

Call-Off Contract

[Insert name of Contracting Authority]

and

[Insert successful Tenderer's full legal name]

AGREEMENT

Relating to the provision of IT Solutions Services pursuant to

Framework Agreement for the provision of [Insert type of IT solutions/services]
(Reference: [Insert Framework Agreement Reference Number])

THIS AGREEMENT IS MADE ON THE [DATE E.G. 2ND] DAY OF [MONTH] 20[YEAR] BETWEEN:

[Insert name of Contracting Authority], of [address] ("the Client");

and

[Contractor's full legal name], of [address] ("the Contractor")

(each a "Party" and together "the Parties").

WHEREAS:

- A. By Request for Tender entitled "[Insert title of RFT]" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number [insert] dated [insert] ("the RFT"), the Contracting Authority established a framework agreement (Reference: [Insert Framework Agreement Reference Number]) dated [insert date] for the provision of IT solutions services ("the Framework Agreement") with [insert number] economic operators, including the Contractor. **[Option A – Delete if not applicable:** The Contracting Authority subsequently conducted a mini-competition pursuant to the Framework Agreement entitled "[Insert title of mini-competition]" dated [insert date] ("the Mini-Competition") inviting the framework participants to submit responses for the provision of the specific services described in Schedule B to this Agreement (the "Services"). **] [Option B – Delete if not applicable:** Pursuant to the cascade mechanism established under the Framework Agreement, the Contracting Authority issued a Call-Off Order dated [insert date] ("the Call-Off Order") to the Contractor, being the highest-ranked framework participant, requesting the Contractor to confirm its availability and capacity and to submit certain information including pricing for the provision of the specific services described in Schedule B to this Agreement (the "Services").] References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between [insert date] and [insert date] (the "RFT Clarifications"). The Framework Agreement, the RFT (including the RFT Clarifications) and, where applicable, the Mini-Competition documents and/or the Call-Off Order are hereby incorporated by reference into this Agreement.
- B. The Contractor submitted **[Option A – Delete if not applicable:** a submission in response to the Call-Off Order dated [insert date] ("the Call-Off Submission"), containing inter alia the Contractor's confirmation of availability and capacity and its pricing for the Services. References to the Call-Off Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the "Call-Off Submission Clarifications"). The Call-Off Submission (including the Call-Off Submission Clarifications) is hereby incorporated by reference into this Agreement.] **[Option B – Delete if not applicable:** a mini-tender in response to the Request for Mini-Tenders dated [insert date] (the "Mini-Tender"). References to the Mini-Tender shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the "Mini-Tender Clarifications"). The Mini-Tender (including the Mini-Tender Clarifications) is hereby incorporated by reference into this Agreement.] The Contractor's original submission to the Framework RFT dated [insert date] ("the Tender") is also hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedules A to F attached hereto;
 - ii. The Framework Agreement;
 - iii. The Call-Off Order (where applicable) or the Request for Mini-Tenders (where applicable);
 - iv. The Call-Off Submission (including the Call-Off Submission Clarifications) (where applicable) or the Mini-Tender (including the Mini-Tender Clarifications) (where applicable);
 - v. The RFT (including the RFT Clarifications); and
 - vi. The Tender.
2. The Contractor agrees to provide the Services described in Schedule B (“the Services”) to the Client in accordance with this Agreement (“Agreement”). The Services are called off pursuant to the Framework Agreement and as applicable, the Call-Off Order issued under the cascade mechanism established thereunder or the Request for Mini-Tenders. Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the Framework Agreement, the Call-Off Order or Request for Mini-Tenders (as applicable) and the Call-Off Submission or Mini-Tender (as applicable) (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice. The Charges shall not exceed the maximum rates established under the Framework Agreement and shall be in accordance with the rates submitted by the Contractor in the Call-Off Submission or the Mini-Tender, as applicable.
4. For the purposes of this Agreement, the Client’s Contact is [name of contact person] of [address of contact person]; the Contractor’s Contact is [Contractor contact name] of [Contractor contact address].
5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [Insert date], unless it is otherwise terminated in accordance with the

provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties ("the Term").

Delete and replace with "Not Used" if not applicable:

The Client reserves the right to extend the Term for a period or periods of up to [Insert Number] months with a maximum of [Insert Number] such extensions permitted subject to its obligations at law.

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the Framework Agreement or, where not defined therein, in the Framework RFT. In this Agreement:

"Call-Off Order" means the written order issued by the Contracting Authority to the Contractor pursuant to the Cascade Procedure under the Framework Agreement as identified in Recital A above (where applicable);

"Call-Off Submission" means the Contractor's submission in response to the Call-Off Order as identified in Recital B above (where applicable);

"Deliverables" means all outputs, materials and work product to be produced, developed or delivered by the Contractor in the course of providing the Services, as identified in the Specification, the Detailed Implementation Plan or as otherwise required under this Agreement, and includes any Software or any output generated in whole or in part by or with the assistance of an AI System;

"Framework Agreement" means the framework agreement identified in Recital A above;

"Implementation Plan" means, collectively, the Outline Implementation Plan and the Detailed Implementation Plan;

"Outline Implementation Plan" means the outline implementation plan submitted by the Contractor in response to the Call-Off Order or Request for Mini-Tenders (as applicable), setting out the Contractor's proposed approach, indicative timeline, expected outputs at a summary level and how the Contractor proposes to meet the Milestones (on an indicative basis) for the provision of the Services;

"Detailed Implementation Plan" means the detailed implementation plan to be developed by the Contractor from the Outline Implementation Plan and approved by the Client in accordance with clause 1 of this Agreement, which shall set out in detail how the Contractor shall meet the Milestones, identifying each Milestone together with the associated Deliverables, dependencies, resource requirements and target completion dates for the provision of the Services;

"Milestones" means the stages or completion points for the provision of the Services as initially indicated by the Client in the Call-Off Order or Request for Mini-Tenders (as applicable) and as further developed and approved by the Client in the Detailed Implementation Plan against which the Contractor's progress in delivering the Services shall be measured, each such Milestone being associated with one or more Deliverables as identified in the Detailed Implementation Plan;

"Milestone Payment" means a payment or portion of the Charges that becomes due and payable by the Client to the Contractor upon the achievement of a specific Milestone and the issue of a Satisfaction Certificate in respect of that Milestone in accordance with clause 4B(1) and Schedule F (Implementation Plan and Testing);

"Mini-Competition" means the mini-competition conducted pursuant to the Framework Agreement as identified in Recital A above (where applicable);

"Mini-Tender" means the mini-tender submitted by the Contractor in response to the Request for Mini-Tenders as identified in Recital B above (where applicable);

"Request for Mini-Tenders" means the written invitation issued by the Contracting Authority to the framework participants pursuant to a Mini-Competition conducted under the Framework Agreement inviting them to submit Mini-Tenders for the provision of the Services (where applicable);

"Satisfaction Certificate" means a certificate issued by the Client in accordance with Schedule F (Testing) confirming that the relevant Milestone and/or Deliverable (as applicable) has satisfied the acceptance criteria and testing requirements specified therein;

"Services" means those services to be delivered by the Contractor in accordance with this Agreement as more particularly described in Schedule B and the Call-Off Order or Request for Mini-Tenders (as applicable);

"Software" means any software supplied, procured, developed or configured by the Contractor in accordance with this Agreement, the Call-Off Order and/or the Request for Mini-Tenders.

"Tender" means the Contractor's original submission to the Framework RFT as identified in Recital B above.

7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

SIGNED for and on behalf of the Client	SIGNED for and on behalf of the Contractor
(being a duly authorised officer)	
Witness	Witness

Schedule A: Terms and Conditions

1. IMPLEMENTATION PLAN

- A. The Contractor shall, within twenty (20) Working Days of the Effective Date (or such other period as the Client may specify in the Call-Off Order or Request for Mini-Tenders (as applicable)) submit to the Client a draft Detailed Implementation Plan developed from and consistent with the Outline Implementation Plan. The draft Detailed Implementation Plan shall contain information at the level of detail necessary to manage the implementation of the Services effectively and as the Client may otherwise require and shall take account of all dependencies known to or which should reasonably be known to the Contractor.
- B. Following receipt of the draft Detailed Implementation Plan from the Contractor, the Parties shall use reasonable endeavours to agree the contents of the Detailed Implementation Plan within twenty (20) Working Days of its submission. The Client shall not be obliged to approve any draft Detailed Implementation Plan that departs from or fails to adequately develop and supplement the detail contained in the Outline Implementation Plan or that does not, in the Client's reasonable opinion, adequately address the requirements of the Specification. The Client shall be entitled to require the Contractor to include such additional detail, information and provisions in the draft Detailed Implementation Plan as the Client may reasonably require in order to manage the implementation of the Services effectively.
- C. The Contractor shall keep the Detailed Implementation Plan under review and updated in accordance with the Client's instructions. The Client shall have the right to require the Contractor to include any reasonable changes or provisions in each version of the Detailed Implementation Plan, provided that any changes to Milestones, Milestone Payments or target completion dates shall only be made in accordance with the change control procedure set out in clause 25 (Change Control Procedure).
- D. Further detail relating to testing and satisfaction certificates is set out in Schedule F (Testing) to this Agreement. For the avoidance of doubt, the financial remedies available to the Client in respect of any delay in the provision of the Services (including any failure to achieve a Milestone by its target completion date) shall be as set out in clause 6H (Liquidated Damages for Late Delivery) of this Agreement, and the liquidated damages mechanism set out therein shall apply to any failure by the Contractor to achieve a Milestone by its target completion date.
- E. The financial consequences of any failure by the Contractor to achieve a Milestone by its target completion date shall be governed exclusively by clause 6H (Liquidated Damages for Late Delivery) of this Agreement.
- F. If the Contractor becomes aware that there is, or there is reasonably likely to be, a delay in the achievement of any Milestone by its target completion date or any other delay in the implementation of the Services by the relevant date set out in the Detailed Implementation Plan, the Contractor shall: (i) notify the Client as soon as practicable and in any event no later than within two (2) Working Days from becoming aware of such delay or anticipated delay; (ii) include in its notification an explanation of the actual or anticipated impact of the delay; (iii) comply with the Client's instructions in order to address the impact of the delay or anticipated delay; and (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any such delay or anticipated delay.

2. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill and diligence and in accordance with Best Industry Practice in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 4 the Contractor shall:
1. provide the Services in accordance with the Specification, the Detailed Implementation Plan, the Framework Agreement, the Client's directions and the terms of this Agreement;
 2. submit all Deliverables for testing, conduct all testing protocols, achieve all Milestones and remedy at its own cost any defects or non-conformities identified during such testing, in each case in accordance with the procedures set out in Schedule F (Testing), provided that the Contractor shall not deploy, release or represent as complete any Deliverable unless and until a Satisfaction Certificate has been issued in respect thereof in accordance with Schedule F (Testing);
 3. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 4. comply with all local security and health and safety arrangements as notified to it by the Client; and
 5. provide the 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 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.
- C. 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 Call-Off Submission or Mini-Tender (as applicable) 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 2B(4) above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the

Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.

- D. Without prejudice to clause 2C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the 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.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. 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 Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client 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 11.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. 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 Client 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.
- I. In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Contractor shall comply with the following obligations:
 - i. not to subcontract more than 50% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure;
 - ii. for contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods or services supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the successful tenderer or by a subcontractor;
 - iii. to provide to the Client, upon request, adequate evidence corresponding to point (i) or (ii) above;

- iv. to pay a proportionate charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the contract.

3. KEY PERSONNEL

- A. The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Tender, and such other individuals as may be identified in the Call-Off Submission or Mini-Tender (as applicable) ("Key Personnel"), assigned by it to provide the Services shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client.
- B. The Contractor confirms that, prior to the award of this Agreement, it has provided to the Client written confirmation of the specific Key Personnel whom the Contractor proposes to deploy for the performance of the Services, together with confirmation that such Key Personnel are available and are not committed to other engagements that would prevent them from meeting the requirements of this Agreement.
- C. The Contractor acknowledges that the Client has entered into this Agreement in reliance upon the skills, experience and expertise of the Key Personnel identified in the Tender, the Call-Off Submission or Mini-Tender (as applicable) and that such Key Personnel are fundamental to the Client's decision to award this Agreement to the Contractor.
- D. The Contractor shall not substitute, remove or replace any Key Personnel without the prior written approval of the Client.
- E. Where any Key Personnel have been replaced prior to the award of this Agreement in accordance with Clause 7 of the Framework Agreement and Clause 9 of the Framework Rules, the Contractor confirms that such replacements have been approved by the Client and that the Replacement Personnel so approved shall be deemed to be Key Personnel for the purposes of this Agreement.
- F. A request for replacement of Key Personnel during the Term shall only be considered by the Client where the Contractor demonstrates to the Client's reasonable satisfaction that the relevant Key Personnel are unavailable due to circumstances beyond the Contractor's reasonable control or due to a bona fide Conflict of Interest.
- G. The Contractor shall notify the Client in writing within five (5) Working Days of becoming aware that any Key Personnel may be or may become unavailable for the Services under this Agreement.
- H. Any proposed replacement personnel ("Replacement Personnel") must possess qualifications, skills and relevant experience at the same level as the Key Personnel being replaced, as defined by reference to the levels of experience specified in the RFT. The Contractor shall not substitute Key Personnel with an individual at a lower level than that of the original Key Personnel.
- I. The Contractor shall provide the Client with a full curriculum vitae and such other supporting documentation as the Client may reasonably require in respect of any proposed Replacement Personnel.
- J. The Client shall have sole discretion to approve or reject any proposed Replacement Personnel and shall not be obliged to provide reasons for any such rejection.
- K. The Contractor warrants that all Key Personnel hold, and shall maintain throughout the

Term, all professional certifications, accreditations and security clearances required for the performance of the Services as specified in the RFT, the Tender or this Agreement. The Contractor shall ensure the ongoing professional development and training of Key Personnel to maintain competence in the technologies and methodologies relevant to the Services in accordance with Best Industry Practice.

- L. Without prejudice to any other right or remedy available to the Client, a failure by the Contractor to make Key Personnel available for the performance of the Services, or to propose Replacement Personnel acceptable to the Client within a period of not less than ten (10) Working Days specified by the Client (or such longer period as the Client may in its discretion allow), shall constitute a material breach of this Agreement and shall entitle the Client to terminate this Agreement with immediate effect by notice in writing to the Contractor.
- M. The provisions of this clause 3 (Key Personnel) are in addition to, and without prejudice to, the provisions relating to Key Personnel set out in the Framework Agreement and the Framework Rules, all of which shall continue to apply.

4. PAYMENT

- A. Subject to the provisions of this clause 4 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Where the Client has specified Milestone Payments in the Call-Off Order or Request for Mini-Tenders (as applicable), the relevant portion of the Charges shall be payable by reference to the achievement of the corresponding Milestones and the issue of a Satisfaction Certificate in accordance with Schedule F (Testing). Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
 - 1. 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 11A from time to time and, where the Client has specified Milestone Payments in the Call-Off Order or Request for Mini-Tenders (as applicable), the issue of a Satisfaction Certificate in respect of the relevant Milestone in accordance with Schedule F (Testing), such Milestone Payments becoming due and payable only upon the issue of the relevant Satisfaction Certificate. For the avoidance of doubt, no Milestone Payment shall become due or payable where the relevant Milestone has not been achieved or where a Satisfaction Certificate has been withheld, refused or issued on a conditional basis (save to the extent that the Client, in its sole discretion, agrees otherwise in writing);
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Where Milestone Payments apply, the Contractor shall only submit an invoice in respect of a Milestone Payment following the issue of the relevant Satisfaction Certificate, and each such invoice shall clearly identify the Milestone to which it relates and the corresponding Satisfaction Certificate. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any

queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and

4. The Client 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.
- C. 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.
- D. 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 Client 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 Client. 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.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client 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 provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor acknowledges, warrants, represents and undertakes that:
 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. 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;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;

5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [insert date] , which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 7 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
 8. *Delete and replace with “Not Used” if not applicable:*
it has inspected the Client’s premises, lands and facilities before submitting its 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;
 9. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 5A.9; and
 10. the Client shall be under no obligation to purchase any minimum number or value of Services.
 11. where the Contractor uses or proposes to use any AI System in the performance of the Services or in the production of any Deliverable, it shall do so in full compliance with the EU AI Act and all other applicable laws, shall maintain transparency regarding such use in accordance with clause 27 (Artificial Intelligence), and warrants that all information provided to the Client pursuant to clause 27B is and shall remain true, complete and accurate in all material respects;
- B.** The Contractor undertakes to notify the Client 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 5A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

6. REMEDIES

Prior to publication please ensure to insert amounts/figures where applicable. When finished, delete these instructions.

- A.** The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client 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 2. This indemnity is in addition to,

and without prejudice to, the Contractor's indemnity obligations under clause 7(I) (Intellectual Property), clause 26 (Data Protection and Security), clause 27(E) (Artificial Intelligence) and clause 28 (Cyber Security). The terms of this clause 6A shall survive termination of this Agreement for any reason.

- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 7(I), 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.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. 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.

- E. *Delete and replace with "Not Used" if not applicable:*

Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 7(I) or clause 27(E) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 100 per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims.

- F. Without prejudice to the provisions of clause 4 (Payment) relating to Milestone Payments and the issue of Satisfaction Certificates in accordance with Schedule F (Testing), if the Client reasonably considers that the Contractor's performance of the Services (or any part thereof) does not conform with the requirements of this Agreement, the Specification or the Detailed Implementation Plan, a sum may be withheld from any payment otherwise due (other than any Milestone Payment in respect of which a Satisfaction Certificate has been issued in accordance with Schedule F (Testing)) calculated as follows:

5% of the Charges attributable to the relevant billing period ("the Retention Amount") which Retention Amount shall not at any given time exceed 20 % of the Charges. In such event the Client shall, within a reasonable period, identify in writing the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction by reference to the requirements of this Agreement, the Specification or the Detailed Implementation Plan. The Contractor shall use all reasonable endeavours to remedy the identified deficiencies within such period as the Client may reasonably specify. Payment of the Retention Amount (or the relevant portion thereof) shall be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries to the Client's reasonable satisfaction. For the avoidance of doubt, this clause 6F shall not apply so as to permit the withholding of any Milestone Payment in respect of which a Satisfaction Certificate has been issued without qualification in accordance with Schedule F (Testing). The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 6F shall be without prejudice to and not be in substitution for any other right or remedy of the Client under this Agreement.

- G. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

Not Used.

- H. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

Without prejudice to any general right to damages under this Agreement, where the Contractor fails to achieve a Milestone by its target completion date as set out in the Detailed Implementation Plan or otherwise fails to provide the Services within the delivery dates or lead times specified in this Agreement, the Client may, at its discretion, deduct [amount to be specified] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [amount to be specified] (the "Liquidated Damages Threshold"). The Contractor acknowledges and agrees that any such liquidated damages constitute a genuine pre-estimate of the loss that may be suffered by the Client as a result of the Contractor's failure to achieve the relevant Milestone or to deliver the Services within the applicable delivery dates or lead times and are reasonable and proportionate having regard to the Client's anticipated loss. Liquidated damages shall accrue on a daily basis from the relevant target completion date or delivery date until the earlier of (i) the date on which the relevant Milestone is achieved or the Services are delivered and (ii) the date on which the Liquidated Damages Threshold is met or exceeded.

Where the Liquidated Damages Threshold is met or exceeded (being that the Contractor continues to fail to achieve the relevant Milestone or to deliver the Services after the Liquidated Damages Threshold is met), the Client shall be entitled to:

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it as a result of the Contractor's failure to achieve the relevant Milestone or to deliver the Services; and
2. without prejudice to sub-clause (1), the Client shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor

7. INTELLECTUAL PROPERTY

- A. 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.
- B. 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 Contractor or Client independently of this Agreement, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.
- C. "Foreground IPR" means all IPR created, developed or first arising in the course of, or for the purposes of, the performance of the Services under this Agreement, including all IPR in the Deliverables, the Materials and any software, databases, configurations, system architecture or other technical outputs developed under this Agreement, but excluding Pre-

existing IPR.

- D. All IPR title and interest in all reports, data manuals and/or other materials (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs and diagrams,) produced for the purposes of this Agreement (collectively “the **Materials**”), the Software (or any part or parts thereof) and all Foreground IPR shall vest in the Client 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, Software and all Foreground IPR (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 Client absolutely.
- E. For the avoidance of doubt, all Intellectual Property Rights, title and interest in any Materials or Deliverables generated in whole or in part by or with the assistance of an AI System in the course of providing the Services shall vest in the Client in accordance with this clause 7, and the Contractor hereby assigns (including by way of present assignment of future rights) all such rights to the Client absolutely. The Contractor warrants that no AI System shall be used in a manner that would compromise the Client's ownership of, or ability to exploit, any such Materials or Deliverables.
- F. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. The Contractor hereby grants to the Client an irrevocable, perpetual, fully paid-up, worldwide, royalty-free, non-exclusive, transferable, sub-licensable licence to use the Contractor's Pre-existing IPR to the extent such use is necessary in order to achieve the benefit of this Agreement (including the Services provided therein), and /or to use the Deliverables and the Materials in accordance with the Call-Off Order or Request for Mini-Tenders. Save as expressly set out in this clause 7 all Pre-existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- G. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- H. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the 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 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 Services.
- I. 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 Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client 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 infringement of third party Intellectual Property Rights in so far as any such rights are

used for the purposes of this Agreement.

At the request of the Client for and in respect of any such breach, the Contractor shall at its expense and option:

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

- J. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 7 will survive the expiration or termination of this Agreement for any reason.

8. CONFIDENTIALITY

- A. 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 to:-
1. its professional advisers subject to the provisions of this clause 8; or
 2. as may be required by law; or
 3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 8; or
 4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 6 to the RFT ("the Confidentiality Agreement").
- C. Without prejudice to clause 27 (Artificial Intelligence), the Contractor shall not input, upload, disclose or otherwise make accessible any Confidential Information to any AI System without the prior written consent of the Client. Any breach of this provision shall constitute a material breach of this Agreement.

The obligations in this clause 8 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it

- from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- D. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the 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 Client arising therefrom.
- E. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- F. The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement. The obligations of the Contractor under this clause 8 are without prejudice to, and in addition to, the Contractor's obligations under clause 28 (Cyber Security) insofar as they relate to the protection of Confidential Information.

9. FORCE MAJEURE

- A. 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 9B 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.
- B. 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:

1. the nature of the Force Majeure Event;
2. the anticipated delay in the performance of obligations;
3. 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.

- C. If the Force Majeure Event continues for 90 calendar days either Party may terminate at 14 days notice.
- D. In circumstances where the Contractor is the Affected Party, the Client 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.

10. TERMINATION

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving three (3) months written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving three (3) months written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 10A 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:
 1. 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;
 2. 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;
 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
 4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client 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 Client becomes aware:
 - (i) that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor

- (ii) that the Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same)
- D. 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.
- E. If this Agreement is terminated for any reason, the Contractor shall only be entitled to the payment of Charges directly attributable to the proportion of the Services properly completed in accordance with this Agreement. Any prepaid Charges for Services to be completed after such termination shall forthwith, upon termination, be refunded to the Client. The Client shall not be liable to the Contractor (or to any third party engaged by the Contractor to assist in the provision of the Services) for any loss of profit, contracts, goodwill, business opportunity or anticipated saving suffered or incurred by the Contractor arising out of or in connection with this Agreement, whether by termination or otherwise. On termination of this Agreement, the Contractor shall execute and deliver all documentation prepared by the Contractor and all other documentation in its custody or control relating to the Services to the Client and shall take such further steps as the Client may reasonably require for the purpose of fully vesting in the Client all rights and benefits of the Contractor arising therefrom. Where the Contractor fails to provide the Services or comply with its obligations in accordance with this Agreement, or fails to provide the Services in a reasonable and timely manner, the Client may, at its absolute discretion, procure substitute services from another supplier and the costs of procuring such alternative supplier shall be reimbursed to the Client by the Contractor, save where this Agreement is terminated pursuant to clause 10A.
- F. Where required by the Client, the Contractor shall develop and maintain an exit management plan and perform exit management services in accordance with the requirements set out in this Agreement. Such exit management services shall be paid for in accordance with the rates set out in Schedule C.
- G. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client ("Employment Information"). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

11. CONTRACT MANAGEMENT

- A. The Client'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 review compliance with and progress against the Milestones, the Detailed Implementation Plan and such compliance schedules and operational protocols as may be required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the

Client.

B. The Contractor agrees to:

1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
3. comply with all reasonable directions of the Client;
4. comply with the service levels and performance indicators set out in Schedule D; and
5. comply with the Detailed Implementation Plan (including all Milestones and target completion dates specified therein).

C. The Client 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 Client thereby arising. The cost of inspection shall be borne by the Client.

D. The Contractor shall maintain proper accounts and records of its performance under this Agreement and, without prejudice to any legal requirement or longer retention requirement, all such accounts and records shall be retained for a period of six (6) years following the termination or expiry of this Agreement or completion of the Services (whichever is later).

12. DISPUTES

A. In the event of any dispute arising out of or in connection with this Agreement (a "Dispute"), the Parties shall resolve the Dispute in accordance with the following procedure, which the Parties agree is mandatory.

B. In the first instance, either Party may give written notice to the other Party identifying the Dispute and requesting its resolution (a "Dispute Notice"). Within ten (10) Working Days of receipt of a Dispute Notice, a senior representative of each Party who has authority to settle the Dispute shall meet and attempt in good faith to resolve the Dispute.

C. If the Dispute is not resolved by negotiation in accordance with clause 11B within twenty (20) Working Days of receipt of the Dispute Notice (or such longer period as the Parties may agree in writing), either Party shall be entitled to refer the Dispute to mediation administered by the Centre for Effective Dispute Resolution ("CEDR") or such other mediation body as the Parties may agree, and the other Party shall be obliged to participate in such mediation. The mediation shall be conducted in Dublin, Ireland in accordance with the mediation procedures of the appointed mediation body. The Parties shall participate in the mediation in good faith and shall use all reasonable endeavours to reach a settlement of the Dispute. The costs of the mediation shall be borne equally by the Parties.

D. No Party may commence proceedings before the courts of Ireland in relation to a Dispute unless and until mediation of the Dispute has been attempted in accordance with clause 11C and either: (a) the mediation has concluded without settlement of the Dispute; or (b) a

period of forty-five (45) Working Days has elapsed from the date of referral to mediation without the mediation having concluded, whichever is the earlier. Any Dispute not resolved by mediation shall be finally determined by the courts of Ireland in accordance with Irish law pursuant to clause 12.

- E. 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.
- F. 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. Nothing in this clause 12 shall prevent either Party from seeking urgent injunctive or interlocutory relief from the courts of Ireland at any time.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

13. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

- A. This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and subject to clause 11 (Resolution of Disputes), 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.
- B. This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

14. NOTICES

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;
 - 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 - 3. if communicated by email, on the next calendar day following transmission.

15. ASSIGNMENT AND SUBCONTRACT

- A. 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.

- B. 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. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established. For the avoidance of doubt, the engagement of any third-party AI System provider in connection with the performance of the Services shall be subject to the requirements of this clause 15 and clause 27 (Artificial Intelligence).
- C. The Contractor must notify the Client of any change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the Contractor's management or policies, whether through ownership of shares, by contract, or by any other means (a "Change of Control"). The Client may, at its absolute discretion, terminate this Agreement with the Contractor if it is of the view that the Change of Control could affect the Contractor's performance of the Services adversely.

16. ENTIRE AGREEMENT

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.

17. SEVERABILITY

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.

18. WAIVER

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.

19. NON-EXCLUSIVITY

Nothing in this Agreement shall preclude the Client from purchasing services (or Services) from a third party at any time during the currency of the Agreement.

20. MEDIA

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 Client.

21. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. 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 Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client 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.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, 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 Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate 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.
- C. 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 21C 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 Client 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.

22. ACCESS TO PREMISES

- A. Any of the Client's premises made available from time to time to the Contractor by the Client 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.
- B. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the Client under this Agreement.

23. EQUIPMENT

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services ("Equipment").
- B. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and

the Client 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 Client'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.

- C. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
 - i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
 - ii. replace such item with a suitable substitute item of Equipment.
- E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

24. NON SOLICITATION

For the Term and for a period of six (6) months thereafter (and save in respect of publicly advertised posts) neither the Client nor the Contractor shall employ or offer employment to or solicit or endeavour to solicit or entice away from the service of the other Party any of the other Party's employees without that other Party's prior written consent.

25. CHANGE CONTROL PROCEDURE

- A. 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.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. 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 Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- G. 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.

- H. The Contractor and the Client 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 Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the 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.

26. DATA PROTECTION AND SECURITY

- A. In this Agreement the following terms shall have the meanings respectively ascribed to them:

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

"Personal Data" has the meaning given under Data Protection Laws;

"Processing" has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws. Without prejudice to the generality of the foregoing, the Contractor's obligations under this clause 26 are in addition to, and without prejudice to, the Contractor's obligations under clause 28 (Cyber Security).
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. The Contractor shall not commence the Processing of any Personal Data in connection with the Services until: (i) Schedule E to this Agreement has been completed in full by the Parties, accurately reflecting the scope, nature and purpose of Processing, the duration of the Processing, the types of Personal Data and the categories of Data Subject; and (ii) the Client has confirmed in writing that all appropriate data protection assessments have been completed to

the Client's reasonable satisfaction. Where the Services (or any part thereof) involve or are likely to involve the Processing of special categories of Personal Data (as defined in Article 9 of the General Data Protection Regulation), children's personal data, large-scale Processing activities, systematic monitoring, or any other form of Processing that is likely to result in a high risk to the rights and freedoms of natural persons, the Parties shall consider at an early stage, and in any event before such Processing commences, whether a data protection impact assessment pursuant to Article 35 of the General Data Protection Regulation or any other data protection assessment is required. Where such an assessment is required, the Contractor shall provide all information and assistance reasonably required by the Client to carry out such assessment and shall not commence the relevant Processing until the assessment has been completed and the Client has confirmed in writing that the Processing may proceed.

- E. Without prejudice to the generality of clause 26B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-

(1) process that Personal Data only on the written instructions of the Client;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it). The Contractor's obligations under this clause 26D(2) are without prejudice to the Contractor's obligations under clause 28 (Cyber Security);

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

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

- i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
- ii. the data subject has enforceable rights and effective legal remedies;
- iii. The 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 Client with respect to the processing of the Personal Data;

- F. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- G. The Contractor shall without undue delay and in any event within twenty-four (24) hours of becoming aware, report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- H. The Contractor shall provide all reasonable assistance to the Client in ensuring compliance with the Client's obligations under the Data Protection Laws, including but not limited to: (i) providing such information, access to systems and cooperation as the Client may reasonably require to enable the Client to carry out data protection impact assessments pursuant to Article 35 of the General Data Protection Regulation in respect of any Processing carried out by the Contractor in connection with the Services, including any assessment of the necessity and proportionality of the Processing, the risks to the rights and freedoms of Data Subjects and the measures envisaged to address such risks; (ii) providing such information and assistance as the Client may reasonably require in connection with any prior consultation with the Data Protection Commission or other supervisory authority pursuant to Article 36 of the General Data Protection Regulation, or any other consultation, inquiry, investigation or correspondence initiated by or involving a supervisory authority in connection with the Processing of Personal Data under this Agreement; and (iii) assisting the Client in ensuring compliance with the Client's obligations under the Data Protection Laws with respect to the security of Processing.
- I. Upon termination or expiry of this Agreement, the Contractor shall, at the written direction of the Client, either return or permanently and irrecoverably delete all Personal Data (and all copies thereof) processed in connection with the Services within three (3) months of the date of termination or expiry (or such other period as the Client may specify in writing). Where the Client directs deletion, the Contractor shall, within ten (10) Working Days of completing such deletion, provide the Client with a written certificate signed by an authorised officer of the Contractor confirming that all Personal Data (and all copies thereof) has been permanently and irrecoverably deleted from all systems, back-ups, archives and storage media in the Contractor's possession or control, save that where deletion of Personal Data from automated back-up systems is not technically practicable within the specified period, the Contractor shall isolate such Personal Data from any further Processing and shall delete it as soon as reasonably practicable thereafter (and in any event shall confirm such deletion to the Client in writing promptly upon completion). The Contractor shall not be required to delete Personal Data to the extent that retention is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor, provided that the Contractor shall: (i) promptly notify the Client in writing of any such retention requirement, specifying the Personal Data retained and the legal basis for retention; (ii) ensure that such retained Personal Data is processed only for the purpose required by such law and remains subject to the confidentiality and security obligations of this clause 26 and clause 28 (Cyber Security); and (iii) permanently and irrecoverably delete such retained Personal Data as soon as the legal requirement for retention ceases to apply, and provide the Client with a certificate of deletion in accordance with this clause. The obligations of the Contractor under this clause are without prejudice to, and in addition to, the Contractor's obligations under clause 29 (Exit Management) and clause

29G (Data Migration) insofar as they relate to the return or deletion of Data upon termination or expiry of this Agreement.

- J. The Contractor shall permit the Client, 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 Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- K. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- L. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 26 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- M. The Contractor shall:-
 - (1) 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;
 - (2) ensure that a back-up copy of any and all such Personal Data is made 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
 - (3) 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 Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- N. **(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)**
The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

(OR IF USING A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

the Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 26 as between the Client 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 26.

- O. Save for clauses 26B, 26C, 26E(4) and 26F, all the obligations on the Contractor in this clause 26 relating to the processing of Personal Data shall apply to the processing of all Data.
- P. Immediately inform the Client if, in its opinion, an instruction received infringes applicable Data Protection Laws.
- Q. The provisions of this clause 26 shall survive termination and or expiry of this Agreement for any reason.

The Contractor agrees to indemnify and keep indemnified the Client against all costs, fines, penalties,

claims, damages or expenses incurred by the Client due to any failure by the Contractor, its employees,

27. ARTIFICIAL INTELLIGENCE

Subcontractors or agents to comply with Data Protection Laws or any of the Contractor's data protection obligations under this Agreement.

A. For the purposes of this clause 27:

"AI System" means an "AI System" as defined by Article 3(1) of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (the **"EU AI Act"**).

"High-Risk AI Systems" shall mean those systems classified as high-risk AI systems by Article 6 EU AI Act;

"Prohibited AI Practices" shall mean those practices prohibited by Article 5 EU AI Act;

"Serious Incident" shall have the meaning given to that term by Article (1)(49) EU AI Act.

B. The Contractor shall not use any AI System in the performance of the Services or in the production of any Deliverable without the prior written approval of the Client. Any request for approval shall include: (i) a description of the AI System and its provider; (ii) the specific purpose for which the AI System is proposed to be used; (iii) the data (including any Personal Data or Confidential Information) that will be input to or processed by the AI System; (iv) the risk classification of the AI System under the EU AI Act; and (v) the safeguards the Contractor proposes to put in place to mitigate any risks identified.

C. Where the Client approves the use of an AI System, the Contractor shall:

(1) ensure that all use of the AI System complies with the EU AI Act, Data Protection Laws and all other applicable laws;

(2) design, implement and/or maintain appropriate human oversight measures in accordance with Article 14 of the EU AI Act for all outputs generated by the AI System and ensure that no AI-generated output is delivered to the Client, incorporated into any Deliverable or relied upon in the performance of the Services without prior review, validation and approval by appropriately qualified personnel of the Contractor;

(3) ensure that no Personal Data or Confidential Information is input to, processed by or accessible to any AI System unless expressly permitted by the Client in writing and in compliance with clause 26 (Data Protection and Security) and clause 7 (Confidentiality);

(4) ensure that the use of the AI System does not infringe any third party Intellectual Property Rights and that all Intellectual Property Rights in the Deliverables vest in the Client in accordance with clause 6 (Intellectual Property);

(5) implement and maintain appropriate measures to identify, assess and mitigate the risk of bias, inaccuracy, hallucination or other deficiency in any output generated by the AI System;

(6) maintain a complete and auditable record of all uses of AI Systems in the performance of the Services, including the identity of the AI System used, the data input, the output generated and the human review undertaken, and make such records available to the Client upon request; and

(7) notify the Client in writing within 24 hours of any Serious Incident, malfunction, unintended output or data breach involving or arising from the use of an AI System.

- D. The Contractor warrants that the AI Systems, used in the performance of the Services, or production of Deliverables, as approved by the Client in accordance with Clause 27(B) do not constitute High-Risk AI Systems, nor do they deploy Prohibited AI Practices.
- E. The Contractor shall ensure that all Subcontractors and agents comply with the requirements of this clause 27 and shall include equivalent provisions in all sub-contracts relating to the performance of the Services.
- F. The Contractor shall indemnify and keep indemnified the Client against all losses, claims, demands, damages, penalties, fines, regulatory costs, costs or expenses caused in whole or in part by any act, omission, default or negligence of the Contractor and/or its subcontractors, arising out of or in connection with the failure to comply with this clause 27 and/or a breach of the EU AI Act, Data Protection Laws, third party Intellectual Property Rights or any other applicable law.
- G. The Client reserves the right to withdraw its approval for the use of any AI System at any time by notice in writing to the Contractor and the Contractor shall immediately cease use of the relevant AI System upon receipt of such notice.
- H. The Contractor shall, and shall procure that any third-party AI providers, sub-processors, and supply-chain participants shall provide all information, access, records, and assistance reasonably required by the Client to audit and verify compliance of each AI System approved by the Client in accordance with clause 27B of this Agreement.
- I. The Contractor shall provide the Client with training materials in order to assist the Client in complying with its AI literacy obligations under Article 4 EU AI Act.
- J. The provisions of this clause 27 are without prejudice to and in addition to the Contractor's obligations under clause 5 (Warranties and Representations), clause 7 (Intellectual Property), clause 8 (Confidentiality), clause 26 (Data Protection and Security) and clause 28 (Cyber Security).

28. CYBER SECURITY

- A. The Contractor shall implement and maintain throughout the Term a comprehensive set of technical and organisational cyber security measures that are appropriate to the nature, scope and sensitivity of the Services, the Deliverables and any data (including Personal Data and Confidential Information) processed, stored, transmitted or otherwise handled by or on behalf of the Contractor in connection with this Agreement. Such measures shall, at a minimum, comply with Best Industry Practice, all Applicable Laws (including the Data Protection Laws and, where applicable, the Network and Information Systems Directive (EU) 2022/2555 ("NIS2 Directive") and any national implementing legislation), the Client's cyber security policies and standards as notified to the Contractor from time to time, and such other cyber security policies or standards as the Client may include within the Specification and/or otherwise notify to the Contractor. The Contractor shall familiarise itself with, and ensure ongoing compliance with, all such policies and standards throughout the Term.
- B. The Contractor shall, promptly upon request by the Client (and in any event within ten (10) Working Days of receipt, or such shorter period as the Client may reasonably specify), complete and return any security questionnaire issued by the Client for the purpose of assessing the Contractor's cyber security arrangements and controls. The Contractor's responses shall be complete, accurate and supported by such evidence or documentation as the Client may reasonably require. The Contractor acknowledges that the Client may issue security

questionnaires at any time during the Term, including immediately following the Effective Date, and shall cooperate fully with any follow-up queries or requests for clarification arising from the Contractor's responses. Where the Client identifies any concerns arising from the Contractor's responses to a security questionnaire, the provisions of this clause 28 relating to Assessments and Findings shall apply.

C. Without limiting the generality of clause 28A, the Contractor shall:

1. Maintain, regularly review and enforce access controls, including password security, multi-factor authentication, role-based access and the principle of least privilege, in respect of all systems, networks and environments used in the performance of the Services;
2. implement and maintain immutable logging capabilities for all access, modification, and deletion events across all systems, networks and environments used in the performance of the Services;
3. encrypt all data in transit and at rest using industry-standard encryption protocols;
4. implement and maintain firewalls, intrusion detection and prevention systems, endpoint protection, and security monitoring and logging capabilities;
5. conduct regular vulnerability assessments and penetration testing of all systems and environments used in the performance of the Services (and, at the Client's request, provide the Client with copies of the results of such assessments and tests);
6. maintain a documented patch management process and apply all critical and high-severity security patches within timeframes consistent with Best Industry Practice;
7. ensure that all personnel with access to the Client's systems, data or Confidential Information receive regular cyber security awareness training; and
8. maintain and regularly test a business continuity and disaster recovery plan that addresses cyber security incidents and ensures the continued availability and integrity of the Services.

D. Without prejudice to clause 28C(7), the Contractor shall implement and maintain personnel security measures in respect of all personnel (including employees, agents and Subcontractor personnel) who have access to the Client's systems, data, Confidential Information or premises in connection with the Services, which shall include, at a minimum:

1. conducting appropriate pre-employment (or pre-engagement) screening and background checks on all such personnel, proportionate to the sensitivity of the data and systems to which they will have access, and, upon request, providing the Client with confirmation that such checks have been satisfactorily completed (together with such further detail as may reasonably be required subject to applicable Data Protection Laws);
2. ensuring that all such personnel are bound by enforceable obligations of confidentiality and data protection at least as onerous as those imposed on the Contractor under this Agreement;
3. implementing secure onboarding procedures, including the provision of role-appropriate cyber security training before any such personnel are granted access to the Client's systems, data or Confidential Information;
4. implementing secure offboarding procedures to ensure that, upon any such personnel ceasing to be engaged in the provision of the Services (whether by reason of termination, reassignment or otherwise), all access rights, credentials and permissions are promptly revoked and all Client data, materials and equipment in their possession are returned or securely destroyed; and
5. maintaining a current register of all personnel with access to the Client's systems, data or Confidential Information, a summary of which (excluding personal data to the extent not strictly necessary) shall be made available to the Client upon request, subject to applicable Data Protection Laws, and which shall be reviewed at least quarterly to ensure

that access is limited to personnel with a current and legitimate need.

- E. The Contractor shall establish and maintain a cyber security governance structure for the duration of the Term, which shall include, at a minimum:
1. the appointment of a named individual with overall responsibility for cyber security in relation to the Services (the “Cyber Security Lead”), whose identity and contact details shall be notified to the Client within ten (10) Working Days of the Effective Date (and promptly upon any change);
 2. a documented cyber security policy, approved at senior management level within the Contractor’s organisation, setting out the Contractor’s approach to the management of cyber security risks in the performance of the Services;
 3. a cyber security risk register identifying, assessing and prioritising the cyber security risks to the Services, the Deliverables and any data processed in connection with this Agreement, which shall be reviewed and updated at least quarterly and made available to the Client upon request;
 4. without prejudice to the Client’s rights under clause 28G, providing the Client with cyber security reports at such intervals and in such form as the Client may reasonably require; and
 5. without prejudice to the Contractor’s obligations under clause 28F, defined escalation procedures for the identification and reporting of cyber security risks, vulnerabilities and near-misses to the Client, including thresholds for escalation and the identity of the individuals responsible for escalation at each level.
- F. The Contractor shall maintain a documented cyber security incident response plan. In the event of any actual or reasonably suspected cyber security incident affecting or potentially affecting the Services, the Deliverables, the Client’s systems or any data processed in connection with this Agreement (a “Cyber Security Incident”), the Contractor shall:
1. notify the Client without undue delay and in any event within twenty-four (24) hours of becoming aware of the Cyber Security Incident;
 2. provide the Client with all information reasonably required to assess the nature, scope and impact of the Cyber Security Incident, including the categories and approximate number of records or data subjects affected;
 3. take all reasonable steps to contain, investigate and remediate the Cyber Security Incident and to mitigate its effects;
 4. cooperate fully with the Client and any relevant regulatory authority in the investigation and resolution of the Cyber Security Incident; and
 5. provide the Client with a written root cause analysis and remediation report within fourteen (14) calendar days of the resolution of the Cyber Security Incident (or such other period as the Client may reasonably require).
- G. The Client shall be entitled, upon reasonable notice and at reasonable intervals (and at any time following a Cyber Security Incident), to conduct or commission assessments, audits or reviews of the Contractor’s cyber security policies, procedures and controls (each an “Assessment”). The Contractor shall cooperate fully with any such Assessment and shall make available all information, access to systems, personnel and documentation reasonably required by the Client or its nominated assessor within ten (10) Working Days of the Client’s request (or such shorter period as the Parties may agree having regard to the urgency of the Assessment). Where an Assessment identifies any non-compliance, deficiency or vulnerability (each a “Finding”), the Contractor shall, within ten (10) Working Days of notification of the Finding (or such shorter period as the Parties may agree having regard to the severity of the Finding), submit to the Client a remediation plan setting out the steps the Contractor proposes to take to address the Finding and the proposed timescales for remediation, and shall implement the agreed

remediation plan within the agreed timescales.

- H. Where the Contractor fails to remediate a Finding as identified under clause 28G within the agreed timescales, or where the Client is not satisfied (acting reasonably) that the Contractor's remediation is adequate, the Client may: (i) require the Contractor to engage, at the Contractor's cost, an independent third-party security specialist approved by the Client to assess and remediate the Finding; (ii) withhold any payment otherwise due under this Agreement until such time as the Finding has been remediated to the Client's reasonable satisfaction; or (iii) where the Finding constitutes or gives rise to a material risk to the Client's systems, data or operations, treat the failure as a material breach of this Agreement.
- I. The Contractor shall indemnify and keep indemnified the Client against all losses, claims, demands, damages, penalties, fines, regulatory costs, costs or expenses suffered or incurred by the Client caused in whole or in part by any act, omission, default or negligence of the Contractor and/or its subcontractors arising out of or in connection with any Cyber Security Incident, a breach by the Contractor of its obligations under this clause 28 or any failure by the Contractor to implement and maintain cyber security measures in accordance with this clause 28. This indemnity is in addition to, and without prejudice to, the Contractor's indemnity obligations under clause 5A, clause 6(G), clause 26 and clause 27(E).
- J. The Contractor shall conduct a comprehensive review of the effectiveness of all cyber security measures implemented pursuant to this clause 28 at least annually (and more frequently where required by the Client or where there has been a material change to the Services, the threat landscape or the Contractor's systems or operating environment). Each review shall assess the adequacy and effectiveness of the Contractor's technical and organisational cyber security measures and identify any areas for improvement. The Contractor shall provide the Client with a written summary of the results of each review, together with any proposed improvements, within a reasonable period of its completion. The Client may, acting reasonably, request the Contractor to implement specific improvements to its cyber security measures in light of the review, and the Contractor shall implement such improvements within such reasonable timescales as the Parties may agree.
- K. The provisions of this clause 28 are without prejudice to, and in addition to, the Contractor's obligations under clause 8 (Confidentiality), clause 26 (Data Protection and Security) and clause 27 (Artificial Intelligence).

29. EXIT PLAN

- A. Without prejudice to clause 10F, the Contractor shall, within sixty (60) calendar days of the Effective Date (or such other period as the Client may specify) prepare and submit to the Client for approval a comprehensive exit management plan (the "**Exit Plan**"). The Exit Plan shall set out in detail the procedures, activities, timelines, resource requirements and responsibilities necessary to ensure the orderly transition of the Services (or any part thereof) from the Contractor to the Client or to a successor contractor upon expiry or earlier termination of this Agreement for any reason, with minimal disruption to the Client's operations. The Contractor shall review and update the Exit Plan at least annually and at any time upon the Client's reasonable request, and each updated version shall be subject to the Client's approval.
- B. The Exit Plan shall address, at a minimum, the following matters:

1. a detailed description of the exit activities and the order in which they are to be performed;
 2. the roles and responsibilities of the Contractor's personnel (including Key Personnel) during the exit period;
 3. the knowledge transfer activities to be undertaken by the Contractor, including the provision of all documentation, training and assistance reasonably required to enable the Client or a successor contractor to assume responsibility for the Services;
 4. the migration, return or secure deletion of all data (including Personal Data and Confidential Information) held by the Contractor in connection with the Services, in accordance with clause 26 (Data Protection and Security), clause 28 (Cyber Security) and clause 29G (Data Migration);
 5. the return of all Materials, Deliverables and Client property in the Contractor's possession or control;
 6. the identification and transfer or licensing of any third-party software, tools or services used in the provision of the Services;
 7. the timetable for the completion of exit activities; and
 8. such other matters as the Client may reasonably require.
- C. Upon the giving of notice of termination or at any time during the final six (6) months of the Term, the Contractor shall, at the Client's request, commence implementation of the Exit Plan and shall cooperate fully with the Client and any successor contractor to ensure an orderly and efficient transition of the Services. The Contractor shall continue to provide the Services in accordance with this Agreement throughout the exit period until the transition is complete or until such date as the Client may specify in writing.
- D. During the exit period, the Contractor's obligations under this Agreement shall continue in full force and effect. The Contractor shall allocate sufficient resources, including appropriately skilled personnel, to perform the exit activities without adversely affecting the ongoing provision of the Services. The costs of performing the exit activities shall be borne by the Contractor, save to the extent that the Exit Plan expressly provides for the payment of exit management services in accordance with Schedule C.
- E. Without prejudice to any other right or remedy available to the Client, any failure by the Contractor to comply with its obligations under this clause 29 or the Exit Plan shall constitute a material breach of this Agreement. The Contractor shall indemnify and keep indemnified the Client against all losses, costs, damages and expenses arising out of or in connection with any failure by the Contractor to comply with its obligations under this clause 29.
- F. The provisions of this clause 29 shall survive the expiry or termination of this Agreement for any reason and shall continue in force until all exit activities have been completed to the Client's reasonable satisfaction.
- G. Without prejudice to the Contractor's obligations under clause 29B(4) and clause 26 (Data Protection and Security), the Contractor shall comply with the following obligations in respect of the migration of Data upon the implementation of the Exit Plan:
- (1) the Contractor shall, at no additional cost to the Client, extract and deliver to the Client (or to a successor contractor as directed by the Client) all Data (including Personal Data and Confidential Information) held, processed or stored by the Contractor in connection with the Services in a format that is open, non-proprietary, machine-readable and readily capable of migration to the Client's systems or those of a successor contractor, or in such other format as the Client may reasonably specify;
 - (2) the Contractor shall provide such reasonable technical assistance, cooperation and support as the Client may require to effect the complete and accurate migration of all Data to the Client

or a successor contractor, including making available appropriately skilled personnel and access to relevant systems and documentation;

(3) the Contractor shall cooperate with the Client in verifying the completeness, accuracy and integrity of all migrated Data and shall facilitate such testing and validation activities as the Client may reasonably require. The Contractor shall promptly remediate, at its own cost, any data corruption, loss or incompleteness identified during such verification;

(4) the Contractor shall complete the migration of all Data within the timelines specified in the Exit Plan and shall provide the Client with regular progress reports on the status of data migration at such intervals as the Client may reasonably require; and

(5) following the successful completion of data migration, and upon written confirmation from the Client that the migrated Data has been validated, the Contractor shall securely destroy all copies of the Data (including Personal Data and Confidential Information) remaining in its possession or control in accordance with clause 26 (Data Protection and Security) and clause 28 (Cyber Security), and shall within ten (10) Working Days of such destruction provide the Client with a written certificate signed by an authorised officer of the Contractor confirming that all such Data has been permanently and irrecoverably destroyed.

Schedule B: Services: The Specification

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

[Insert at RFT stage, if applicable, or when completing contract]

Schedule E: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

- 1. Processing by the Contractor**
 - 1.1 Subject matter of processing**
 - 1.2 Nature of processing**
 - 1.3 Purpose of processing**
 - 1.4 Duration of the processing**
- 2. Types of personal data**
- 3. Categories of data subject**

Schedule F: Testing

1. Test Strategy

- 1.1. The Contractor shall develop and submit to the Client for approval a comprehensive strategy for the conduct of all testing under this Schedule F (the "Test Strategy") as soon as practicable after the Effective Date and in any event no later than twenty (20) Working Days after the Effective Date.
- 1.2. The Test Strategy shall include, at a minimum:
 - (a) an overview of how testing will be conducted in relation to the Detailed Implementation Plan;
 - (b) the process to be used to capture and record test results and the categorisation of test issues by Severity Level in accordance with this Schedule F;
 - (c) the procedure to be followed where a Deliverable fails a test, fails to satisfy the Acceptance Criteria or where testing produces unexpected results, including a procedure for the resolution of test issues;
 - (d) the procedure to be followed to sign off each test;
 - (e) the process for the production and maintenance of Test Reports and a plan for the resolution of test issues;
 - (f) the names and contact details of the Client's and the Contractor's testing representatives;
 - (g) a high-level identification of the resources required for testing, including Client and/or third party involvement in the conduct of tests;
 - (h) the technical environments required to support the tests; and
 - (i) the procedure for managing the configuration of the test environments.

2. Test Plans

- 2.1. The Contractor shall, as part of the Detailed Implementation Plan (or as a separate document if so required by the Client), prepare and submit to the Client for approval a detailed test plan for each Deliverable or group of Deliverables (each a "Test Plan"). Each Test Plan shall be submitted to the Client for approval not less than twenty (20) Working Days prior to the date on which the relevant testing is scheduled to commence (or such other period as the Client may specify). The Client shall not unreasonably withhold or delay its approval of a Test Plan, provided that the Contractor shall implement any reasonable requirements of the Client in the Test Plan. Each Test Plan shall be consistent with the Test Strategy.
- 2.2. Each Test Plan shall include, at a minimum:
 - (a) a description of the Deliverable(s) to be tested;
 - (b) the acceptance criteria and performance standards against which the Deliverable(s) will be assessed, derived from the Specification and the Detailed Implementation Plan (the "Acceptance Criteria");
 - (c) the test cases, test scripts and test data to be used;
 - (d) the testing methodology and environment;
 - (e) the roles and responsibilities of each Party during testing;
 - (f) the timetable for testing;
 - (g) the criteria for classifying defects or non-conformities by Severity Level in accordance with this Schedule F;
 - (h) the specific test success criteria to be satisfied in respect of each test (the "Test Success Criteria"); and
 - (i) the Test Issue Threshold applicable to each test.

3. Test Specification

3.1. Following approval of a Test Plan, the Contractor shall develop and submit to the Client for approval a test specification for the relevant Deliverable(s) (each a **“Test Specification”**) as soon as reasonably practicable and in any event at least ten (10) Working Days prior to the commencement of the relevant testing (as specified in the Detailed Implementation Plan).

3.2. Each Test Specification shall include, at a minimum:

- (a) the specification of the test data, including its source, scope, volume and management, any request for relevant test data to be provided by the Client and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for testing;
- (c) test pre-requisites and the mechanism for measuring them; and
- (d) expected test results, including a mechanism to be used to capture and record test results and a method to process the test results to establish their content.

4. Test Issue Classification

4.1. Each test issue identified during testing (a **“Test Issue”**) shall be classified by severity level (each a **“Severity Level”**) as follows:

- (a) **Severity Level 1:** an error that causes non-recoverable conditions such that it is not possible to continue using the relevant component of the Deliverables;
- (b) **Severity Level 2:** an error for which, as reasonably determined by the Client, there is no practicable workaround available, and which causes a component of the Deliverables to become unusable, causes a lack of functionality or unexpected functionality that has an impact on the current test, or has an adverse impact on any other component or area of the Deliverables;
- (c) **Severity Level 3:** an error which causes a component of the Deliverables to become unusable, causes a lack of functionality or unexpected functionality that does not impact on the current test, or has an impact on any other component or area of the Deliverables, but for which, as reasonably determined by the Client, there is a practicable workaround available;
- (d) **Severity Level 4:** an error which causes incorrect functionality of a component or process, but for which there is a simple workaround, and which has no impact on the current test or other areas of the Deliverables; and
- (e) **Severity Level 5:** an error that causes a minor problem, for which no workaround is required, and which has no impact on the current test or other areas of the Deliverables.

4.2. A Test Issue classified as Severity Level 1 or Severity Level 2 shall constitute a **“Material Test Issue”**.

4.3. The relevant Test Plan shall specify, in respect of each test, the maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues that may subsist without preventing the issue of a Satisfaction Certificate (the **“Test Issue Threshold”**).

4.4. The Contractor shall establish and maintain a log for the recording of all Test Issues identified during testing (the **“Test Issue Management Log”**). The Test Issue Management Log shall record each Test Issue by reference to its Severity Level and shall accurately represent the current status of each Test Issue at all relevant times.

4.5. The Contractor shall make the Test Issue Management Log available to the Client upon request.

4.6. The Client shall confirm the classification of any Test Issue unresolved at the end of a test in consultation with the Contractor. If the Parties are unable to agree the classification of any

unresolved Test Issue, the dispute shall be resolved in accordance with the dispute resolution provisions of this Agreement.

5. Performing Tests

- 5.1. All tests conducted by the Contractor pursuant to this Schedule F shall be conducted in accordance with the Test Strategy, the relevant Test Specification and the relevant Test Plan. Before submitting any Deliverable for testing, the Contractor shall subject the relevant Deliverable to its own internal quality control measures. The Contractor shall not submit any Deliverable for testing:
 - (a) unless the Contractor is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - (b) until the Client has issued a Satisfaction Certificate in respect of any prior, dependent Deliverable(s); and
 - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 5.2. The Contractor shall notify the Client at least ten (10) Working Days in advance of the date, time and location of each test.
- 5.3. The Client may, in its sole discretion, appoint one or more persons to attend and witness any test (each a **"Test Witness"**). Each Test Witness shall have appropriate skills to fulfil the role.
- 5.4. The Contractor shall give each Test Witness access to any documentation and testing environments reasonably necessary to perform their role.
- 5.5. Each Test Witness shall:
 - (a) actively review the test documentation;
 - (b) attend and engage in the performance of the tests on behalf of the Client so as to enable the Client to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the test should be re-tested;
 - (c) not be involved in the execution of any test; and
 - (d) verify that the Contractor conducted the tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification.
- 5.6. Each Test Witness may: (i) produce and deliver independent reports on testing, which may be used by the Client to assess whether the tests have been passed; (ii) raise Test Issues on the Test Issue Management Log; and (iii) require the Contractor to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

6. Test Reports

- 6.1. The Contractor shall provide to the Client in relation to each test:
 - (a) a draft test report not less than two (2) Working Days prior to the date on which the test is planned to end; and
 - (b) the final test report within five (5) Working Days of completion of the relevant testing (each a **"Test Report"**).
- 6.2. Each Test Report shall provide a full report on the testing conducted in respect of the relevant Deliverables, including:

- (a) an overview of the testing conducted;
- (b) identification of the Test Success Criteria that have and have not been satisfied, together with the Contractor's explanation of why any criteria have not been met;
- (c) the tests that were not completed, together with the Contractor's explanation of why those tests were not completed;
- (d) the Test Issues identified, in each case grouped by Severity Level; and
- (e) the specification for any hardware and software used throughout testing and any changes that were applied to that hardware and/or software during testing.

6.3. The Client shall be entitled to review the relevant Test Reports and the Test Issue Management Log prior to the issue of any Satisfaction Certificate.

7. Testing Quality Audits

- 7.1. The Client or an agent or contractor appointed by the Client may perform ongoing quality audits in respect of any part of the testing conducted pursuant to this Schedule F (each a **"Testing Quality Audit"**)
- 7.2. The Contractor shall allow sufficient time in each Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided. The Client shall give the Contractor at least five (5) Working Days' written notice of its intention to undertake a Testing Quality Audit. The Contractor shall provide all reasonable necessary assistance and access to all relevant documentation required by the Client to enable it to carry out the Testing Quality Audit.
- 7.3. If a Testing Quality Audit gives the Client concern in respect of the testing procedures or any test, the Client shall prepare a written report for the Contractor detailing its concerns and the Contractor shall, within a reasonable timeframe, respond in writing to the Client's report. In the event of an inadequate response from the Contractor, the Client (acting reasonably) may withhold a Satisfaction Certificate until the issues identified in the report have been addressed to the reasonable satisfaction of the Client.

8. Acceptance Testing and Outcomes

- 8.1. When the Contractor considers that a Deliverable is ready for acceptance testing, the Contractor shall notify the Client in writing (a **"Readiness Notice"**), providing:
 - (a) confirmation that the Deliverable has passed the Contractor's internal quality control testing;
 - (b) all documentation, test results and supporting materials necessary for the Client to conduct acceptance testing; and
 - (c) confirmation that the relevant test environment has been prepared and is available for use by the Client.
- 8.2. The Client shall commence acceptance testing within ten (10) Working Days of receipt of a valid Readiness Notice (or such other period as may be specified in the Detailed Implementation Plan).
- 8.3. The Client shall conduct acceptance testing in accordance with the approved Test Plan and shall assess the Deliverable against the Acceptance Criteria. The acceptance testing period shall be twenty (20) Working Days from the date of commencement of acceptance testing (or such other period as may be specified in the Detailed Implementation Plan or as the Client may reasonably require having regard to the nature and complexity of the Deliverable) (the **"Acceptance Testing Period"**).

- 8.4. The Client shall be entitled to engage third parties to assist in or conduct acceptance testing on its behalf, and the Contractor shall cooperate fully with any such third parties.
- 8.5. Upon completion of acceptance testing, the Client shall notify the Contractor in writing of the outcome within ten (10) Working Days of the expiry of the Acceptance Testing Period. The Client shall either:
- (a) where the Deliverable satisfies the Test Success Criteria without any Test Issues, or where there are Test Issues that do not exceed the Test Issue Threshold and there are no Material Test Issues, issue a satisfaction certificate confirming that the Deliverable meets the Acceptance Criteria (a **"Satisfaction Certificate"**);
 - (b) where there are Test Issues that exceed the Test Issue Threshold but there are no Material Test Issues, issue a conditional satisfaction certificate conditional upon the remediation of the Test Issues in accordance with an agreed Rectification Plan (a **"Conditional Satisfaction Certificate"**); or
 - (c) where there are one or more Material Test Issues, or where the Deliverable otherwise fails to satisfy the Test Success Criteria, reject the Deliverable, specifying in reasonable detail the defects, deficiencies or non-conformities identified and the respects in which the Deliverable fails to meet the Acceptance Criteria (a **"Rejection Notice"**). Where one or more Material Test Issues are identified, such failure shall, without prejudice to the Client's other rights and remedies, constitute a material breach of this Agreement.
- 8.6. The issue of a Satisfaction Certificate shall constitute acceptance of the relevant Deliverable and, where the Deliverable is associated with a Milestone, shall constitute achievement of that Milestone for the purposes of this Agreement. A Milestone Payment shall become due and payable only upon the issue of a Satisfaction Certificate (or, where applicable, a Conditional Satisfaction Certificate) in respect of the corresponding Milestone, in accordance with clause 4 (Payment) of this Agreement.
- 8.7. Where a Conditional Satisfaction Certificate is issued, the Contractor shall submit a detailed rectification plan for the Client's approval (a **"Rectification Plan"**) setting out the steps the Contractor proposes to take to remedy all Test Issues identified, together with a proposed timetable for remediation.
- 8.8. The Rectification Plan shall be agreed before the issue of the Conditional Satisfaction Certificate unless the Client agrees otherwise, in which case the Contractor shall submit the Rectification Plan for approval by the Client within ten (10) Working Days of receipt of the Client's notification.
- 8.9. The Contractor shall remedy all defects or non-conformities identified in the Conditional Satisfaction Certificate in accordance with the agreed Rectification Plan (and in any event within twenty (20) Working Days of the date of the Conditional Satisfaction Certificate, unless the Client agrees otherwise in writing).
- 8.10. Upon satisfactory remediation, the Client shall issue a full Satisfaction Certificate. If the Contractor fails to remedy the identified defects or non-conformities within the specified period, the Client may, at its discretion:
- (a) extend the remediation period;
 - (b) revoke the Conditional Satisfaction Certificate and issue a Rejection Notice; or
 - (c) withhold or recover any Milestone Payment that has become payable on foot of the Conditional Satisfaction Certificate.

Where the Client issues a Conditional Satisfaction Certificate, the Client may (but shall not be obliged to) revise the relevant Milestone Date and any subsequent Milestone Date.

9. Defect Remediation and Re-Testing

- 9.1. Where a Rejection Notice is issued, the Contractor shall, at its own cost, use all reasonable endeavours to remedy the defects, deficiencies or non-conformities identified in the Rejection Notice and re-submit the Deliverable for acceptance testing within twenty (20) Working Days of receipt of the Rejection Notice (or such other period as the Client may reasonably specify having regard to the nature and severity of the defects identified).
- 9.2. Upon re-submission of a Deliverable following remediation, the Client shall conduct further acceptance testing in accordance with the procedures set out in this Schedule F.
- 9.3. The Client shall not be required to limit its re-testing to the defects previously identified and shall be entitled to test the Deliverable against all Acceptance Criteria. If a Deliverable fails acceptance testing on two (2) consecutive occasions (including the initial acceptance testing), the Client shall be entitled, without prejudice to any other right or remedy available to it under this Agreement (including the right to claim liquidated damages under clause 6H), to:
 - (a) require the Contractor to submit a detailed remediation plan for the Client's approval, setting out the root cause of the failures and the steps the Contractor proposes to take to achieve conformity with the Acceptance Criteria;
 - (b) engage a third party, at the Contractor's cost, to assess the Deliverable and advise on remediation; or
 - (c) treat the failure as a material breach of this Agreement.

10. Milestone Completion and Final Acceptance

- 10.1. The issue of a Satisfaction Certificate shall constitute acceptance of the relevant Deliverable and, where the Deliverable is associated with a Milestone shall constitute achievement of that Milestone for the purposes of this Agreement. A Milestone Payment shall become due and payable only upon the issue of a Satisfaction Certificate (or, where applicable, a Conditional Satisfaction Certificate) in respect of the corresponding Milestone, in accordance with clause 4 (Payment) of this Agreement.
- 10.2. Upon the achievement of all Milestones and the issue of Satisfaction Certificates in respect of all Deliverables, the Client shall conduct a final review to confirm that the Services as a whole have been delivered in accordance with the Specification and the Detailed Implementation Plan. If the Client is satisfied, the Client shall issue a final acceptance certificate (the "Final Acceptance Certificate") confirming completion of the implementation. The issue of the Final Acceptance Certificate shall not relieve the Contractor of any continuing obligations under this Agreement, including any warranty, support or maintenance obligations.

11. Warranty Period

- 11.1. Each Deliverable shall be subject to a warranty period of ninety (90) calendar days commencing on the date of issue of the relevant Satisfaction Certificate (or such other period as may be specified in the Detailed Implementation Plan) (the "**Warranty Period**").
- 11.2. During the Warranty Period, the Contractor shall, at its own cost, promptly remedy any defect, error or non-conformity in the Deliverable that is identified by the Client, provided that

such defect, error or non-conformity relates to a failure of the Deliverable to conform to the Acceptance Criteria or the Specification. The Contractor shall commence remediation within five (5) Working Days of notification by the Client (or such shorter period as the nature of the defect may require) and shall complete remediation within such period as the Client may reasonably specify.

12. General Provisions

- 12.1. The Contractor shall provide all assistance and cooperation reasonably required by the Client in connection with testing, including making available Key Personnel and such other personnel, documentation, test data and access to systems and environments as the Client may require.
- 12.2. The issue of a Satisfaction Certificate, Conditional Satisfaction Certificate or Final Acceptance Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Client's requirements for that Deliverable or Milestone;
 - (b) affect the Client's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates; or
 - (c) constitute a waiver of any right or remedy available to the Client under this Agreement in respect of any defect, deficiency or non-conformity in a Deliverable that was not apparent or could not reasonably have been discovered at the time of acceptance testing, nor shall it limit the Client's rights under clause 6 (Remedies) of this Agreement.
- 12.3. Each Party shall bear its own costs in respect of testing. However, if a Milestone is not achieved, the Client shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of further review or re-testing.
- 12.4. The Contractor shall maintain complete and accurate records of all testing conducted pursuant to this Schedule F, including Test Plans, Test Specifications, test results, Test Reports, the Test Issue Management Log and remediation records, and shall make such records available to the Client upon request. Such records shall be retained for the period specified in clause 11D of this Agreement.