

TOURISM IRELAND CLG

Services Contract

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“Invitation to Tender (ITT)”	means the document issued on [INSERT DATE] by which Tourism Ireland invited the Contractor to tender;
“Key Personnel”	means those key persons identified at Schedule IV to provide the Services to Tourism Ireland (or their authorised replacements appointed in accordance with Clause 6.3);
“Personal Data”	has the meaning given to such term in Schedule V .
“Price”	means the price of the Services as set out in Schedule II .
“Pricing Schedule”	means the document setting out the Price, attached as Schedule II hereto;
“Service Level Agreement (SLA)”	means the document submitted as part of the Tender Proposal which sets out how the Contractor will meet Tourism Ireland’s requirements and the Contractor’s obligations in relation to the provision of the Services, attached as part of Schedule I hereto, (which shall comply with the minimum requirements attached in Schedule I ;
“Tender Proposal”	means the tender submitted by the Contractor, including the Pricing Schedule and any other schedules thereto.

- 1.2 Any reference to any provision of any legislation shall include any modification, re-enactment or extension thereof for the time being in force whether made before or after the date of this agreement.
- 1.3 The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms or companies unless the context clearly indicates the contrary.
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. THE CONTRACTOR’S OBLIGATIONS

- 2.1 The Contractor shall provide the Services with skill and expertise and in a first class, professional, diligent and conscientious manner.
- 2.2 The Contractor is hereby required to comply with all reasonable instructions and requests of Tourism Ireland in relation to the Services.

3. PRICE

- 3.1 The Price shall be as set out in **Schedule II**.
- 3.2 Unless otherwise stated, the Price shall be:

3.2.1 exclusive of any applicable Value Added Tax (which shall be noted separately in **Schedule II** and payable by Tourism Ireland subject to receipt of a VAT invoice); and

3.2.3 payable in Euro.

3.3 The Price shall be inclusive of any costs and/or expenses incurred by the Contractor in the performance of the Services.

4 TERMS OF PAYMENT

4.1 Tourism Ireland shall pay the Contractor for the Services in the manner and amounts specified in **Schedule II**.

4.2 In the event that Tourism Ireland determines at any time that the quality of the Services being performed by the Contractor is of a standard below that required by this Agreement, or that the Services in any other respect are not being rendered in accordance with this Agreement, Tourism Ireland will notify the Contractor accordingly and will be entitled to withhold any future payment due to the Contractor pursuant to this Agreement until such time as the matter in question has been remedied to the reasonable satisfaction of Tourism Ireland. The rights of Tourism Ireland pursuant to this clause shall be without prejudice to any other rights of Tourism Ireland under this Agreement or under law, including the right of termination as provided in **Clause 15** hereof.

4.3 Tourism Ireland shall pay such charges within **thirty (30) days** (or such other period agreed in writing by both parties) of receipt of invoice, provided all monies specified on the Contractor's invoices are properly due in accordance with this Agreement and the invoices meet the agreed requirements.

4.4 Tourism Ireland shall be entitled to set off against the Price any sums owed to Tourism Ireland by the Contractor.

4.5 The Late Payments in Commercial Transactions Regulations 2012 (as amended) shall apply to this Agreement.

5 TOURISM IRELAND'S OBLIGATIONS

5.1 During the term of this Agreement, Tourism Ireland shall afford the Contractor such access to Tourism Ireland's information records and Tourism Ireland's material relevant to the Services as the Contractor may reasonably require to provide the Services.

6 PERSONNEL AND SUB-CONTRACTORS

6.1 The Contractor shall ensure that all of its personnel and/or sub-contractors involved in the provision of the Services shall perform the Services with skill and expertise and in a first class, professional, diligent and conscientious manner and in accordance with Tourism Ireland's reasonable requirements and instructions.

6.2 The Contractor shall ensure that the Key Personnel identified at Schedule IV are made available to render the Services and are, subject to Clause 6.3 below, not replaced or substituted for the duration of the Services.

6.3 In the event that the Contractor wishes to replace any Key Personnel, it shall notify Tourism Ireland forthwith in writing and shall use its best endeavours to identify a

replacement of equivalent expertise and experience as soon as possible. The appointment of any such replacement shall be subject to the prior written approval of Tourism Ireland.

- 6.4 If any of the Key Personnel or other employees, sub-contractors or agents of the Contractor shall be prevented by illness or injury from performing the Services, the Contractor shall report that fact forthwith to Tourism Ireland and shall keep Tourism Ireland informed of the reason for any continued absence and of its expected duration and, if Tourism Ireland request, provide a substitute in accordance with the procedure set out in Clause 6.3 above.
- 6.5 In the event that Tourism Ireland is not satisfied with the performance of the Contractor's personnel or sub-contractor(s), the Contractor shall remove said person or sub-contractor(s) and the Contractor shall use its best endeavours to identify a replacement of equivalent expertise and experience as soon as possible. The appointment of any such replacement shall be subject to the prior written approval of Tourism Ireland.
- 6.6 The Contractor hereby undertakes to Tourism Ireland that, for the duration of this Agreement and for the period of 12 months following upon its termination or expiry, it shall not directly, or by its agents or affiliates or otherwise, whether for itself or for the benefit of any other person, induce or endeavour to induce any officer or employee of the Tourism Ireland to leave its employment.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Tourism Ireland hereby acknowledges that all of the copyright and any other Intellectual Property Rights used in connection with, or subsisting in, the Bespoke Works developed for Tourism Ireland hereunder and with respect to all source code, object code, documentation, flowcharts, drawings, specifications, manuals and other data which are created as a result of this Agreement shall remain vested in the Contractor. The Contractor hereby grants Tourism Ireland a non-exclusive, perpetual, irrevocable, assignable and royalty free licence to reproduce, copy, use and sub-licence the Intellectual Property Rights for all purposes connected with the Bespoke Works including, without limitation, the design, construction, alteration, reconstruction, extension and completion of the Bespoke Works or any part thereof **PROVIDED ALWAYS THAT** the Contractor shall not be liable for any use by the Tourism Ireland or its appointee of any of the Intellectual Property Rights for any purpose other than that for which the same were prepared by or on behalf of the Contractor.
- 7.2 The Contractor hereby irrevocably and unconditionally waives in favour of Tourism Ireland any and all moral rights conferred on the Contractor by the Copyright and Related Rights Act, 2000 (and any amendments or re-enactments thereto) in relation to any right which may be vested in Tourism Ireland pursuant to Clause 7.1 above or otherwise.
- 7.3 The Contractor shall forthwith deliver to Tourism Ireland on request and, if applicable, as set out at Schedule 1 a full and updated copy of any data, documentation, flowcharts, drawings, specifications, source code, object code and manuals in relation to the Bespoke Works, together with the necessary listings and other documentation relating thereto.
- 7.4 The Contractor undertakes and covenants that all personnel involved in the development of the Bespoke Works are/shall be its employees, or are/shall be under contract to the Contractor, and that, under the contract of employment or service of each, any Intellectual Property Rights arising out of or relating to work done by that person for the Contractor in relation to the Bespoke Works vested or will be caused to vest in the Contractor and that employees or contractors have no title right or interest whether legal or beneficial in any such Intellectual Property Rights.

- 7.5 The Contractor hereby grants to Tourism Ireland a non-exclusive, perpetual, assignable, irrevocable, world-wide, royalty-free licence to use, copy, develop and sub-license any and all of the Contractor's Intellectual Property Rights used or subsisting in the Services.
- 7.6 Under no circumstances shall the Contractor have the right, either express or implied, to use, copy, disseminate or develop any of Tourism Ireland's Intellectual Property Rights under this Agreement, other than for the sole purpose of providing Tourism Ireland with the Services in accordance with this Agreement, without the express prior written consent of Tourism Ireland.

8 WARRANTIES AND INDEMNITIES

- 8.1 The Contractor shall indemnify and keep indemnified Tourism Ireland, its agents, employees, officers, subsidiaries, associated companies, assigns and, where Tourism Ireland is acting as an agent, Tourism Ireland's principal, in full against:
- 8.1.1 any liability whatsoever, including, without limitation, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Tourism Ireland (whether to its own customers or otherwise) directly arising from or in connection with any breach by the Contractor of any warranty or provision of this Agreement; and
 - 8.1.2 arising out of any act or omission of the Contractor or its employees, agents or sub-contractors in performing its obligations under this Agreement or arising out of the failure of the Contractor or its employees, agents or sub-contractors to adequately and safely perform any of its obligations under this Agreement.
- 8.2 Without prejudice to the generality of **Clause 8.1** above, the Contractor agrees to indemnify Tourism Ireland in respect of any damage, loss or injury occurring to any property, or any person in consequence of the performance of the Services by the Contractor or its employees, agents or sub-contractors and shall reimburse Tourism Ireland in respect of any such damage, loss or injury caused to its property or its employees.
- 8.3 Without prejudice to the generality of the above, the Contractor undertakes and covenants that it will not in the provision of the Services, including the Bespoke Works, infringe the copyright or other Intellectual Property Rights of any third party, and undertakes that it shall fully indemnify Tourism Ireland against all losses, expenses, third party actions, claims or demands, and damages and costs arising therefrom (including any legal costs and any sums paid in settlement of claims) suffered or incurred by Tourism Ireland as a result of any act or omission of the Contractor in providing the Services in respect of any third party Intellectual Property Rights.
- 8.4 Tourism Ireland undertakes that the Contractor shall be given notice of any third party action or claim described in **Clause 8.3** above that is made against Tourism Ireland and the Contractor shall have the right to defend any such claims, following consultation with Tourism Ireland who shall be kept fully informed at all times of all such claims or proceedings arising from such actions or claims, and make settlements thereof at its own discretion in order to settle or oppose any such claims.
- 8.5 The Contractor shall notify Tourism Ireland without delay of any claims arising in connection with this Agreement.
- 8.6 The Contractor warrants that:

- 8.6.1 it has the appropriate qualifications, consents, competence and authority to perform the Services;
 - 8.6.2 the Services are fit for the purpose for which they are intended, and shall be performed with the degree of skill and care that is required by good, competent, workmanlike procedures and standards prevailing at the time of the Services being performed; and
 - 8.6.3 it shall not do anything to prejudice the name or reputation of Tourism Ireland or the Tourism Ireland's business interests.
- 8.7 Both Parties acknowledge and understand their respective duties of care in respect of the Safety, Health and Welfare at Work Act 2005 and all regulations made under that Act.

9 THE CONTRACTOR'S LIABILITY

- 9.1 Tourism Ireland is relying wholly and exclusively upon the Contractor's skill, judgement and expertise in providing the Services and accordingly the Contractor shall be liable to Tourism Ireland for any loss or damage whatsoever, or howsoever or wherever caused arising directly in connection with this Agreement Provided Always that the Contractor shall not be liable for acts or omissions of Tourism Ireland.
- 9.2 Save as set out in paragraph 16.1 of Schedule V, the Contractor shall not be liable for consequential or indirect loss (that is to say loss not naturally or directly flowing from any negligence omission or breach) including loss of sale, loss or diminution of earnings, loss or diminution of profit, loss of contract or loss of opportunity or any special loss incurred or suffered by Tourism Ireland.
- 9.3 Any approval, testing or acceptance by Tourism Ireland in accordance with this Agreement shall not, in any way, limit the Contractor's liability and obligations under this Agreement.

10 INSURANCE

- 10.1 The Contractor shall procure and maintain adequate insurance cover in respect of its provision of the Services, for the types and minimum levels of cover stated at **Schedule 1** hereto and to the reasonable satisfaction of Tourism Ireland, with a reputable insurance company against all insurable liability under this Agreement in respect of the Services, without prejudice to the generality of the foregoing, in respect of any loss or damage to the Services and all claims by third parties for death, injuries, loss or damage to property, and against all actions, suits, claims, demands, costs and expenses whatsoever, by reason of, or arising out of any claim by any of the Contractor's employees, workmen or servants, in respect of any accident, death, injury or damage sustained in connection with or arising out of this Agreement. Tourism Ireland's interest shall be noted in the above policies.
- 10.2 If the proceeds of such insurance are insufficient to cover the cost of reinstatement, replacement or repair, the Contractor will make good any deficiency out of its own monies.
- 10.3 The said insurance policy or policies shall be furnished, duly completed, to Tourism Ireland prior to the commencement of the Services and maintained for the duration of the provision of the Services and, in the case of professional indemnity insurance (or equivalent insurance cover which meets the satisfaction of Tourism Ireland), for 6 years following the completion of the Services and up-to-date copies forwarded to Tourism Ireland each year.

- 10.4 The Contractor shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

11 TAX CLEARANCE CERTIFICATES

- 11.1 The Contractor and all sub-contractors (domestic or otherwise) shall continue to hold, in good standing, current issues of all tax certificates and, in the case of non resident contractors, statements from the Revenue Commissioners as to suitability for tax purposes, for the duration of the Services and until final payment has been made.

12 COMPLIANCE WITH LAW

- 12.1 The Contractor shall comply with all applicable requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures in providing the Services.

13 CONFIDENTIALITY

- 13.1 Both parties agree to keep all business, financial and other confidential information provided to them by the other party (“Confidential Information”), arising or coming to their attention in connection with this Agreement secret and confidential and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party, except as necessary to enable both parties to carry out their duties and obligations under this Agreement. Tourism Ireland's Confidential Information shall include but shall not be limited to Personal Data. Both parties shall procure that their personnel, whether employed directly or sub-contractors, having access to such information shall, under their contracts of employment or service, be subject to the same obligations of confidentiality.
- 13.2 The obligations of confidence referred to in **Clause 13.1** shall not apply to any information which:
- 13.2.1 is in the possession of and is at the free disposal of either party or is published or is otherwise in the public domain prior to the receipt of such information by that party;
 - 13.2.2 is or becomes publicly available on a non-confidential basis through no fault of Tourism Ireland or the Contractor; or
 - 13.2.3 is received in good faith by Tourism Ireland or the Contractor from a third party who, on reasonable enquiry claims to have no obligations of confidence in respect of it and who imposes no obligations of confidence upon Tourism Ireland or the Contractor.
- 13.3 All information relating to the nature of the Services, the affairs of Tourism Ireland or any of its requirements shall be strictly confidential as between Tourism Ireland and the Contractor and the Contractor shall not during the or at any time afterwards publish or otherwise disclose such information except in the performance of the Services.
- 13.4 The provisions of this **Clause 13** shall not prevent either party from disclosing Confidential Information where it is required to do so by law or by a binding court order save that, to the extent legally permissible, it shall notify the other party of such disclosure and allow that party a reasonable opportunity to object to such disclosure.
- 13.5 Upon any termination of the Services each Party shall cause all Confidential Information belonging to the other Party and applicable to the terminated agreement in whatever medium, to be returned, deleted or destroyed, according to the written instructions of the other party, subject to as may be required pursuant to applicable regulatory requirements.

14 CONTRACT REVIEW / AUDIT

- 14.1 The performance of the Contractor under this Agreement shall be subject to review on an on-going basis. The Contractor shall provide to Tourism Ireland periodic reports to the reasonable satisfaction of Tourism Ireland during the term of this Agreement, and shall be committed to continuously improving the Contractor / Tourism Ireland relationship.
- 14.2 The Contractor shall grant to Tourism Ireland access to the Contractor's premises, books, records, documents, equipment and other property it may reasonably require in order to check the Contractor's compliance with this Agreement. Such access includes, but is not limited to, access for the purpose of liaison, reporting and inspection and for verification of compliance by the Contractor with its obligations under this Agreement and its likely capacity to continue to comply with its obligations in the future. Without limiting the foregoing, such audits may include, but need not be limited to:
- security and administration practices and facilities;
 - quality assurance practices;
 - relevant insurance policies;
 - annual audited accounts of the Contractor;
 - accounts for payment;
 - invoices and receipts; and
 - such other investigations as are necessary to determine whether the Contractor has complied with this Agreement.
- 14.3 The Contractor shall implement such recommendations and comply with such audit findings to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its related obligations in accordance with the requirements set out in this Agreement.

15 TERMINATION

- 15.1 The Services shall continue for a period of three [3] years from the date of the commencement of the Services with, at Tourism Ireland's option, annual extensions for a further in [1] year, or terminated in accordance with this **Clause 15**.
- 15.2 Without prejudice to any other rights or remedies to which it may be entitled, Tourism Ireland shall be entitled to terminate the Services forthwith without liability to the Contractor by giving notice to the Contractor at any time if:-
- 15.2.1 the Contractor commits a material breach of any term or condition of this Agreement or fails to perform any obligation, responsibility hereunder and if such breach is capable of being remedied fails to remedy the breach within thirty (30) days of notice given by Tourism Ireland requiring the Contractor to do so;
 - 15.2.2 the Contractor convenes a meeting for the purposes of or proposes to enter into any arrangement or composition for the benefit of its creditors;
 - 15.2.3 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Contractor;
 - 15.2.4 the Contractor ceases or threatens to cease to carry on business or takes or suffers any similar analogous action under any other applicable law;
 - 15.2.5 the Contractor is unable to pay its debts within the meaning of Section 570 of the Companies Act 2014 or any analogous provision of law;
 - 15.2.6 an order is made or an effective resolution is passed for the winding up of the Contractor's company other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by Tourism Ireland;

- 15.2.7 a petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Contractor's company;
 - 15.2.8 the Contractor is struck off the register of companies;
 - 15.2.9 Tourism Ireland reasonably believes that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor accordingly;
 - 15.2.10 any representation made by the Contractor in connection with this Agreement shall in the opinion of Tourism Ireland prove to be untrue or incorrect in a material respect as of the date when made; or
 - 15.2.11 the Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Agreement.
- 15.3 Tourism Ireland reserves the right to terminate the Services forthwith at any stage on payment to the Contractor of such reasonable and agreed costs as were accrued prior to the date of termination, including reasonable costs arising from the termination of the Services.
- 15.4 Termination of the Services pursuant to **Clause 15.2** or **15.3** above shall not relieve or discharge either party from any obligations which have accrued prior to such termination.
- 15.5 Upon termination or expiry of the Services, the Contractor shall, if requested by Tourism Ireland, provide all reasonable assistance to Tourism Ireland in the orderly transfer of the Services, functions and operations provided pursuant to this Agreement to another service provider or to Tourism Ireland itself.
- 15.6 The provisions of **Clauses 1, 7, 8, 9, 11, 12, 13, 14, 19, 22, 23, 24, 26, 27, 28 and 29** shall survive the termination or expiry of this Agreement.

16 TRANSFER AND SUB-CONTRACTING

- 16.1 The Contractor shall not assign, transfer, sub-contract or purport to assign, transfer or sub-contract to any other person any of its rights or obligations under this Agreement, without the express prior written authorisation of Tourism Ireland. Tourism Ireland shall not be bound to give such an authorisation and may withhold same without giving any reason, or may grant such authorisation subject to such conditions as Tourism Ireland may, in its absolute discretion, see fit to impose.
- 16.2 Tourism Ireland may assign, transfer or sub-contract this Agreement, or any part thereof. The Contractor shall, if requested by Tourism Ireland, provide all reasonable assistance to Tourism Ireland in relation to any such assignment, transfer or sub-contract and fully co-operate with any relevant third parties.
- 16.3 This Agreement shall be binding upon the successors and assigns of the Parties and the name of a Party appearing in this Agreement shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either Party except as expressly provided.

17 NOTICES

- 17.1 Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:
- (i) if delivered, at the time of delivery to the addressee or its duly authorised agent,

- (ii) if sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto)
- (iii) if transmitted electronically on receipt of 'read receipt' or equivalent.

17.2 All notices to Tourism Ireland or the Contractor from the other party under this Agreement shall be in writing and sent to the appropriate address set out below:

Tourism Ireland	Contact: Address:
Contractor	Contact: Address:

17.3 All notices, documents and communications provided under this Agreement shall be in the English language.

18 WAIVER

18.1 Failure or neglect by Tourism Ireland to enforce at any time any of the provisions hereof shall not be construed nor deemed to be a waiver of Tourism Ireland's rights hereunder, nor in any way affect the validity of the whole or any part of this Agreement, nor prejudice Tourism Ireland's rights to take subsequent action.

19 VALIDITY

19.1 If any provisions of this Agreement are held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

20 RELATIONSHIP

20.1 Neither party shall be the authorised agent of the other party or have the right or authority either express or implied to create or incur any liability against or on behalf of any other party other than those obligations and liabilities in this Agreement. In particular, the Contractor shall not hold itself out, nor permit any person to hold it out, as being authorised to bind or pledge the credit of Tourism Ireland in any way and shall not do any act that might reasonably create the impression that it is so authorised.

21 FORCE MAJEURE

21.1 For the purposes of this Agreement and subject to the Contractors fulfilment of its obligations pursuant to Clause 28, the expression "Force Majeure" shall mean any governmental regulations, pandemic, fire, flood or any disaster affecting or delaying the performance by a party of its obligations. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it could not have been reasonably foreseen, beyond the reasonable control of the party seeking to rely on it and it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party seeking to rely on it, or of that party's agents or employees.

21.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever directly or indirectly caused or incurred by the other party by reason of any failure

or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

- 21.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 21.4 In the event that the Force Majeure event is continuing for a period at least three (3) months, the other party shall have the right to terminate the Services upon fourteen (14) days' notice.
- 21.5 It is expressly agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing its obligations under this Agreement, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor has a contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be events falling within the definition of Force Majeure set out in Clause 26.1 above, and therefore exclude other events such as strikes, lock-outs or industrial disputes of the Contractor.

22 PUBLICITY

- 22.1 The Contractor shall ensure that no publicity relating to the Services shall take place without the prior written consent of Tourism Ireland. For the avoidance of doubt, this includes internal publicity and using Tourism Ireland as a referee.

23. DATA PROTECTION

- 23.1 To the extent that any Personal Data is Processed (as defined in Schedule V) by the Contractor in connection with the provision of the Services or otherwise, the provisions set out in Schedule V shall apply to such processing.

24 CONFLICT OF INTEREST

- 24.1 The Contractor shall ensure that no employees of the Contractor or any other person engaged by the Contractor to fulfil this Agreement shall accept any professional or other commitment or engagement during the term of the Services which conflicts or might reasonably be expected to conflict with the duties and obligations undertaken by the Contractor hereunder. The Contractor warrants that it has disclosed to Tourism Ireland any such commitments or engagements as may be already in existence on the date hereof.

25 GOVERNING LAW

- 25.1 Subject to **Clause 26** below, this Agreement shall be governed by and shall be read and construed in all respects in accordance with Irish law and each of the parties hereto submit to the jurisdiction of the Irish courts.

26 DISPUTE RESOLUTION

26.1 Should there be any dispute arising out of this Agreement or the interpretation or fulfilment of any of its provisions, the following mechanism shall apply:

- 26.1.1 In the first instance, the parties shall submit the dispute to the personnel nominated specifically to participate in the escalation process and identified as such in **Schedule III** in the order set out therein;
- 26.1.2 If such disputes cannot be resolved pursuant to the mechanism set out at **Clause 26.1.1** above within a period of ten (10) days, either party may request that the matter is submitted to conciliation/mediation. If any such request is made, the matter will be submitted to conciliation/mediation by a conciliator/mediator to be appointed, in the absence of agreement between the parties, by the President for the time being of the Law Society of Ireland or, in the event of the President being unable or unwilling to make the appointment, by the next senior Officer of that Society who is so able and willing. The determination of the conciliator/mediator shall be final and binding on both parties unless, within fourteen (14) days following the date of the determination, either party notifies the other in writing that it rejects the determination of the conciliator/mediator. Each party shall bear its own costs in the conciliation/mediation and shall each pay half of the costs of the conciliator/mediator;
- 26.1.3 In the event that the conciliation procedure under **Clause 26.1.2** above fails to result in a satisfactory resolution of the dispute within thirty (30) days of the date of the notice to refer to conciliation/mediation (or such other longer period as is agreed between the parties), or if both parties agree to submit the matter directly to arbitration after the conclusion of the escalation process under **Clause 26.1.1**, either party may submit the matter to arbitration by a sole arbitrator to be appointed, in the absence of agreement between the parties, by the President for the time being of the Incorporated Law Society of Ireland (or, in the event of his being unwilling or unable to do so, by the next senior officer of the said institution who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies) and in such an event this article shall be deemed to be a submission to an arbitration within the meaning of the Arbitration Act 2010 and any amendment or any statutory modification or re-enactment thereof for the time being in force.

27 DISASTER RECOVERY PLANS AND PROCEDURES

Notwithstanding the provisions of Clause 21 (Force Majeure), the Contractor shall at all times have adequate written disaster recovery plans and procedures in place which, in the event of a crisis or disaster, will prevent or minimise the disruption of the Services to be provided to Tourism Ireland in accordance with this Agreement (including, but not limited to, the immediate provision of replacement personnel and/or equipment). The Contractor shall provide Tourism Ireland with a copy of such plans and procedures (upon Tourism Ireland's request from time to time) and allow Tourism Ireland to inspect and/or test such plans and procedures upon request. The Contractor must comply with and adopt any reasonable recommendations which Tourism Ireland may have in relation to such plans and procedures.

28 FREEDOM OF INFORMATION

Tourism Ireland is subject to the provisions of the Code of Practice on Freedom of Information for North South Implementation Bodies and Tourism Ireland ("the Code"). If, for any reason, it is wished that information provided to Tourism Ireland is not disclosed because of its sensitive nature, then it is incumbent upon the Contractor, when providing the information, to identify same and specify the reasons for its sensitivity.

A copy of the Code is available at the Tourism Ireland website
<https://www.tourismireland.com/About-Us/Freedom-Of-Information>

29 SECURITY

- 29.1 The Contractor shall comply, and shall procure the compliance of its staff, with Tourism Ireland's ICT Security Policies & Procedures and the Contractor shall ensure that any ICT Security Plans produced by the Contractor fully complies with Tourism Ireland's ICT Security Policies and procedures.
- 29.2 Tourism Ireland shall notify the Contractor of any variations or proposed variations to the ICT Security Policies and Procedures.
- 29.3 If the Contractor believes that a variation or proposed variation to the ICT Security Policies & Procedures will have a material and unavoidable cost implication to the Services it may submit a Variation to Contract. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
- 29.4 Until and/or unless a change to the Contract Price is agreed by Tourism Ireland the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 29.5 Whilst on Tourism Ireland's Premises, staff shall comply with all ICT security measures implemented by Tourism Ireland in respect of Personnel and other Persons

attending those Premises. Tourism Ireland shall provide copies of its written ICT security procedures to the Contractor on request.

The Contractor shall co-operate with any investigation relating to security which is carried out by Tourism Ireland or by any person who is responsible to Tourism Ireland for ICT security matters and when required by the company's Representative –

- a) shall make any staff identified by Tourism Ireland's Representative available to be interviewed by the company's Representative, or by a person who is responsible to Tourism Ireland for ICT security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both Tourism Ireland's Representative and the Contractor's Representative; and
- b) shall provide all documents, records or other material of any kind which may reasonably be required by Tourism Ireland or by a person who is responsible to the company for ICT security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. Tourism Ireland shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

29.6 The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from both Tourism Ireland's and the contractor's ICT systems.

29.7 If Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Tourism Ireland's Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

29.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of this Condition shall be borne by the parties as follows:

- a) by the Contractor where the Malicious Software originates from the Contractor Software, any third parties software used by the Contractor in providing the Services or Tourism Ireland's Data (whilst Tourism Ireland's Data was under the control of the Contractor); and
- b) by Tourism Ireland if the Malicious Software originates from Tourism Ireland's Software or Tourism Ireland's Data (whilst this Data was under the control of Tourism Ireland).

The parties hereto have executed this Agreement the day and year first herein WRITTEN

SIGNED for and on behalf of
TOURISM IRELAND CLG:

Director: _____ **INSERT NAME**

Date: _____

SIGNED for and on behalf of
[INSERT NAME OF CONTRACTOR:]

Managing Director: _____ **INSERT NAME**

Date: _____

Schedule I

SERVICES

[Tourism Ireland will insert in this schedule a detailed description of the specific requirements of Tourism Ireland and the Services required from the Contractor, including deliverables, time frames etc as per the ITT and extracting the relevant elements of the Tender.]

[This Schedule will also include the Service Level Agreement agreed between Tourism Ireland and the successful tenderer.]

SERVICE LEVEL AGREEMENT

The Service Level Agreement to be agreed between the parties shall include the following provisions.

The Contractor shall:

- (i) conduct its business and provide the Services with all due skill, care, diligence and expedition and in an orderly and business-like manner;
- (ii) provide the Services in compliance with the ITT and the Tender Proposal;
- (iii) at all times liaise, communicate and work with Tourism Ireland and with any third parties appropriately authorised by Tourism Ireland so as to facilitate the efficient provision of the Services;
- (iii) employ and retain sufficient and adequately trained staff for the provision of the Services, always provided that adequate notification is received from the Tourism Ireland as to anticipated requirements;
- (v) inform Tourism Ireland, as soon as reasonably practical, of any difficulties or circumstances which might affect the Contractor's performance of its obligations under this Agreement; and
- (viii) as soon as reasonably practical, notify Tourism Ireland in writing of any notice or order by any court, governmental agency, local authority or regulatory agency which may have an impact of the Contractor's ability to perform the Services.

Insurance

The Contractor is required, in accordance with Clause 10 of the Agreement, to procure and maintain the following types and minimum levels of insurance cover (for each and every claim) in respect of the provision of the Services:

Insurance Type	Minimum Level	Additional Requirements
Public Liability Insurance		
Employer's Liability Insurance		
Professional Indemnity Insurance		

Schedule II
PRICING SCHEDULE

This Schedule will include details in relation to the agreed amount and timing of payments.

Schedule III

ESCALATION PROCEDURE

In the event of a dispute in relation to the interpretation or fulfilment of any of the provisions of this Agreement, the parties shall, in accordance with **Clause 26.1.1**, submit the dispute to the following personnel in the order set out below:

1. Tourism Ireland Project Manager Contractor's Project Manager

 and
2. Director of Tourism Ireland Director of Contractor

Schedule IV
KEY PERSONNEL

Name	Position
<u>Contractor</u> INSERT NAME	INSERT DESIGNATION

Schedule V

The following definitions and rules of interpretation apply in this Schedule

Agreement the service level agreement to which this Schedule is attached.

Appropriate Technical and Organisational Measures: has the meaning given to such term in Data Protection Legislation (including, as appropriate, the measures referred to in Article 32(1) of the GDPR).

Authorised Person: the persons specified as the Client's Key Personnel in section 1.5 of the Agreement, as amended from time to time in accordance with the Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in Ireland when banks are open for business.

Business Purpose: the purpose of carrying out obligations of the Contractor in the Schedule.

Client: Tourism Ireland.

Client Data: the Personal Data supplied by the Client to the Contractor from time to time.

Client System: any information technology system or systems owned or operated by the Client from which Client Data is received by the Contractor in accordance with this Schedule.

Contractor System: any information technology system or systems owned or operated by the Contractor to which Client Data is delivered or on which the Services are performed in accordance with this Schedule.

Data: any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.

Data Controller: has the meaning given to such term in Data Protection Legislation.

Data Processor: has the meaning given to such term in Data Protection Legislation.

Data Protection Legislation: means the Data Protection Acts 1988 to 2018, GDPR and, any other applicable law or regulation relating to the Processing of Personal Data and to privacy including the E-Privacy Directive 2002/58/EC and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations"), as such legislation shall be supplemented, amended, revised or replaced from time to time.

Data Protection Officer: a data protection officer appointed pursuant to Data Protection Legislation.

Data Subject: an individual who is the subject of Personal Data.

Delete: to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.

DPC: Office of the Data Protection Commissioner, Canal House, Station Road, Portarlinton, Co. Laois, R32 AP23, Ireland.

Effective Date: the date of the Agreement.

GDPR: General Data Protection Regulation (EU) 2016/679.

Normal Business Hours: 9 am to 5.30 pm GMT on a Business Day.

Personal Data: has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller, and in respect of which the Contractor is the Data Processor under the Agreement.

Processed Data: any Client Data that has been Processed.

Personal Data Breach: means any “personal data breach” as defined in the GDPR in respect of the Client Data caused by the Contractor and Personal Data Breaches shall be interpreted accordingly.

Processing: has the meaning given to such term in Data Protection Legislation, and **Process** and **Processed** shall be interpreted accordingly.

Restricted Transfer: any transfer of Client Data from the Contractor to a Sub-processor or any other person or entity, or any onward transfer of Client Data from such Sub-processor, person or entity, in each case where such transfer would be prohibited by Data Protection Legislation (or by the terms of data transfer agreements put in place to address the data transfer restrictions in Data Protection Legislation). For the avoidance of doubt, this includes transfers of Client Data to countries outside the EEA which are not subject to an adequacy decision by the European Commission.

Security Features: any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard.

Specific Instructions: instructions meeting the criteria set out in paragraph 2.3 of this Schedule.

Standard Contractual Clauses: the contractual Clauses dealing with the transfer of Personal Data outside the EEA, which have been approved by (i) the European Commission under Data Protection Legislation, or (ii) by the DPC or an equivalent competent authority under Data Protection Legislation.

Sub-processor: has the meaning given to such term in paragraph 13.2 of this Schedule.

The Parties agree as follows:

2. DATA PROCESSING

2.1 The Contractor is the Data Processor and the Client is the Data Controller under the Agreement.

2.2 The Contractor shall Process the Client Data for the Business Purpose only and in compliance with the Client's instructions from time to time, which may be:

2.2.1 Specific Instructions; or

2.2.2 the general instructions set out in Schedule I of the Agreement unless required to do otherwise by law, in which case, where legally permitted, the Contractor shall inform the Client of such legal requirement before Processing.

2.3 The Contractor shall not act on any specific instructions given by the Client from time to time during the Term unless they are:

2.3.1 in writing (including by electronic means); and

2.3.2 given by an Authorised Person.

2.4 The types of Personal Data to be Processed pursuant to this Schedule may include but is not limited to Name, email address, DOB, postal address, phone number, bank details, gender, dietary requirements, nationality, and the categories of Data Subject to whom such Personal Data relates may include but is not limited to employees, customers, suppliers and business contacts.

2.5 The Client reserves the right to alter the technical arrangements relating to the format, presentation and distribution of the Client Data and it shall be a matter solely for the Contractor to adjust its systems and business accordingly. For the avoidance of doubt, it shall be the responsibility of the Contractor to ensure that the Client Data format, presentation and provision by the Client is suitable and satisfactory to meet the business requirements of the Contractor.

3. CONNECTION

3.1 The Parties shall use reasonable efforts to establish connectivity between the Client System and the Contractor System on the Effective Date. Each Party shall bear its own costs of establishing that connectivity.

4. CONTRACTOR'S OBLIGATIONS

4.1 The Contractor shall:

4.1.1 only make copies of the Client Data to the extent reasonably necessary for the Business Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Client Data);

4.1.2 not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Client Data other than for the Business Purpose; and

4.1.3 not do anything in connection with the Client Data that may materially damage the reputation of the Client.

4.2 The Contractor shall notify the Client in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Contractor to Process the Client Data as set out in the Agreement.

4.3 The Contractor shall promptly comply with any request from the Client requiring the Contractor to amend, transfer or Delete any of the Client Data.

4.4 At the Client's request, the Contractor shall provide to the Client a copy of all Client Data held by the Contractor in the format and on the media reasonably specified by the Client.

4.5 At the Client's request, the Contractor shall provide to the Client such information and such assistance as the Client may reasonably require, and within the timescales reasonably specified by the Client, to allow the Client to comply with its obligations under Data Protection Legislation, including but not limited to assisting the Client to:

4.5.1 comply with its own security obligations with respect to the Client Data;

4.5.2 discharge its obligations to respond to requests for exercising Data Subjects' rights;

4.5.3 comply with its obligations to inform Data Subjects about serious Personal Data Breaches;

4.5.4 carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Client Data; and 4.5.5 engage in consultation with the DPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Client Data would result in a high risk to Data Subjects.

4.6 Any proposal by the Contractor to in any way use or make available the Client Data other than as provided for pursuant to the Agreement shall be subject to prior written approval of the Client.

5. CONTRACTOR'S EMPLOYEES

5.1 The Contractor shall ensure that access to the Client Data is limited to those employees who need access to the Client Data strictly to meet the Contractor's obligations under the Agreement and/or to comply with Data Protection Legislation; and in the case of any access by any employee, such part or parts of the Client Data as is strictly necessary for performance of that employee's duties.

5.2 The Contractor shall ensure that all employees that have access to the Client Data:

5.2.1 are informed of the confidential nature of the Client Data and are subject to an appropriate statutory obligation of confidentiality or have committed themselves to a binding duty of confidentiality in respect of such Client Data;

5.2.2 have undertaken training in the laws relating to handling Personal Data; and

5.2.3 are aware both of the Contractor's duties and their personal duties and obligations under Data Protection Legislation and the Agreement.

5.3 The Contractor shall take reasonable steps to ensure the reliability of any of the Contractor's employees (or approved agents/contractors) who have access to the Client Data.

6. RECORDS

6.1 The Contractor shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) relating to the Processing activities carried out on behalf of the Client, containing:

6.2 details of the purposes of such processing;

6.2.1 a general description of the security measures taken in respect of the Client Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;

6.2.2 the name and contact details of the Contractor; any sub-processor; where applicable, the Contractor's representatives; and where applicable, any Data Protection Officer appointed by the Contractor;

6.2.3 the categories of Data Subjects and categories of Client Data Processed by the Contractor on behalf of the Client;

6.2.4 the time limits for erasure of the Client Data; and

6.2.5 details of any non-EEA Client Data transfers, and the safeguards in place in respect of such transfers.

7. AUDITS

7.1 The Client shall have the right to examine and review the use by the Contractor of the Client Data provided to the Contractor by the Client for the purposes of ascertaining that such Client Data has been used and Processed in accordance with the terms of the Agreement on the basis set out paragraph 7.2 of this Schedule.

7.2 An audit under this paragraph 7 shall be carried out on the following basis: (i) The Client must first contact the Contractor by email asking for evidence of compliance with the Contractor's obligations under this Schedule, and the Contractor shall respond to such email within 21 Business Days; (ii) if the Contractor has not responded to the Client's email with a response which is reasonably satisfactory to the Client within such 21 Business Day period then, no more than once in any three/six (3/6) month period and during Normal Business Hours during the course of three Business Days, the Client or its representatives may on reasonable advance notice of no less than 10 Business Day Period in writing, audit the Contractor's Processing of the Client Personal Data at the Contractor's premises for the purposes of such examination and review, and the Contractor shall give all necessary assistance to the conduct of such examinations/audits during the Term. The requirement to give advance notice will not apply if the Client believes that the Contractor is in breach of any of its obligations under the Agreement.

7.3 The examination and review by the Client of the use by the Contractor of the Client Data may include, but shall not be limited to, a review of the existing internal compliance regime of the Contractor in relation to:

7.3.1 business processes and nature of interactions with customers;

7.3.2 existing audit procedures on business activities and financial reporting, and the governance of such procedures;

7.3.3 staff vetting, hiring and training procedures;

7.3.4 data access requests and the purpose/duration for which Client Data is Processed/kept;

7.3.5 reporting of data breaches; and

7.3.6 the named director or senior person (or Data Protection Officer (if applicable to the Contractor)) within the organisation with responsibility for audit and business process rigour.

7.4 After each audit, the Client may (but shall not be obliged to) provide a report to the Contractor detailing the extent of compliance with the provisions of this Schedule. The Contractor shall respond as required to the findings and recommendations of any Client audit report and shall provide information requested by the Client on the implementation by the Contractor of any required actions.

7.5 In the event that the audit process determines that the Contractor is non-compliant with the provisions of this Schedule, the Client may, by notice in writing, deny further access to the Client Data and the provisions of paragraph 14 of this Schedule will, by notice in writing, be invoked.

7.6 Without prejudice to the Client's right of audit under this Schedule, to the extent permitted under Data Protection Legislation, the Contractor may demonstrate its and, if applicable its Sub-processors', compliance with its obligations under the Agreement through its compliance with a certification scheme or code of conduct approved under Data Protection Legislation.

8. DATA SUBJECT REQUESTS

8.1 The Contractor shall co-operate with and assist the Client, including but not limited to employing Appropriate Technical and Organisational Measures, in respect of the fulfilment of the Client's obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.

8.2 The Contractor shall notify the Client within twenty four (24) hours if it receives:

8.2.1 a request from a Data Subject for access to that person's Personal Data;

8.2.2 any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Client Data; or

8.2.3 any complaint or any claim for compensation arising from or relating to the Processing of the Client Data.

8.3 The Contractor shall not disclose the Client Data to any Data Subject or to a third party other than at the request of the Client or as provided for in the Agreement, or as required by law, in which case the Contractor shall to the extent permitted by law inform the Client of that legal requirement before the Contractor discloses the Client Data to any Data Subject or third party.

8.4 The Contractor shall not respond to any request from a Data Subject except on the documented instructions of the Client or Authorised Person or as required by law, in which case the Contractor shall to the extent permitted by law inform the Client of that legal requirement before the Contractor responds to the request.

9. DATA PROTECTION OFFICER

The Contractor shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide the Client with the contact details of such Data Protection Officer.

10. SECURITY

10.1 The Contractor shall, in accordance with its requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures and Security Features to safeguard the Client Data from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage, and

that, having regard to the state of technological development and the cost of implementing any measures (and the nature, scope, context and purposes of Processing, as well as the risk to Data Subjects), such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage and to the nature of the Client Data to be protected.

10.2 The Contractor shall ensure that the Client Data provided by the Client can only be accessed by persons and systems that are authorised by the Contractor and necessary to meet the Business Purpose, and that all equipment used by the Contractor for the Processing of Client Data shall be maintained by the Contractor in a physically secure environment.

10.3 The Contractor shall make a back-up copy of the Client Data every week and record the copy on media from which the Client Data can be reloaded in the event of any corruption or loss of the Client Data.

11. BREACH REPORTING

11.1 The Contractor shall promptly inform the Client if any Client Data is copied, modified, lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised or unlawful disclosure of or access to the Client Data. In such case, the Contractor will restore such Client Data at its own expense, and will comply with all of its obligations under Data Protection Legislation in this regard.

11.2 The Contractor must inform the Client of any Personal Data Breaches or any complaint, notice or communication in relation to a Personal Data Breach, without undue delay, provide sufficient information and assist the Client in ensuring compliance with its obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the DPC within seventy two (72) hours), and communication of Personal Data Breaches to Data Subjects where the breach is likely to result in a risk to the rights of such Data Subjects. The Contractor shall co-operate with the Client and take such reasonable commercial steps as are directed by Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

12. RESTRICTED TRANSFERS

12.1 A Restricted Transfer may not be made without the prior written consent of the Client, and if such Client consent has been obtained, the Restricted Transfer may only be made where there are Appropriate Technical and Organisational Measures in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses approved by the DPC).

12.2 Subject to paragraph 12.3 of this Schedule, in the event that any Restricted Transfer by the Contractor to a contracted Sub-processor or otherwise ("**Data Importer**") is approved by the Client in accordance with paragraph 12.1 of this Schedule, the obligations of the Contractor in paragraph 12.1 to ensure that there are Appropriate Technical and Organisational Measures in place will be satisfied if the contract between the Contractor and the Data Importer contains at least the same level of data protection obligations on the Data Importer as the Contractor has in the Agreement (including, but not limited to incorporating the Standard Contractual Clauses (to the extent applicable)), and such contract has been validly authorised, executed and is legally binding between the Contractor and the Data Importer.

12.3 Paragraphs 12.1 or 12.2 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which may include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

13. SUB-PROCESSORS

13.1 The Contractor shall not engage a sub-processor (including any third party, affiliate or contractor of the Contractor, but excluding Contractor employees) to Process Client Data without the prior written consent of the Client. In the case of general written authorisation given, the Contractor shall inform the Client of any intended changes concerning the addition or replacement of other sub-processors, thereby giving the Client the opportunity to revoke its consent in respect of such changes.

13.2 Where the Contractor is authorised pursuant to paragraph 13.1 of this Schedule to engage a sub-processor in connection with the Processing of Client Data pursuant to the Agreement (the “**Sub-processor**”), the Contractor must enter into a data processing contract with the Sub-processor (and provide the Client with an executed copy of such contract on request) which:

13.2.1 places the same data protection obligations on the Sub-processor as the Contractor has in the Agreement (in particular, providing sufficient guarantees to implement Appropriate Technical and Organisational Measures in such a manner that the Processing will meet the requirements of Data Protection Legislation); and

13.2.2 terminates automatically on termination of the Agreement for any reason or on expiry of the term of the Agreement.

13.3 With respect to each approved Sub-processor, the Contractor shall, before the Sub-processor first Processes Client Data, carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Client Data required by this Agreement

13.4 The Contractor will remain fully liable to the Client in respect of any failure by the Sub-processor to fulfil its data protection obligations in this regard.

14. TERMINATION PROVISIONS

14.1 On any expiry or termination of the Agreement for any reason:

14.1.1 at the choice of the Client, the Contractor shall Delete or return all Client Data to the Client and Delete existing copies of such Client Data, unless legally required to store the Client Data for a period of time. If the Client makes no such election within a ten (10) day period of expiry or termination of the Agreement, the Contractor shall Delete any of the Client Data in its possession; and

14.1.2 if the Client elects for destruction rather than return of the Client Data under paragraph 14.1.1 the Contractor shall as soon as reasonably practicable ensure that all Client Data is Deleted from the Contractor System.

14.2 The Contractor shall provide written confirmation of compliance with this section 14 in the form of a letter signed by an authorised representative no later than fourteen (14) days after expiry or termination of the Agreement.

15. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

15.1 The Contractor warrants, represents and undertakes to the Client that:

15.1.1 the Contractor will Process the Client Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including Data Protection Legislation);

15.1.2 the Contractor will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of Client Data and against the accidental loss or destruction of, or damage to, Client Data; and

15.1.3 the Contractor will discharge its Processing obligations under the Agreement with all due skill, care and diligence.

15.2 The Client does not warrant that the Client Data:

15.2.1 is or are accurate, complete, reliable, secure, useful, fit for purpose or timely;

15.2.2 has or have been tested for use by the Contractor or any third party; or

15.2.3 will be suitable for or be capable of being used by the Contractor or any third party.

16. INDEMNITIES

16.1 The Contractor shall indemnify the Client against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with the Processing of the Client Data by the Contractor, its employees or agents in breach of this Agreement, contrary to the instructions of the Client or in contravention of Data Protection Legislation (including but not limited to claims by Data Subjects relating to loss of control over Client Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of Client Data and any other significant economic or social disadvantage).

16.2 The Contractor shall take out insurance sufficient to cover any payment that may be required under the indemnity contained in paragraph 16.1 and produce the policy and receipt for premium paid, to the Client on request.

16.3 Unless required to do so by the DPC or any other competent supervisory authority, the Contractor shall not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of the Client Data, without the prior written agreement of the Client.”

16.4 This paragraph 16 is intended to apply to the allocation of liability for losses relating to Data Protection Legislation as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary, except to the extent (i) not permitted by applicable law (including Data Protection Legislation); and (ii) it does not affect the liability of either party to any Data Subject.