoice shall be payable by the Contracting Authority. Payment is subject to any rights reserved by the Contracting Authority under any other provision of this Agreement; and (d) the Contracting Authority being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable EU and domestic taxation law and requirements.



- 7.4 The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- 7.5 Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Authority in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Contracting Authority. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 7.6 Unless otherwise clearly agreed in writing by both parties the Charges must be in accordance with Incoterms.
- 7.7 Unless otherwise stated in the applicable Incoterms, the Charges shall include any and all costs, expenses, taxes and duties incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- 7.8 Unless otherwise stated or agreed, the Charges for Goods and Services from outside the European Union will be on an Incoterms 2020 'Delivered at Place' basis. Unless otherwise stated or agreed, the Charges for Goods and Services from inside the European Union will be on an Incoterms 2020 'Delivered Duty Paid' basis.
- 7.9 The Charges shall be discharged as provided for in this clause subject to the retention by the Contracting Authority in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the supply of the Goods and Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

8 WARRANTIES, REPRESENTATIONS & UNDERTAKINGS

- 8.1 The Contractor acknowledges, warrants, represents and undertakes that: (a) it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods and Services hereunder; (b) it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks; (c) it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations; (d) it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the supply of the Goods and Services (to include manufacture and distribution process) as they apply to the Contractor; (e) it has taken all and any action necessary to ensure that it has the power to execute and



enter into this Agreement; (f) Where applicable as determined by the Contracting Authority, it has inspected the Contracting Authority's premises, lands and facilities before submitting the Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement; (g) The Contractor confirms that none of the excluding circumstances listed in Clause 57 of S.I. No. 284/2016 - European Union (Award of Public Authority Contracts) apply to the Contractor, and shall not apply throughout the duration of this Agreement; and (h) the Contracting Authority shall be under no obligation to purchase any minimum number or value of Goods and Services.

- 8.2 Where the Agreement relates to the supply and/or delivery of Goods, the Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on its premises which are the property of the Contracting Authority and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.
- 8.3 Where the Contract relates to the supply and/or delivery of Goods, the Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the Specification (to include any samples furnished thereunder) and the PO and that the manufacture, distribution and processes employed will comply in all material respects with the Specification and PO. None of the provisions of the Sale of Goods and Supply of Services Acts 1893 and 1980 shall be excluded or limited under this Agreement.
- 8.4 The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from and in respect of all and any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.
- 8.5 The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 8.1 and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Agreement.

9 REMEDIES

- 9.1 The Contractor shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to



exercise skill, care and diligence as outlined in clause 3. The terms of this clause 9.1 shall survive termination of this Agreement for any reason.

- 9.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 8.4, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- 9.3 Should the Contracting Authority find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver the Goods and Services, the Contracting Authority shall be entitled to recover from the Contractor any excess prices which may be paid by the Contracting Authority.
- 9.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.5 Save in respect of fraud, gross negligence, personal injury or death or in respect of the Contractor's indemnity under clause 8.4 (for which no limit applies), or breach of Data Protection Laws, the limit of the Contractor's aggregate liability to the Contracting Authority under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 150% of the Charges paid or projected to be paid (whichever is higher) under this agreement regardless of the number of claims.
- 9.6 If for any reason the Contracting Authority is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due ("the Retention Amount"). In such event the Contracting Authority shall identify the particular Goods and Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the effected Goods and Services as identified by the Contracting Authority or resolution of outstanding queries. the Contracting Authority shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 9.6 shall be without prejudice to and not be in substitution for any remedy of the Contracting Authority under this Agreement.
- 9.7 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods and Services within the time period promised or specified in the Specification, the Contracting Authority may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Goods and Services and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Contracting Authority.



10 INTELLECTUAL PROPERTY

- 10.1 Intellectual Property Rights (“IPR”) means 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.
- 10.2 Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for the Contractor or the Contracting Authority independently of this Agreement, and any IPR in the Contractor’s standard hardware and software products or modifications or updates to such products.
- 10.3 All IPR title and interest 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 this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Contracting Authority and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Contracting Authority absolutely.
- 10.4 The Contracting Authority grants to the Contractor a royalty-free non-exclusive licence to use the Contracting Authority’s Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 10, all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- 10.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- 10.6 Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Goods and Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Goods and Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Goods and Services.



- 10.7 The Contractor 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 this Agreement (to include but not be limited to ensuring that the Contracting Authority shall be vested with all necessary rights so as to enable the Contracting Authority to enjoy the benefit of the Goods and Services for its business purposes). The Contractor hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from and in respect of all and any losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.
- 10.8 At the request of the Contracting Authority for and in respect of any such breach, the Contractor shall at its expense and option: (a) procure the necessary rights for the Contracting Authority to continue use; (b) replace the relevant Deliverable with a non-infringing equivalent; (c) replace the relevant Deliverable to make it non-infringing while giving equivalent performance; or (d) if the Contractor cannot obtain the remedies in (a), (b) or (c) above, it may direct the return of the Deliverable and refund to the Contracting Authority Charges paid for such Deliverable less a reasonable amount for the Contracting Authority'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 Contracting Authority as a result of the breach.
- 10.9 Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Contracting Authority all the Materials prepared up to the date of termination. The provisions of this clause 10 will survive the expiration or termination of this Agreement for any reason.

11 CONFIDENTIALITY

- 11.1 Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except:- (a) If its professional advisers are subject to the provisions of this clause 11; or (b) as may be required by law; or (c) as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 11; or (d) in the case of the Contracting Authority by request of any person or body or authority whose request the Contracting Authority or persons associated with the Contracting Authority (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 11.2 The Contractor undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any of its



Confidential Information and shall comply with a Confidentiality Agreement issued by the Contracting Authority to the Contractor.

- 11.3 The obligations in this clause 11 will not apply to any Confidential Information: (a) in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or (b) which is or becomes public knowledge other than by breach of this clause; or (c) is independently developed by the disclosing Party without access to or use of the Confidential Information; or (d) is lawfully received by the disclosing Party from a third party (with full right to disclose).
- 11.4 The Contractor acknowledges that the security of the State and its information is of paramount importance to the Contracting Authority. Accordingly, the Contractor confirms that it will, if requested by the Contracting Authority, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Goods and Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Contracting Authority arising therefrom.
- 11.5 In circumstances where the Contracting Authority is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Contracting Authority receiving a request for information related to this Agreement, the Contracting Authority may, but is not obliged to, consult with the Contractor in respect of the request. The Contractor shall be required to identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity within the Submission, or on commencement of the Agreement. The Contracting Authority may consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority 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.
- 11.6 The terms of this clause 11 shall survive expiry, completion or termination for whatever reason of this Agreement.

12 DATA PROTECTION & SECURITY

- 12.1 The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- 12.2 The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. The Letter of Intent sets out the scope, nature and purpose of Processing by the Contractor, the duration of the



Processing and the types of Relevant Personal Data and categories of Data Subject.

- 12.3 Without prejudice to the generality of clause 12.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement: (a) process that Personal Data only on the written instructions of the Contracting Authority; (b) ensure that it has in place appropriate technical and organisational measures, as may be reviewed and approved by the Contracting Authority, 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); (d) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; (e) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority 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 Contractor 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 Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;
- 12.4 The Contractor shall promptly notify the Contracting Authority 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 Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- 12.5 The Contractor shall report any Personal Data Breach relating to University of Galway Personal Data without undue delay, and in any event within 24 hours of becoming aware such incident, in accordance with the requirements of Articles 33 and 34 of the GDPR.



- 12.6 The Contractor shall assist the Contracting Authority in ensuring compliance with its obligations under the Data Protection Laws with respect to security, Impact Assessments and consultations with supervisory authorities and regulators.
- 12.7 The Contractor shall amend, delete (and provide confirmation thereof) or return Personal Data and copies thereof to the Contracting Authority on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- 12.8 The Contractor shall permit the Contracting Authority, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor'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 Contractor in any way for the provision of the Goods and Services. The Contractor shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.
- 12.9 The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Contracting Authority from time to time.
- 12.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for inspections and contribute to any audits by the Contracting Authority or the Contracting Authority's designated auditor.
- 12.11 The Contractor 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 least daily 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 Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- 12.12 The Contracting Authority consents to the Contractor appointing third-party processor(s) of Personal Data under this Agreement if written permission is sought from and provided by the Contracting Authority in advance of such engagement. The Contractor confirms that it has entered or (as the case may be) shall enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 12 as between the Contracting Authority and the Contractor,



the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.

12.13 Save for clauses 12.1, 12.2, 12.3 (d), and 12.4, all the obligations on the Contractor in this clause 12 relating to the processing of Personal Data shall apply to the processing of all Data.

12.14 The provisions of this clause 12 shall survive termination and or expiry of this Agreement for any reason.

13 FORCE MAJEURE

13.1 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 (as defined in clause 13.2 below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement 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 Contractor (or Subcontractor or agent) places of business.

13.2 In the event of any failure, interruption or delay in the performance of either Party's obligations (or of 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; (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.

13.3 If the Force Majeure Event continues for 28 calendar days either Party may terminate at 14 days' notice.

13.4 In circumstances where the Contractor is the Affected Party, the Contracting Authority shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

14 TERMINATION

14.1 This Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving one month's written notice to the



Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving six months' written notice to the Contracting Authority.

- 14.2 Either Party shall have the right (in addition to its rights under clause 14.1 and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following: (a) if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party; (b) if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect; (c) in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Contracting Authority, be removed by other means; and (d) in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the Contractor.
- 14.3 the Contracting Authority shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds set out in Clause 57 of S.I. No. 284/2016 - European Union (Award of Public Authority Contracts).
- 14.4 If requested by the Contracting Authority, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Goods and Services as may be required by the Contracting Authority ("Employment Information"). The Contractor agrees that the Contracting Authority may release the Employment Information to third parties for the purposes of any procurement competition which relates to the provision of the goods, services, or software the subject matter of this Agreement upon expiry of the term or earlier termination of this Agreement for whatever cause.
- 14.5 Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.6 Transfer of Undertakings Information: 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 Goods and Services are transferred to a new Contractor and such transfer constitutes a transfer of a business or undertaking within the meaning of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as may be amended), then the Contractor shall comply with its



obligations under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, including but not limited to its information and consultation obligations under Regulation 8, and it shall immediately once notified in writing by the Contracting Authority to do so, provide the necessary information including all employee information and assistance to a new Contractor and/or the Contracting Authority to allow the new Contractor to comply with its obligations (including providing a list of persons considered to be Retransferring Employees).

15 CONTRACT MANAGEMENT

- 15.1 The Contracting Authority's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Contracting Authority from time to time. If requested in writing by the Contracting Authority, the Contractor shall meet formally with the Contracting Authority to report on progress and shall comply with all written directions of the Contracting Authority.
- 15.2 The Contractor agrees to: (a) liaise with and keep the Contracting Authority's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement; (b) maintain such records and comply with such reporting arrangements and protocols as required by the Contracting Authority from time to time and: (c) comply with all reasonable directions of the Contracting Authority.
- 15.3 The Contracting Authority or its Authorised Representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Contracting Authority thereby arising.

16 BUSINESS CONTINUITY

- 16.1 The Contractor shall ensure it is able to implement the Business Continuity Plan at all times in accordance with its terms which would enable the maintenance or prompt restoration of all business-critical functions upon the occurrence of any Disruptive Incident in order to enable it to continue to supply of the Goods and/or perform the Services to the Contracting Authority.
- 16.2 The Contractor warrants, represents and undertakes that it shall implement the Business Continuity Plan if notified to do so by the Contracting Authority and/or in the event of a Disruptive Incident and that it will promptly notify the Contracting Authority within 24 hours if it experiences a Disruptive Incident.



16.3

- (a) The Contracting Authority reserves the right to request a copy of the Contractor's Business Continuity Plan at any and all times and to assess the Contractor's Business Continuity Plan against the Contracting Authority's business continuity requirements.
- (b) The Contractor shall test the Business Continuity Plan on a regular basis, and in any event at least once every 12 months. The Contractor shall give the Contracting Authority at least 5 calendar days' notice of each test and allow the Contracting Authority, if it so elects, to participate in such tests. Following each test, the Contractor shall: (a) send to the Contracting Authority a written report summarising the results of the test; and (b) promptly implement any actions or remedial measures which the Contracting Authority considers to be necessary as a result of those tests.

16.4 Following a Force Majeure Event, the Contractor shall still be obliged to implement the Business Continuity Plan; and in circumstances where the Contractor suffers a Force Majeure Event that prevents or hinders the Contractor's performance of its obligations in connection with the Business Continuity Plan for a continuous period of more than 28 calendar days, the Contracting Authority may terminate the agreement on written notice to the Contractor".

17 DISPUTES

- 17.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- 17.2 The Dispute shall be referred as soon as practicable to one or more of the following persons, within the Contractor: (a) the Contractor's Business Manager, Account Manager (or similar titled position); (b) the Contractor's senior management representative / director; (c) the Contractor's Contact; AND, within the Contracting Authority: to the Contracting Authority's Contact and to the Head of Procurement and Contracts at the Contracting Authority;
- 17.3 Each Party shall advise the other Party within 10 days of any alterations to their primary contacts (the Contractor's Contact, and the Contracting Authority's Contact).
- 17.4 If the Dispute has not been resolved within fifteen (15) business days (or such longer period as may be agreed in writing by the Parties) of being referred to the relevant persons outlined in Clause 17.2, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.



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

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

19 NOTICES

- 19.1 Any notice or other written communication to be given to the Contractor under this Agreement shall either be delivered personally, or sent by registered post or email, to one or more of the following persons, within the Contractor: (a) the Contractor's Business Manager, Account Manager (or similar titled position); (b) the Contractor's senior management representative / director; (c) the Contractor's Contact;
- 19.2 Any notice or other written communication to be given to the Contracting Authority, other than those relating to disputes (which must be delivered both to the Contracting Authority's Contact and to the Head of Procurement and Contracts at the Contracting Authority), under this Agreement must either be delivered personally, or sent by registered post or email, to the Contracting Authority's Contact;



19.3 All notices shall be deemed to have been served as follows: (a) if personally delivered, at the time of delivery; or (b) if posted by registered post, at the time of delivery confirmed by the relevant postal service; or (c) if communicated by email, on the next working day following transmission.

20 ASSIGNMENT AND SUBCONTRACTING

20.1 Subject to a Party's obligations at law, any assignment to a third party or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.

20.2 Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

21 ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire agreement and understanding of the Parties, and any and all other previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement (save where fraudulently made) are hereby excluded.

22 SEVERABILITY

22.1 If any term or provision herein is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

23 WAIVER

23.1 No failure or delay by either Party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

24 NON-EXCLUSIVITY

24.1 Nothing in this Agreement shall preclude the Contracting Authority from purchasing Goods and Services from a third party at any time during the term of the Agreement.

25 MEDIA

25.1 No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or



marketing material, shall be made by the Contractor without the prior written consent of the Contracting Authority.

26 CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- 26.1 The Contractor 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 Goods and Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Contracting Authority immediately should any conflict or potential conflict of interest come to its attention during the term of this Agreement and to comply with the Contracting Authority's directions in respect thereof. In the event of such notification, the Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- 26.2 Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Contracting Authority, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Contracting Authority immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Contracting Authority's directions in respect thereof, to the satisfaction of the Contracting Authority. In the event of such disclosure, the Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- 26.3 The Contractor 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 26.3 or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Contracting Authority to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

27 ACCESS TO PREMISES

- 27.1 Any of the Contracting Authority's premises made available from time to time to the Contractor by the Contracting Authority in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall



be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

- 27.2 The Contractor shall upon reasonable notice by the Contracting Authority, and within a maximum of five working days, allow the Contracting Authority access to its premises (including the premises of any Subcontractor or agent) where the Goods and Services are being performed for the Contracting Authority under this Agreement.

28 EQUIPMENT

- 28.1 The Contractor shall provide all equipment and materials necessary for the provision of the Goods and Services (“Equipment”).
- 28.2 All Equipment brought onto the Contracting Authority’s premises shall be at the Contractor’s own risk and the Contracting Authority shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Contracting Authority’s premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.
- 28.3 The Contractor shall maintain and store all items of Equipment within the Contracting Authority’s premises in a safe, serviceable and clean condition.
- 28.4 The Contractor shall, at the Contracting Authority’s written request, at its own expense and as soon as reasonably practicable, within a maximum of five working days: (a) remove from the Contracting Authority’s premises any Equipment which in the reasonable opinion of the Contracting Authority is either hazardous, noxious or not in accordance with this Agreement; and (b) replace such item with a suitable substitute item of Equipment.
- 28.5 On completion of the supply of the Goods and Services the Contractor shall remove the Equipment used by the Contractor to supply the Goods and Services and shall leave the Contracting Authority’s premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Contracting Authority’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

29 NON-SOLICITATION

- 29.1 For the term of this Agreement and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Contracting Authority nor the



Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

30 CHANGE CONTROL PROCEDURE

- 30.1 At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- 30.2 The change control procedures set out in this clause 30 will apply to all changes irrespective of whether the Contractor or the Contracting Authority proposes the change.
- 30.3 A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the supply of the Goods and Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- 30.4 All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- 30.5 The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- 30.6 In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- 30.7 The Contractor and the Contracting Authority will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Contracting Authority's request for any variation is subsequently withdrawn but results in a delay in the supply of the Goods and Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

31 KEY PERSONNEL

- 31.1 The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel, (including employees, agents, independent consultants, etc. used by the Contractor for the supply and performance of the Goods and Services) as agreed with the Contracting Authority or otherwise proposed or assigned by it to supply the Goods and Services (the "Key Personnel") shall be available for the term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the supply of the Goods and Services to the Contracting Authority. In the event that any of the Key Personnel assigned by the



Contractor to supply the Goods and Services under this Agreement becomes unable to provide the Goods and Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Contracting Authority in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise (“Replacement Personnel”). The Contractor shall provide to the Contracting Authority such details as the Contracting Authority may reasonably require in writing regarding any Replacement Personnel. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

32 INSURANCE

- 32.1 The Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property and the Contractor shall maintain such insurance policies as will protect the Contracting Authority from said risks, including but not limited to the types and amounts of cover stated in the RFT.
- 32.2 In addition, if accessing or using a mechanically propelled vehicle on campus, then the Contractor shall have Motor Insurance with third party cover with a property damage limit of €6.5 million per claim or series of claims arising from one event and unlimited in the aggregate.
- 32.3 In addition, from the date of the PO until completion of delivery, the Contractor is obliged to insure the Goods.
- 32.4 In addition, where professional indemnity insurance is specified in the RFT, the Contractor is obliged to maintain this cover for a period of 6 years following completion of the Agreement.

33 ORDER OF PRECEDENCE FOR ANY ADDITIONAL CLAUSE(S)

- 33.1 Any additional clauses added to the Agreement shall not in any way be read, interpreted or construed to overrule these Terms and Conditions or any other aspect of the Agreement.
- 33.2 In the event that any additional terms or conditions do conflict with the Agreement and these Terms and Conditions of clause 1 to clause 33 inclusive, then the terms and conditions of the Agreement and clause 1 to clause 33 inclusive shall take precedence.



Schedule A: The Specification

The Specification shall be as per the goods and services specifications provided by the Contracting Authority in the RFT and the solution to meet the Contracting Authority's requirements proposed by the Contractor in the Submission.



Schedule B: Prices, Rates and Charges

Save for any requirements which have not specifically been priced as part of the Tender process the Prices, Rates and Charges for delivery of the Specification shall be as outlined by the Contractor in the Submission, subject to the terms outlined in the RFT.



Schedule C: Service Levels

The Service Levels shall be as per the Specification provided by the Contracting Authority in the RFT and the solution to meet the Contracting Authority's requirements proposed by the Contractor in the Submission.